

After Recording Return
Original Signed Covenant to:

Erik Snyder
HQ Section Manager
Toxics Cleanup Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Environmental Covenant

Grantor: Ninth and Lenora LLC

Grantee: State of Washington, Department of Ecology (hereafter "Ecology")

Brief Legal Description:

Portions of THAT PORTION OF LOT 10, BLOCK 24, PLAT OF THE SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL, DECEASED, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 121, IN KING COUNTY, WASHINGTON (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S 2ND ADDITION TO THE TOWN OF SEATTLE), LYING EASTERLY OF WESTLAKE AVENUE AS ESTABLISHED BY ORDINANCE NO. 7733, as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Portions of LOTS 11 AND 12, BLOCK 24, PLAT OF THE SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL, DECEASED, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 121, IN KING COUNTY, WASHINGTON (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S 2ND ADDITION TO THE TOWN OF SEATTLE), as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Tax Parcel Nos.: Portions of King County Parcel Nos. 0660000540 and 0660000545, as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Cross Reference: No Further Action Likely opinion letter dated August 9, 2021.

RECITALS

- a.** This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70A.305 RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b.** The Property that is the subject of this Covenant is part or all of a site commonly known as the Lenora Building Site, Facility/Site Identification No. 91413494. The Property is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (hereafter "Property"). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.
- c.** The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on the Property in two defined areas at concentrations exceeding applicable MTCA cleanup levels following completion of remedial actions. Specifically, the following principal contaminants remain on the Property at concentrations exceeding MTCA cleanup levels:

Medium	Principal Contaminants Present
Soil	Gasoline-range petroleum hydrocarbons (TPH-G), heavy oil-range petroleum hydrocarbons (TPH-O), benzene, and toluene.
Groundwater	Gasoline-range petroleum hydrocarbons (TPH-G), heavy oil-range petroleum hydrocarbons (TPH-O), arsenic, chromium, lead, and mercury.
Surface Water/Sediment	None

d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. Records describing the extent of residual contamination and remedial actions conducted are available through Ecology, including the following:

- GeoEngineers, Inc., *Remedial Investigation/Feasibility Study, Ninth and Lenora Redevelopment, 2101 9th Avenue, Seattle, Washington, VCP Project No. NW2980*, dated March 24, 2016.
- GeoEngineers, Inc., *Cleanup Action Report, Ninth and Lenora Redevelopment, 2101 9th Avenue, Seattle, Washington, VCP Project No. NW2980*, dated March 24, 2016.
- Aspect Consulting, *Cleanup Action Report, Lenora Building Site (aka Stratus Apartments), 820 Lenora Street, Seattle, Washington, VCP Project No. NW3277*, dated March 26, 2020.
- Aspect Consulting, *Cleanup Action Report Amendment, Lenora Building Site – Final, Facility/Site #9143494 and Cleanup Site ID #1802, Project No.*, dated August 23, 2022.

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an “agency” under UECA, other than its’ right as a holder, are not an interest in real property.

COVENANT

Ninth and Lenora LLC, as Grantor and fee simple owner of the Property hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the Grantor has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. Leases.** Grantor shall restrict any land lease for any portion of the Property to uses and activities consistent with this Covenant and notify all such lessees of the restrictions on the use of the Property. This notification requirement does not apply to individual apartment leases.
- e. Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall

have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. Containment of Soil:

The remedial action for the Property is based on containing remaining contaminated soil under a cap consisting of asphalt pavement and/or concrete. Exhibit B shows the location of the capped areas on the Property. The primary purpose of this cap is to prevent direct contact with contaminated soil and/or leaching of contaminants. As such, the following restrictions shall apply within the area illustrated in Exhibit B:

Any activity in areas of the Property with remaining contamination that are shown on Exhibit B that will compromise the integrity of the cap including: drilling; digging; piercing the cap with sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of the cap; or, application of loads in excess of the cap load bearing capacity, is prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to the cap. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

b. Vapor controls:

The residual contamination on the Property, illustrated in Exhibit B, includes volatile chemicals that may generate harmful vapors. As such, the following restrictions shall apply on the Property to minimize the potential for exposure to these vapors:

- i.** No new building or other enclosed structure shall be constructed within the areas illustrated on Exhibit B unless approved by Ecology.

ii. If a new building or other enclosed structure is approved, it shall be constructed with a sealed foundation and a vapor control system that is operated and maintained to prevent the migration of vapors into the building or structure, unless an alternative approach is approved by Ecology.

iii. If the existing building or the garage HVAC system is altered in any manner that could adversely change vapor intrusion conditions, the Grantor must conduct an updated vapor intrusion assessment.

c. Groundwater Use:

The groundwater beneath the area of the Property illustrated in Exhibit B remains contaminated and shall not be extracted for any purpose other than temporary construction dewatering, investigation, monitoring or remediation. Drilling of a well for any water supply purpose is strictly prohibited. Groundwater extracted within this area for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

Section 3. Access.

a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor, and maintain the remedial action.

b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.

c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

a. Conveyance of Any Interest. The Grantor, when conveying any interest within the area of the Property described and illustrated in Exhibit B, including but not limited to title, easement, leases, and security or other interests but excluding individual apartment leases, must:

i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.

ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON _____ AND RECORDED WITH THE KING COUNTY AUDITOR UNDER RECORDING NUMBER _____. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.

iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.

b. Reporting Violations. Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.

c. Emergencies. For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. Notification procedure. Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

Elton Lee Ninth and Lenora LLC 455 Market Street, Suite #1920 San Francisco, CA 94105 (415) 495-3003 elee@gid.com	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, WA 98504 – 7600 (360) 407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
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Section 5. Modification or Termination.

a. Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:

- i.** Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and
- ii.** If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.


b. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

c. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

Section 6. Enforcement and Construction.

- a.** This Covenant is being freely and voluntarily granted by the Grantor.
- b.** Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.
- c.** Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay, or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.
- d.** The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.
- e.** This Covenant shall be liberally construed to meet the intent of MTCA and UECA.
- f.** The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.
- g.** A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph. The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 19th day of March, 2024.

by: 
Elton Lee
Title: Vice President

CORPORATE ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

On this _____ day of _____, 2024, I certify that _____ personally appeared before me, acknowledged that **he/she** is the _____ of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

Notary Public in and for the State of _____

Residing at ~~See Attached Acknowledgement/Jurat~~

My appointment expires _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of San Francisco)
On March 19, 2024 before me, April M. Johnson, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Elton Lee
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Environmental Covenant
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

The Department of Ecology hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant for the Lenora Building Site.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



By: Erik Snyder

Title: Toxics Cleanup Program, Headquarters Section Manager

Dated: 4/2/2024

STATE ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF Thurston

On this 2nd day of April, 2024, I certify that Erik G. Snyder personally appeared before me, acknowledged that he is the HQ Cleanup Section Manager of the state agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for said state agency.



