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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

GRAND STREET COMMONS LLC,

Defendant.

NO. 18-2-14708-5 SEA

AMENDMENT NO. 2 TO PROSPECTIVE
PURCHASER CONSENT DECREE

I. INTRODUCTION

A. A Prospective Purchaser Consent Decree (Decree) was entered by this Court on July 3, 2018 and amended on March 8, 2021. The Decree is a negotiated settlement between the State of Washington, Department of Ecology (Ecology) and Grand Street Commons (GSC), entered pursuant to RCW 70A.305.040(5), to (1)¹ prospectively resolve the potential liability of GSC for contamination at the Grand Street Commons Project Site (Site) arising from a release(s) or threatened release(s) of hazardous substances, in advance of GSC purchasing an ownership interest in the Site, and (2) facilitate the cleanup of the Site for redevelopment and reuse as transit-oriented affordable and market-rate housing.

¹ Effective July 1, 2020, Chapter 70.105D of the Revised Code of Washington (RCW) was reorganized and recodified in a new Title 70A of the RCW, with no substantive changes. *See* S.H.B. 2246, 66th Leg. (as filed in Office of Sec’y of State, March 28, 2020). This Amendment thus employs citations to 70A.305 RCW, as applicable.

1 B. The Decree provides that GSC shall be responsible for completing a Remedial
2 Investigation/Feasibility Study (RI/FS) for the Site, while, via a parallel Prospective Purchaser
3 Consent Decree, the Mt. Baker Housing Association (“MBHA”) shall complete an RI/FS for the
4 full Site. Decree, Section VI.C. GSC and MBHA have completed the RI/FS for the Site. GSC
5 and MBHA have also completed a draft Cleanup Action Plan (“CAP”) for the Site. The Decree
6 provides that the Parties intend to amend the Decree “to provide for additional remedial actions at
7 the Site.” These additional remedial actions will include a cleanup action meeting the requirements
8 of WAC 173-340-360 that will serve as the final Site remedy. Decree, Section VI.D.

9 C. The Public Review RI/FS and Draft CAP were the subject of public comment from
10 TBD to TBD. Following the completion of public comment, Ecology approved the Final RI/FS
11 and issued the Final CAP for the Site on TBD. The CAP is attached to this Second Amendment
12 and is Exhibit E to the Decree. The CAP provides for additional remedial actions, serves as the
13 final Ecology-selected remedy for the Site, and meets the requirements of WAC 173-340-360.

14 D. This Second Amendment requires GSC to conduct additional remedial actions at
15 the Properties; specifically, implementing the cleanup action described in the CAP that serves as
16 the final Site remedy. A parallel amendment to the MBHA Decree requires MBHA to implement
17 the cleanup action described in the CAP at the full Site.

18 E. The Decree provides that redevelopment at the Site may occur on a property-
19 specific basis under the following requirements:

- 20 1. A final CAP for the Site has been issued by Ecology;
- 21 2. The property-specific redevelopment is accompanied by a remedial action
22 that implements Ecology’s selected cleanup action for the portion of the Site; and
- 23 3. Ecology determines that proceeding with the property-specific
24 redevelopment and remedial action:
 - 25 (a) Is consistent with, and will not preclude, complicate, or render more
26 expensive the final cleanup action for the Site as a whole; and

1 (b) Will not result in recontamination of the subject property.

2 F. The cleanup action provided for in the CAP requires that Environmental
3 (Restrictive) Covenants be recorded pursuant to WAC 173-340-440. The Parties agree to further
4 discuss affordable units for the project.

5 G. The cleanup action provided for in the CAP requires the implementation of
6 engineered and institutional controls, triggering the need for financial assurance under WAC 173-
7 340-440(11).

8 **II. AMENDMENT TO CONSENT DECREE**

9 Based on the foregoing, and pursuant to the provisions of Section XVI (Amendment of
10 Decree), the Parties stipulate and agree that the Decree should be amended with the following
11 additional determinations and conditions, as follows:

12 A. All terms of the Decree, including previous amendments and determinations,
13 remain in effect unless expressly amended herein.

14 B. The CAP is hereby added as Exhibit E to the Decree.

15 C. Pursuant to Section VI of the Decree, GSC shall implement the cleanup action
16 specified in the CAP for the Properties in accordance with the CAP and the CAP Implementation
17 Schedule, which is hereby added as Exhibit F to the Decree. Exhibit F may be modified by
18 agreement of the project coordinators pursuant to Section XVI of the Decree.

19 D. Upon completion of the remedial action components that are to be accomplished
20 prior to initiating the property-specific redevelopment, GSC shall submit a request to proceed with
21 redevelopment. Ecology shall issue an authorization to proceed with redevelopment upon its
22 determination that the CAP elements necessary to be completed prior to redevelopment have been
23 completed.

24 E. Pursuant to the provisions of Section XXI (Land Use Restrictions) of the Decree,
25 GSC shall record Environmental (Restrictive) Covenants on properties it owns within the Site in
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1 accordance with the requirements of that Section and the requirements of the CAP and its
2 applicable schedules

3 F. In addition to restrictions related to environmental conditions, the Environmental
4 (Restrictive) Covenants to be recorded pursuant to Section II.F may require that the project will
5 provide affordable units. By agreement of the project coordinators pursuant to Section XVI of the
6 Decree, prior to the recording of any Covenant required by the Decree, the Parties will further
7 discuss (1) the requirements for the number of affordable units where affordable units will be
8 otherwise required; (2) the term of land use restriction; and (3) the instrument(s) required to be
9 recorded to restrict land use to the requirements of this section. If required, the affordable housing
10 requirements shall, through this Decree, attach to GSC prior to the above-referenced Covenants
11 being recorded.

12 G. In the event that, prior or subsequent to the above-referenced Covenants being
13 recorded, one or more of the referenced parcels is transferred to a successor in interest who is not
14 a party to this Decree, compliance with the affordable housing requirements of Section II.G is
15 necessary in order for that successor in interest to enjoy the stay of enforcement provided in
16 RCW 70A.305.040(4)(e). In the event such a successor in interest fails to comply with the
17 affordable housing requirements of Section II.G, Ecology reserves authority to pursue an action
18 for cost recovery from such successors pursuant to RCW 70A.305.050(3), to the extent Public
19 Funds have been expended at the Site.

20 H. In accordance with WAC 173-340-440(8)(c), GSC must make good faith efforts to
21 obtain restrictive covenants for any properties not owned by GSC that are affected by the releases
22 addressed by the CAP.
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2 STATE OF WASHINGTON
3 DEPARTMENT OF ECOLOGY

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9 Date: _____

Date: _____

10 GRAND STREET COMMONS



11 Joe Ferguson
12 Principal, Lake Union Partners &
13 Manager, Grand Street Commons
14 (206) 829-9452

15 Date: 4/1/21

16 ENTERED this _____ day of _____, 2021.

17
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19 JUDGE
20 King County Superior Court

CLEANUP ACTION PLAN IMPLEMENTATION SCOPE OF WORK AND SCHEDULE

Following completion of the Final RI/FS report, GSC and MBHA prepared an Agency Review preliminary DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. Pursuant to the PPCDs, The preliminary DCAP included a general description of the proposed remedial actions, cleanup standards developed from the RI/FS and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions. GSC and MBHA submitted two (2) copies of the Agency Review preliminary DCAP, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval.

After receiving Ecology's comments on the Agency Review preliminary DCAP, if any, GSC and MBHA shall revise the preliminary DCAP to address Ecology's comments and submit two (2) copies of the Public Review DCAP including one electronic copy each in Word (.doc) and Adobe (.pdf) formats. Ecology will select a final Site remedy in a final CAP and that the Potential Responsible Parties (PLPs) will conduct remedial actions pursuant to and consistent with the CAP.

The Parties (GSC, MBHA, and Ecology) understand that the Site consists of multiple parcels and that GSC and MBHA will likely seek to redevelop parcels at the Site in phases. Ecology may authorize parcel-specific remedial action where such remedial action implements the CAP for that portion of the Site. The phased redevelopment will be consistent with, will not preclude, complicate, or render more expensive the final Site-wide cleanup action in the CAP, and will not result in re-contamination at the Site.

The following is a tentative schedule for implementing the Ecology-approved CAP.

EXHIBIT F – CAP ACTIVITIES AND IMPLEMENTATION SCHEDULE

Schedule	Activity	Deliverables to Ecology
May-July 2021	Permitting, field activities planning, logistical coordination, in-situ groundwater treatment and performance monitoring followed by groundwater monitoring well decommissioning (actions to be completed prior to construction/remedial excavation)	Draft Engineering Design Report
Estimated Cost of In-Situ Groundwater Treatment		
July-December 2021	Shoring installation, Remedial Excavation of Contaminated Soil, Confirmation Soil Sampling and Testing	Construction Completion

December 2021- May 2022	Capping of Contaminated Soil and Installation of new groundwater monitoring wells	Report along with a Groundwater Compliance Monitoring Plan
Estimated Cost for Remedial Actions		
May 2022 – December 2028 or December 2033	Groundwater compliance monitoring and testing for 5 to 10 years. Execute environmental covenants and implement Institutional Controls.	Annual Groundwater Monitoring Reports and Cleanup Completion Report

DRAFT