Notary Public in and for the State of Washington

Residing at Rochester, WA

My appointment expires 5/31/2027



Exhibit A

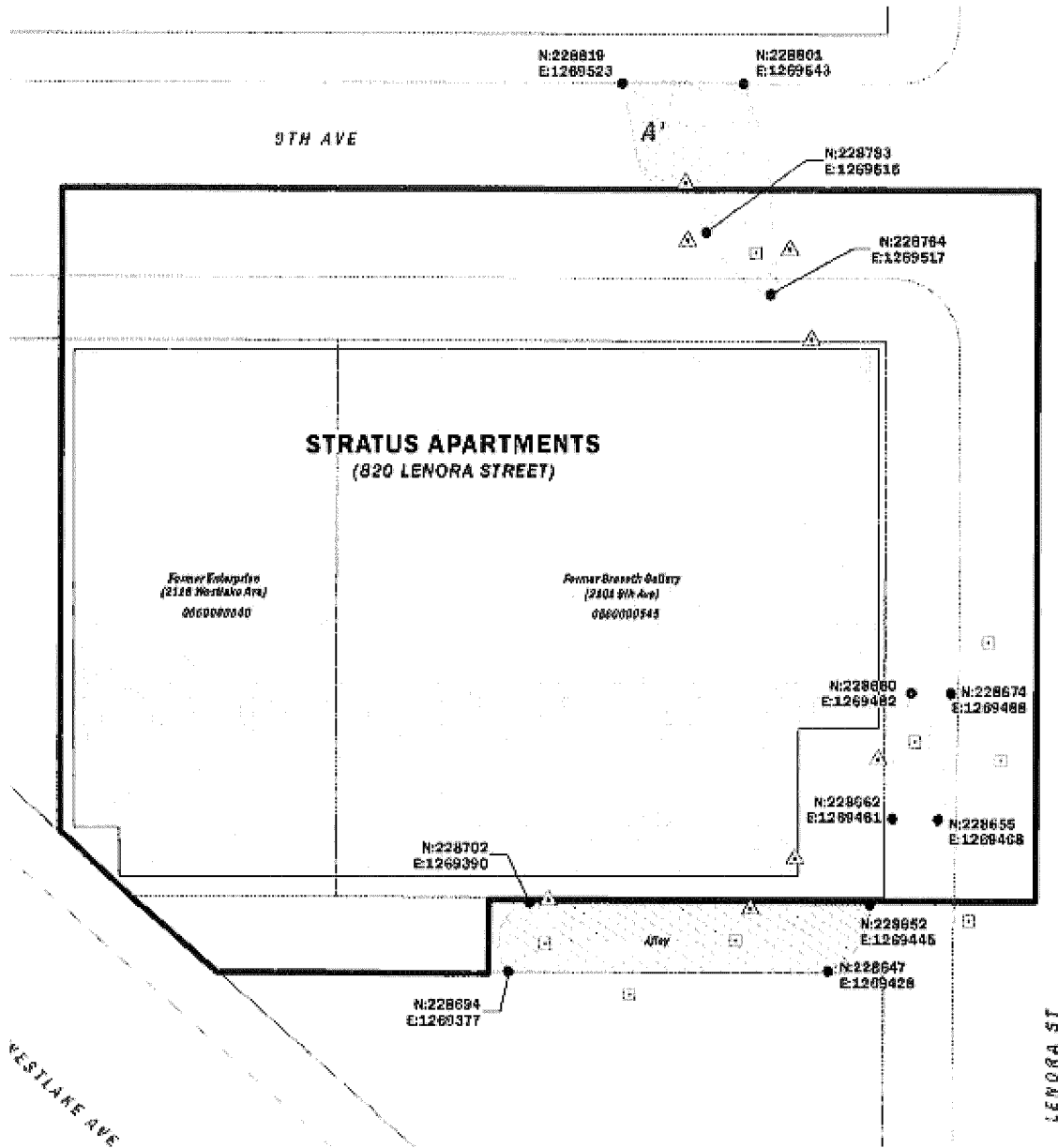
LEGAL DESCRIPTION

Portions of King County Parcel No 0660000540: THAT PORTION OF LOT 10, BLOCK 24, PLAT OF THE SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL, DECEASED, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 121, IN KING COUNTY, WASHINGTON (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S 2ND ADDITION TO THE TOWN OF SEATTLE), LYING EASTERLY OF WESTLAKE AVENUE AS ESTABLISHED BY ORDINANCE NO. 7733, as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Portions of King County Parcel No. 0660000545: LOTS 11 AND 12, BLOCK 24, PLAT OF THE SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL, DECEASED, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 121, IN KING COUNTY, WASHINGTON (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S 2ND ADDITION TO THE TOWN OF SEATTLE), as depicted as "COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL" in Exhibit B.

Exhibit B

COVENANT RESTRICTED AREA AND RESIDUAL CONTAMINATED SOIL



When Recorded, Return to:

HILLIS CLARK MARTIN & PETERSON, P.S.
Attention: Allyson Bazan
999 Third Avenue, Suite 4600
Seattle, WA 98104

SUBORDINATION AGREEMENT

Grantor: <u>Wells Fargo Bank, N.A.</u>	
<input type="checkbox"/> Additional on page _____	
Grantee: 1) <u>Ninth and Lenora LLC</u>	2) <u>Fidelity National Title Company of Washington, Inc.</u>
<input type="checkbox"/> Additional on page _____	
Legal Description (abbreviated): <u>N/A</u>	
<input type="checkbox"/> Additional on : _____	
Assessor's Tax Parcel ID #: <u>N/A</u>	
Reference Nos. of Documents Released or Assigned: <u>20150814001077</u>	

SUBORDINATION AGREEMENT

KNOW ALL PERSONS, That Wells Fargo Bank, N.A. ("Lender"), the owner and holder of that certain Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement, and Fixture Filing from Ninth and Lenora, a Delaware limited liability company, to Fidelity National Title Company of Washington, Inc, for the benefit of Lender, recorded in the office of the County Auditor of King County, State of Washington, on August 14, 2015, under Auditor's File Number 20150814001077, does hereby agree that said Instrument shall be subordinate to the interest of the State of Washington, Department of Ecology, under the environmental (restrictive) covenant dated March 19, 2024 and recorded in King County, Washington under Auditor's File Number 20240404000611.

WELLS FARGO BANK, N.A.

By: *Matthew Webb*

Name: MATTHEW WEBB

Title: VICE PRESIDENT

Dated: 2/7/2024

ACKNOWLEDGMENT

Commonwealth of
STATE OF
Massachusetts)

) SS

COUNTY OF Suffolk)

I, Rebecca J Shannon, a Notary Public in and for the County and State aforesaid, do hereby certify that [Lender Signatory] to me known, who declared and acknowledged that he/she is the [Lender Title] of WELLS FARGO BANK, N.A., subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said entities and as his own free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and notarial seal this 7th day of February, 2023.

Rebecca J Shannon
Notary Public

Rebecca J Shannon
Printed Name:

(Seal)

Commission expires:

