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KING COUNTY, WASHINGTON

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DEPARTMENT OF
JUDICIAL ADMINISTRATION

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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

GRAND STREET COMMONS LLC

Defendants.

NO. 18-2-14708-5 SEA

PROSPECTIVE PURCHASER
CONSENT DECREE

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1 I. INTRODUCTION

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Grand Street Commons (GSC) under this Decree is to (1) resolve the potential
4 liability of GSC for contamination at the Grand Street Commons Site (Site) arising from a
5 release(s) or threatened release(s) of hazardous substances, in advance of GSC purchasing real
6 property within the Site, and (2) facilitate the cleanup of the Site for redevelopment and reuse
7 as transit-oriented affordable and market rate housing. GSC is an entity formed for the Grand
8 Street Commons redevelopment Project to bring together the Mt. Baker Housing Association
9 (MBHA), Lake Union Partners Seattle LLC (LUP) and HAL Real Estate, Inc., in order to
10 clean up and redevelop the Site. MBHA and LUP have substantial and successful experience
11 in brownfield redevelopment projects. This Decree requires GSC to participate cooperatively
12 by funding the purchase of properties within the Site, facilitating the redevelopment of these
13 properties and ensuring the completion of a Remedial Investigation and Feasibility Study
14 (RI/FS) pursuant to the schedule set forth in Exhibit C. MBHA will be the lead party in
15 performing the cleanup work required by this Decree and the anticipated amendments.
16 MBHA's obligations are more specifically described in a separate Decree it is entering with
17 Ecology for the Site. The parties intend to amend this Decree in the future for GSC to assist
18 MBHA in conducting additional remedial actions at the Site, with MBHA serving as lead
19 performing party. The parties may also amend this Decree in the future to provide for Public
20 Funds pursuant to RCW 70.105D.070(3)(q) or to provide for other applicable public funding.
21 The redevelopment of any property within the Site is contingent on such additional remedial
22 actions occurring.

23 B. Ecology has determined that these actions are necessary to protect human health
24 and the environment.

25 C. The Complaint in this action is being filed simultaneously with this Decree. An
26 answer has not been filed, and there has not been a trial on any issue of fact or law in this case.

1 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the
2 Parties agree that settlement of these matters without litigation is reasonable and in the public
3 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

4 D. By signing this Decree, the Parties agree to its entry and agree to be bound by
5 its terms.

6 E. By entering into this Decree, the Parties do not intend to discharge non-settling
7 parties from any liability they may have with respect to matters alleged in the Complaint. The
8 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
9 sums expended under this Decree.

10 F. This Decree shall not be construed as proof of liability or responsibility for any
11 releases of hazardous substances or cost for remedial action nor an admission of any facts;
12 provided, however, that GSC shall not challenge the jurisdiction of Ecology in any proceeding
13 to enforce this Decree.

14 G. The Court is fully advised of the reasons for entry of this Decree, and good
15 cause having been shown:

16 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

17 II. JURISDICTION

18 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
19 to the Model Toxics Control Act (MTCA), RCW 70.105D.

20 B. Authority is conferred upon the Washington State Attorney General by
21 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
22 after public notice and any required hearing, Ecology finds the proposed settlement would lead
23 to a more expeditious cleanup of hazardous substances. In addition, under
24 RCW 70.105D.040(5), the Attorney General may agree to a settlement with a person not
25 currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse
26 the facility provided: the settlement will yield substantial new resources to facilitate cleanup;

1 the settlement will expedite remedial action consistent with the rules adopted under MTCA;
2 and Ecology determines based upon available information that the redevelopment or reuse of
3 the facility is not likely to contribute to the existing release or threatened release, interfere with
4 remedial actions that may be needed at the Site, or increase health risks to persons at or in the
5 vicinity of the Site. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a
6 consent decree issued by a court of competent jurisdiction.

7 C. Ecology has determined that a release or threatened release of hazardous
8 substances has occurred at the Site that is the subject of this Decree, and that the remedial
9 actions required by this Decree are necessary to protect human health and the environment
10 based on the planned future use of the Site as contemplated by the Parties under this Decree.

11 D. GSC has not been named a PLP for the Site, and GSC has certified under
12 Section IX (Certification of Defendant) that it is not currently liable for the Site under MTCA.
13 GSC is under contract to execute Purchase and Sale Agreements to acquire fifteen parcels
14 located between Rainer Avenue South and 23rd Avenue South, and South State Street and
15 South Holgate Street (the Properties) from the current owners of the Properties. Legal
16 descriptions and addresses of the Properties are provided in Exhibit B. GSC expects to execute
17 the Purchase and Sale Agreements, and acquire the Properties, no later than **June 30, 2018**.
18 The Properties comprise, or likely comprise, portions of the Site. GSC will incur potential
19 liability under RCW 70.105D.040(1)(a) at the time it acquires an interest in the Properties at
20 the Site for performing remedial actions or paying remedial costs incurred by Ecology or third
21 parties resulting from past releases or threatened releases of hazardous substances at the Site.
22 This Decree settles GSC's liability as described herein for this Site upon its purchase of the
23 Properties.

24 E. GSC will redevelop the Properties for a mix of affordable and market-rate
25 transit-oriented housing on the Properties. GSC's involvement and the inclusion of market-rate
26 housing will facilitate the development of affordable housing at the Properties through GSC's

1 ability to bring acquisition and cleanup funding to bear on the project beyond what MBHA
2 itself can achieve. In addition, GSC intends to include approximately 25% affordable units in
3 the market portion of the project and MBHA's portion of the project will be 100% affordable
4 units. The development of additional affordable housing is a critical need in the City of Seattle.
5 The affordable housing at the Properties, in the southeast portion of Seattle in the North
6 Rainier neighborhood is intended to serve a diverse population of residents. The Properties are
7 located two blocks south of the future East Link Light Rail station, which will provide light rail
8 service to Bellevue and other communities. This Decree will facilitate redevelopment of the
9 Properties at the Site, which is contingent on additional remedial actions first occurring as
10 described in Section VI (Work to be Performed). Once completed, the redevelopment will add
11 additional affordable, transit-oriented housing at the Site.

12 F. Ecology finds that this Decree will yield substantial new resources to facilitate
13 cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site
14 in compliance with the cleanup standards established under RCW 70.105D.030(2)(e) and
15 WAC 173-340; will promote the public interest by facilitating the redevelopment or reuse of
16 the Site; and will not be likely to contribute to the existing release or threatened release at the
17 Site, interfere with remedial actions that may be needed at the Site, or increase health risks to
18 persons at or in the vicinity of the Site. In addition, Ecology has determined that this Decree
19 will provide a substantial public benefit by: (1) significantly advancing the cleanup process at
20 the Site through completion of an RI/FS; and (2) putting the structure in place for future
21 cleanup and redevelopment of a partially vacant, no longer operating former commercial
22 equipment manufacturing facility.

23 G. GSC has agreed to undertake the actions specified in this Decree and consents
24 to the entry of this Decree under MTCA.

25 H. This Decree has been subject to public notice and comment.
26

1 **III. PARTIES BOUND**

2 This Decree shall apply to and be binding upon the Parties to this Decree, their successors
3 and assigns. The undersigned representative of each party hereby certifies that he or she is fully
4 authorized to enter into this Decree and to execute and legally bind such party to comply with
5 the Decree. GSC agrees, as herein described, to undertake all actions required by the terms and
6 conditions of this Decree. No change in ownership or corporate status shall alter GSC's
7 responsibility under this Decree. GSC shall provide a copy of this Decree to all agents,
8 contractors, and subcontractors retained to perform work required by this Decree, and shall
9 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
10 this Decree.

11 **IV. DEFINITIONS**

12 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
13 WAC 173-340-200 shall control the meanings of the terms in this Decree.

14 A. Site: The Site is referred to as the Grand Street Commons Project Site and is
15 generally located between Rainier Avenue South and 23rd Avenue South and between South
16 State and South Holgate streets. The Site comprises approximately 3.2 acres and includes all
17 areas where contamination has come to be located from releases at the former Penthouse
18 Drapery operation and property at 1752 Rainier Avenue South (former Penthouse Drapery
19 property), currently owned and operated by Seattle Collision Center (SCC), and from
20 commercial equipment manufacturing operations at the former Belshaw facility. This former
21 facility consists of multiple parcels located between Rainier Avenue South and 23rd Avenue
22 South and between South State and South Holgate streets (former Belshaw property). These
23 releases have likely commingled at the Site, which is more particularly described in the Site
24 Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

25 B. Properties: Refers to the fifteen parcels located between Rainier Avenue South
26 and 23rd Avenue South and between South State and South Holgate streets that MBHA and

1 GSC intend to purchase. The parcel addresses and legal description of the Properties is
2 attached as Exhibit B. The Properties comprise, or likely comprise, portions of the Site.
3 Collectively, the Properties comprise the Belshaw Redevelopment Project.

4 C. Parties: Refers to the State of Washington, Department of Ecology (Ecology),
5 and Grand Street Commons (GSC)

6 D. Consent Decree or Decree: Refers to this Prospective Purchaser Consent
7 Decree, each of the exhibits to the Decree, and any future amendments to the Decree. All
8 exhibits are integral and enforceable parts of this Prospective Purchaser Consent Decree. The
9 terms "Consent Decree" or "Decree" shall include all exhibits and any future amendments to
10 this Prospective Purchaser Consent Decree.

11 E. Public Funds: Refers to public funding provided by Ecology as specified in this
12 Decree or amendments to this Decree and as described in RCW 70.105D.070(3)(q) or other
13 authorized public funding. Nothing in this definition shall be construed to limit GSC from
14 seeking and receiving funding from any other public source that can be applied toward
15 remedial actions.

16 F. Redevelopment: Refers to construction activity, other than building demolition
17 or any activity that also serves as a remedial action (e.g., soil excavation), that improves
18 property for conversion to a new use. Such new uses include, but are not limited to, affordable
19 housing and market-rate mixed commercial and residential use.

20 G. Additional Funding: Refers to funds that GSC will seek to obtain or use to fund
21 remedial action at the Site, including, but not limited to, Public Funds, insurance policy
22 coverage payments, and judgments or settlement funds obtained from other Potentially Liable
23 Persons. This term does not refer to GSC's assets or the liquidation of GSC's assets.

24 V. FINDINGS OF FACT

25 Ecology makes the following findings of fact without any express or implied admissions
26 of such facts by GSC.

1 A. The Site is located in Seattle, Washington, and consists of approximately 3.2
2 acres. The Site is located between Rainier Avenue South and 23rd Avenue South and between
3 South State and South Holgate streets. A diagram of the Site is attached as Exhibit A. A
4 portion of the Site, the former Penthouse Drapery property at 1752 Rainier Avenue South, has
5 been designated by Ecology's Voluntary Cleanup Program (VCP) as the Penthouse Drapery
6 Cleaners, VCP Project No. NW2278.

7 B. MBHA and GSC are under contract to purchase the Properties and intend to
8 close on the Properties no later than June 30, 2018.

9 C. Over the last several decades, businesses operating at the Site released
10 hazardous substances into soil, groundwater, and soil gas at the Site. With respect to the former
11 Penthouse Drapery property at 1752 Rainier Avenue South, this property has been occupied by
12 multiple commercial and/or light industrial facilities from approximately the early 1950s to the
13 present. Between approximately 1984 and 1990, the former Penthouse Drapery property was
14 used by Penthouse Drapery as a commercial dry cleaning operation that used tetrachloroethene
15 (PCE) as a dry cleaning solvent. Significant amounts of PCE were released at the former
16 Penthouse Drapery property to soil and groundwater. Groundwater with levels of PCE above
17 applicable MTCA cleanup levels has migrated south onto the Properties. Since approximately
18 1994, the former Penthouse Drapery Property has been owned by SCC, which has operated a
19 vehicle repair and painting business. GSC is not purchasing the former Penthouse Drapery
20 property.

21 D. Commercial and industrial operations have been conducted at the Properties
22 from approximately 1916 until the early 2000s. The Properties are also the location of the
23 former Belshaw operation. Belshaw Brothers, Inc. (BBI) owned the Properties from
24 approximately 1924 until the early 2000s. BBI operated a commercial equipment
25 manufacturing facility that produced bakery and restaurant equipment at the Properties. The
26 operation encompassed several parcels and included a paint building, welding shop, an on-site

1 foundry used for aluminum parts casting, warehouses, production buildings, and an un-paved
2 parking lot. Contamination at the Site is related to these past operations and includes releases
3 from past operations of chlorinated solvents and petroleum hydrocarbons to soil, soil gas, and
4 groundwater.

5 E. Due to the nature of its operation, Ecology determined that BBI was a large
6 quantity generator of hazardous waste, and BBI was issued the generator number
7 WAD103351581. Ecology issued BBI a Notice of Correction on March 15, 1999 due to
8 improper hazardous waste handling and storage issues.

9 F. BBI operations at the Properties included two underground storage tanks (UST).
10 Although the exact contents of these former USTs is unknown, results of soil and groundwater
11 investigations indicate that these USTs contained petroleum products such as leaded gasoline,
12 diesel, and heating oil.

13 G. Between 2002 and 2008, several environmental investigations were conducted
14 on a portion of the Properties by private parties and their consultants. These investigations
15 included soil and groundwater sampling and demonstrated that chlorinated solvents were
16 present at Properties above appropriate MTCA cleanup levels.

17 H. In or around 2002, the Enodis Corporation (Enodis) acquired BBI through a
18 stock purchase. Enodis subsequently sold the BBI stock to AGAFoodservice. In or around
19 2005, Centioli Improvements LLC acquired and currently owns the Properties.

20 I. Between 2004 and 2007, Enodis enrolled a portion of the Site into Ecology's
21 Voluntary Cleanup Program (VCP Project No. NW1254) in order to receive a technical opinion
22 related to petroleum releases at the Site. Enodis installed and operated a dual-phase vacuum
23 extraction system to remediate petroleum contamination at the Site. The system extracted some
24 petroleum products, light non-aqueous phase liquid and possibly chlorinated solvents from
25 groundwater at the Site. Enodis was terminated from the VCP by Ecology in 2008.

26

1 J. In 2014, Penthouse Drapery entered the VCP and Ecology assigned it VCP
2 Project No. NW2278. Through several VCP opinions, Ecology determined that total petroleum
3 hydrocarbons in the gasoline range (TPH-G) and PCE have been released to soil, and that PCE,
4 trichloroethylene (TCE), cis-1,2-dichloroethene (DCE), 1,1,1-trichloroethane (TCA), 1,1-
5 dichloroethene, 1,1-dichloroethane, and 1,4-dioxane have been released to groundwater, and
6 that PCE has been released to the air, at the Site.

7 K. Additionally, based on the analytical results from 2017 environmental
8 investigations, the contaminants of concern at the Site that exceed MTCA cleanup levels
9 include lead in soil, diesel-range hydrocarbons (TPH-D), benzene, and total xylenes in
10 groundwater, and benzene and TCE and vinyl chloride in soil gas. Although Ecology has not
11 yet assigned the Site an overall priority rank pursuant to MTCA, an Ecology-approved cleanup
12 action consisting of Electrical Resistance Heating (ERH) is being performed at the former
13 Penthouse Drapery property and in a limited northwest portion of the Properties as part of VCP
14 Project No. NW2278. The cleanup action is being performed by the former Penthouse Drapery
15 and SCC to address the PCE contamination that originated from the former Penthouse Drapery
16 property and migrated to the Properties. No cleanup action plan has been provided by Enodis
17 or BBI to Ecology for addressing contamination at the Properties.

18 L. The Site has been used for manufacturing, commercial dry cleaning, and vehicle
19 repair and painting. The Site is zoned C1-65 by the City of Seattle to provide for mixed
20 residential and commercial uses.

21 M. GSC has entered into a Purchase and Sale Agreement with the current owners
22 of the Properties. Pursuant to these contracts, GSC intends to purchase the Properties no later
23 than June 30, 2018.

24 N. GSC proposes to conduct remedial actions at the Site and redevelop the
25 Properties for transit-oriented market-rate housing, affordable housing, and mixed commercial
26 use as provided in this Decree, consistent with MTCA and its implementing regulations,

1 WAC 173-340, and applicable City of Seattle zoning provisions and comprehensive plan
2 designations.

3 O. The mix of market-rate housing with affordable housing and associated joint
4 ventures with MBHA, LUP, and HAL Real Estate is essential to acquire and develop
5 contaminated properties on this scale. Without the GSC joint venture there would be
6 insufficient financial resources and tools to clean up and redevelop a project of this scale, and
7 the joint venture provides the additional financial resources necessary to realize this project.
8 Further, the mix of market-rate and affordable housing provides complimentary uses and is
9 desirable in terms of forming a diverse community with a variety of housing options.

10 P. The MBHA Purchase and Sale Agreement for the South Block (South Block
11 PSA) is a binding purchase and sale agreement that ensures MBHA's exclusive rights to
12 acquire and develop the South Block as affordable housing. A memorandum of the South
13 Block PSA is attached as Exhibit C. The closing date for the South Block PSA is flexible for
14 the sole purpose of allowing MBHA additional time to assemble capital for its development of
15 the South Block. MBHA will exclusively control design and entitlement of the South Block
16 prior to closing of the South Block PSA. GSC and MBHA will record a memorandum of the
17 South Block PSA on the title of the Properties at closing to ensure that the South Block PSA is
18 of record, putting all third parties on notice of MBHA's purchase rights. If GSC were to sell or
19 pledge its interest in the wider Grand Street Commons development project prior to closing of
20 the South Block PSA, any successor to GSC would take title subject to (and be bound by) the
21 South Block PSA, meaning MBHA would simply complete closing with the successor.

22 **VI. WORK TO BE PERFORMED**

23 This Decree contains a program designed to protect human health and the environment
24 from the known release, or threatened release, of hazardous substances or contaminants at, on,
25 or from the Site.

26

1 A. MBHA will serve as the lead performing party for the cleanup of the Site. GSC
2 will provide the necessary financial resources and tools to purchase the Properties and will
3 coordinate with MBHA in completing the work in the attached Exhibit C. GSC's assistance
4 includes providing cleanup funding, using its best efforts to secure Additional Funding for the
5 project, and providing land entitlement and redevelopment plans. In addition, if for any reason
6 MBHA is unable to perform its obligations for the Site, GSC will complete an RI/FS for the
7 Properties.

8 B. Specifically, should MBHA be unable to perform its obligations for the Site,
9 GSC shall complete an RI work plan for the Properties for Ecology review. Once approved by
10 Ecology, GSC shall produce a Final RI work plan for the Properties and shall conduct the work
11 required by the Final RI work plan for the Properties. At the conclusion of the RI work, GSC
12 shall provide an Agency Review RI/FS report for the Properties for Ecology review. Once
13 approved by Ecology, GSC shall produce a Public Review Draft RI/FS report for the
14 Properties for public review and comment. At the conclusion of the public comment period,
15 and after incorporating any changes resulting from the public comment period, GSC shall
16 produce a Final RI/FS report for the Properties.

17 C. Pursuant to RCW 70.105D.040(5)(a), the Attorney General may resolve the
18 liability of a prospective purchaser for partial cleanup of a Site. Accordingly, GSC's
19 obligations under this Decree are limited to the boundaries of the Properties and shall not
20 extend to the full Site. GSC shall be responsible for completing an RI/FS for the Properties,
21 should MBHA be unable to perform its obligations for the Site for any reason. GSC will work
22 cooperatively with MBHA and will provide assistance and support for the RI/FS work and the
23 Scope of Work and Schedule attached as Exhibit D and will provide property purchase, and
24 cleanup cost funding. MBHA's obligations under the Decree it will enter into will extend to the
25 entire Site.

26

1 D. Following the completion of the Final RI/FS report, the Parties intend to amend
2 the Decree to provide for additional remedial actions at the Site. Such additional remedial
3 actions are contingent upon MBHA and GSC obtaining or having sufficient Additional
4 Funding to conduct additional remedial actions; provided, that this contingency does not bind
5 Ecology in the event the circumstances described in the reopener provisions of Section XIX
6 (Covenant Not to Sue)B.3 or B.4 arise. These additional remedial actions will include a
7 cleanup action meeting the requirements of WAC 173-340-360 that serves as a final Site
8 remedy. Until such time as this Decree is amended to provide for the implementation of such a
9 cleanup action, no redevelopment of any properties within the Site may proceed; provided, that
10 this Decree may be amended to allow for redevelopment to occur on a property-specific basis
11 if: (1) a final Cleanup Action Plan for the Site has been issued by Ecology; (2) the property-
12 specific redevelopment is accompanied by a remedial action that implements Ecology's
13 selected cleanup action for that portion of the Site; and (3) Ecology determines that proceeding
14 with the property-specific redevelopment and remedial action: (a) is consistent with, and will
15 not preclude, complicate, or render more expensive the final cleanup action for the Site as a
16 whole; and (b) will not result in recontamination of the subject property.

17 E. During the pendency of this Decree, GSC shall use all best efforts to seek and
18 obtain Additional Funding for additional remedial actions at the Site. This may include
19 working in cooperation and in partnership with Ecology to obtain Public Funds as described in
20 RCW 70.105D.070(3)(q). After the completion of the Final RI/FS report, the Parties shall meet
21 not less than once per quarter, unless the Parties agree to a different timeframe, to discuss the
22 status and progress of obtaining Additional Funding for future remedial actions. The Parties
23 intend to amend this Decree to accomplish future remedial actions and for the possible future
24 provision of Public Funds pursuant to RCW 70.105D.070(3)(q).

25 F. GSC agrees not to perform any remedial actions outside the scope of this
26 Decree unless the Parties agree to modify the Scope of Work and Schedule (Exhibit D) to

1 cover these actions. All work conducted by GSC under this Decree shall be done in accordance
2 with WAC 173-340 unless otherwise provided herein.

3 G. All plans or other deliverables submitted by GSC for Ecology's review and
4 approval under the Scope of Work and Schedule (Exhibit D) shall, upon Ecology's approval,
5 become integral and enforceable parts of this Decree.

6 VII. DESIGNATED PROJECT COORDINATORS

7 The project coordinator for Ecology is:

8 Ching-Pi Wang
9 Northwest Regional Office
10 Washington State Department of Ecology
11 3190 160th Avenue SE
12 Bellevue, WA 98008-5452
13 425-649-7134
14 Email: cwan461@ecy.wa.gov

12 The project coordinator for GSC is:

13 Dave Cook, LG, CPG, Principal Geologist
14 Aspect Consulting
15 401 Second Avenue S., Suite 201
16 Seattle, WA 98104
17 206-328-7443
18 Email: dcook@aspectconsulting.com

17 Each project coordinator shall be responsible for overseeing the implementation of this
18 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.
19 To the maximum extent possible, communications between Ecology and GSC, and all
20 documents, including reports, approvals, and other correspondence concerning the activities
21 performed pursuant to the terms and conditions of this Decree shall be directed through the
22 project coordinators. The project coordinators may designate, in writing, working level staff
23 contacts for all or portions of the implementation of the work to be performed required by this
24 Decree.

24 Any party may change its respective project coordinator. Written notification shall be
25 given to the other party at least ten (10) calendar days prior to the change.
26

1 **VIII. PERFORMANCE**

2 All geologic and hydrogeologic work performed pursuant to this Decree shall be under
3 the supervision and direction of a geologist or hydrogeologist licensed by the State of
4 Washington or under the direct supervision of an engineer registered by the State of Washington,
5 except as otherwise provided for by RCW 18.43, .220.

6 All engineering work performed pursuant to this Decree shall be under the direct
7 supervision of a professional engineer registered by the State of Washington, except as otherwise
8 provided for by RCW 18.43.130.

9 All construction work performed pursuant to this Decree shall be under the direct
10 supervision of a professional engineer or a qualified technician under the direct supervision of a
11 professional engineer. The professional engineer must be registered by the State of Washington,
12 except as otherwise provided for by RCW 18.43.130.

13 Any documents submitted containing geologic, hydrologic, or engineering work shall be
14 under the seal of an appropriately licensed professional as required by RCW 18.43, .220.

15 GSC shall notify Ecology in writing of the identity of any engineer(s), geologist(s),
16 contractor(s), subcontractor(s), and others to be used in carrying out the terms of this Decree, in
17 advance of their involvement at the Site.

18 **IX. CERTIFICATION OF DEFENDANT**

19 GSC represents and certifies that, to the best of its knowledge and belief, it has fully and
20 accurately disclosed to Ecology the information currently in its possession or control that relates
21 to the environmental conditions at and in the vicinity of the Site, or to GSC's right and title
22 thereto.

23 GSC represents and certifies that it did not cause or contribute to a release or threatened
24 release of hazardous substances at the Site and is not otherwise currently potentially liable for
25 the Site under RCW 70.105D.040(1).
26

1 **X. ACCESS**

2 Ecology or any Ecology-authorized representative shall have access to enter and freely
3 move about all property at the Site that GSC either owns, controls, or has access rights to at all
4 reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts
5 related to the work being performed pursuant to this Decree; reviewing GSC's progress in
6 carrying out the terms of this Decree; conducting such tests or collecting such samples as
7 Ecology may deem necessary; using a camera, sound recording, or other documentary type
8 equipment to record work done pursuant to this Decree; and verifying the data submitted to
9 Ecology by GSC. GSC shall make all reasonable efforts to secure access rights for those
10 properties within the Site not owned or controlled by GSC where remedial activities or
11 investigations will be performed pursuant to this Decree. Ecology or any Ecology-authorized
12 representative shall give reasonable notice before entering any Site property owned or controlled
13 by GSC unless an emergency prevents such notice. All Parties who access the Site pursuant to
14 this section shall comply with any applicable health and safety plan(s). Ecology employees and
15 their representatives shall not be required to sign any liability release or waiver as a condition of
16 Site property access.

17 **XI. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

18 With respect to the implementation of this Decree, GSC shall make the results of all
19 sampling, laboratory reports, and/or test results generated by it or on its behalf available to
20 Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in
21 both printed and electronic formats in accordance with Section XII (Progress Reports),
22 Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any
23 subsequent procedures specified by Ecology for data submittal.

24 If requested by Ecology, GSC shall allow Ecology and/or its authorized representative to
25 take split or duplicate samples of any samples collected by GSC pursuant to the implementation
26 of this Decree. GSC shall notify Ecology seven (7) days in advance of any sample collection or

1 work activity at the Site. Ecology shall, upon request, allow GSC and/or its authorized
2 representative to take split or duplicate samples of any samples collected by Ecology pursuant
3 to the implementation of this Decree, provided that doing so does not interfere with Ecology's
4 sampling. Without limitation on Ecology's rights under Section X (Access), Ecology shall notify
5 GSC prior to any sample collection activity unless an emergency prevents such notice.

6 In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be
7 conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be
8 conducted, unless otherwise approved by Ecology.

9 XII. PROGRESS REPORTS

10 GSC shall assist MBHA in submitting to Ecology written monthly Progress Reports that
11 describe the actions taken during the previous month to implement the requirements of this
12 Decree. The Progress Reports shall include the following unless Ecology determines otherwise
13 as provided in this Section:

14 A. A list of on-site activities that have taken place during the month.

15 B. Detailed description of any deviations from required tasks not otherwise
16 documented in project plans or amendment requests.

17 C. Description of all deviations from the Scope of Work and Schedule (Exhibit D)
18 during the current month and any planned deviations in the upcoming month.

19 D. For any deviations from the schedule, a plan for recovering lost time and
20 maintaining compliance with the schedule.

21 E. All raw data (including laboratory analyses) received by MBHA and GSC during
22 the past month and an identification of the source of the sample.

23 F. A list of deliverables for the upcoming month if different from the schedule.

24 As appropriate, the project coordinators shall discuss the level of detail for the Progress
25 Reports or a specific Progress Report. Ecology's project coordinator may find that the Progress
26 Reports or a specific Progress Report does not need to include all of the elements listed in this

1 Section. All Progress Reports shall be submitted by the tenth (10th) day of the month in which
2 they are due after the effective date of this Decree. Unless otherwise specified, Progress Reports
3 and any other documents submitted pursuant to this Decree shall be sent by certified mail, return
4 receipt requested, to Ecology's project coordinator.

5 **XIII. RETENTION OF RECORDS**

6 During the pendency of this Decree, and for ten (10) years from the date this Decree is
7 no longer in effect as provided in Section XXIX (Duration of Decree), GSC shall preserve all
8 records, reports, documents, and underlying data in its possession relevant to the implementation
9 of this Decree and shall insert a similar record retention requirement into all contracts with
10 project contractors and subcontractors. Upon request of Ecology, GSC shall make all records
11 available to Ecology and allow access for review within a reasonable time.

12 Nothing in this Decree is intended by GSC to waive any right they may have under
13 applicable law to limit disclosure of documents protected by the attorney work-product privilege
14 and/or the attorney-client privilege. If GSC withholds any requested records based on an
15 assertion of privilege, GSC shall provide Ecology with a privilege log specifying the records
16 withheld and the applicable privilege. No Site-related data collected pursuant to this Decree shall
17 be considered privileged.

18 **XIV. TRANSFER OF INTEREST IN PROPERTY**

19 No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest
20 in any portion of the Site shall be consummated by GSC without provision for continued
21 operation and maintenance of any containment system, treatment system, and/or monitoring
22 system installed or implemented pursuant to this Decree.

23 Prior to GSC's transfer of any interest in all or any portion of the Site, and during the
24 effective period of this Decree, GSC shall provide a copy of this Decree to any prospective
25 purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30)
26 days prior to any transfer, GSC shall notify Ecology of said transfer. Upon transfer of any

1 interest, GSC shall notify all transferees of the restrictions on the activities and uses of the
2 property under this Decree and incorporate any such use restrictions into the transfer documents.

3 **XV. RESOLUTION OF DISPUTES**

4 A. In the event that GSC elects to invoke dispute resolution, GSC must utilize the
5 procedure set forth below.

6 1. Upon the triggering event (receipt of Ecology's project coordinator's
7 written decision or an itemized billing statement), GSC has fourteen (14) calendar days
8 within which to notify Ecology's project coordinator in writing of its dispute (Informal
9 Dispute Notice).

10 2. The Parties' project coordinators shall then confer in an effort to resolve
11 the dispute informally. The parties shall informally confer for up to fourteen (14)
12 calendar days from receipt of the Informal Dispute Notice. If the project coordinators
13 cannot resolve the dispute within those fourteen (14) calendar days, then within seven (7)
14 calendar days Ecology's project coordinator shall issue a written decision (Informal
15 Dispute Decision) stating: the nature of the dispute; GSC's position with regards to the
16 dispute; Ecology's position with regards to the dispute; and the extent of resolution
17 reached by informal discussion.

18 3. GSC may then request regional management review of the dispute. This
19 request (Formal Dispute Notice) must be submitted in writing to the Northwest Region
20 Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's
21 Informal Dispute Decision. The Formal Dispute Notice shall include a written statement
22 of dispute setting forth: the nature of the dispute; the disputing Party's position with
23 respect to the dispute; and the information relied upon to support its position.

24 4. The Section Manager shall conduct a review of the dispute and shall issue
25 a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar
26 days of receipt of the Formal Dispute Notice.

1 5. If GSC finds Ecology's Regional Section Manager's decision
2 unacceptable, GSC may then request final management review of the decision. This
3 request (Final Review Request) shall be submitted in writing to the Toxics Cleanup
4 Program Manager within seven (7) calendar days of GSC's receipt of the Decision on
5 Dispute. The Final Review Request shall include a written statement of dispute setting
6 forth: the nature of the dispute; the disputing Party's position with respect to the dispute;
7 and the information relied upon to support its position.

8 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
9 the dispute and shall issue a written decision regarding the dispute (Final Decision on
10 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The
11 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
12 disputed matter.

13 B. If Ecology's Final Decision on Dispute is unacceptable to GSC, GSC has
14 the right to submit the dispute to the Court for resolution. The Parties agree that one judge should
15 retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this
16 Decree. In the event GSC presents an issue to the Court for review, the Court shall review the
17 action or decision of Ecology on the basis of whether such action or decision was arbitrary and
18 capricious and render a decision based on such standard of review.

19 C. The Parties agree to only utilize the dispute resolution process in good
20 faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is
21 used. Where either party utilizes the dispute resolution process in bad faith or for purposes of
22 delay, the other party may seek sanctions.

23 D. Implementation of these dispute resolution procedures shall not provide a
24 basis for delay of any activities required in this Decree, unless Ecology agrees in writing to a
25 schedule extension or the Court so orders.
26

- 1 2. The length of the extension sought.
2 3. The reason(s) for the extension.
3 4. Any related deadline or schedule that would be affected if the extension
4 were granted.

5 B. The burden shall be on GSC to demonstrate to the satisfaction of Ecology
6 that the request for such extension has been submitted in a timely fashion and that good cause
7 exists for granting the extension. Good cause may include, but may not be limited to:

8 1. Circumstances beyond the reasonable control and despite the due
9 diligence of GSC including delays caused by unrelated third parties or Ecology, such as
10 (but not limited to) delays by Ecology in reviewing, approving, or modifying documents
11 submitted by GSC.

12 2. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,
13 or other unavoidable casualty.

14 3. Endangerment as described in Section XVIII (Endangerment).

15 However, neither increased costs of performance of the terms of this Decree nor changed
16 economic circumstances shall be considered circumstances beyond the reasonable control of
17 GSC.

18 C. Ecology shall act upon any written request for extension in a timely
19 fashion. Ecology shall give GSC written notification of any extensions granted pursuant to this
20 Decree. A requested extension shall not be effective until approved by Ecology or, if required,
21 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend this
22 Decree pursuant to Section XVI (Amendment of Decree) when a schedule extension is granted.

23 D. An extension shall only be granted for such period of time as Ecology
24 determines is reasonable under the circumstances. Ecology may grant schedule extensions
25 exceeding ninety (90) days only as a result of:
26

- 1 1. Delays in the issuance of a necessary permit which was applied for in a
2 timely manner.
- 3 2. Other circumstances deemed exceptional or extraordinary by Ecology.
- 4 3. Endangerment as described in Section XVIII (Endangerment).

5 **XVIII. ENDANGERMENT**

6 In the event Ecology determines that any activity being performed at the Site under this
7 Decree is creating or has the potential to create a danger to human health or the environment,
8 Ecology may direct GSC to cease such activities for such period of time as it deems necessary
9 to abate the danger. GSC shall immediately comply with such direction.

10 In the event GSC determine that any activity being performed at the Site under this
11 Decree is creating or has the potential to create a danger to human health or the environment,
12 GSC may cease such activities. GSC shall notify Ecology's project coordinator as soon as
13 possible, but no later than twenty-four (24) hours after making such determination or ceasing
14 such activities. Upon Ecology's direction, GSC shall provide Ecology with documentation of
15 the basis for the determination or cessation of such activities. If Ecology disagrees with GSC's
16 cessation of activities, it may direct GSC to resume such activities.

17 If Ecology concurs with or orders a work stoppage pursuant to this section, GSC's
18 obligations with respect to the ceased activities shall be suspended until Ecology determines the
19 danger is abated, and the time for performance of such activities, as well as the time for any other
20 work dependent upon such activities, shall be extended, in accordance with Section XVII
21 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the
22 circumstances.

23 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or
24 contractors to take or require appropriate action in the event of an emergency.

25
26

1 **XIX. COVENANT NOT TO SUE**

2 A. Covenant Not to Sue: In consideration of GSC's compliance with the terms and
3 conditions of this Decree, Ecology covenants not to institute legal or administrative actions
4 against GSC regarding the release or threatened release of hazardous substances covered by this
5 Decree.

6 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
7 and those hazardous substances that Ecology knows are located at the Site as of the date of entry
8 of this Decree. This Decree does not cover any other hazardous substance or area. This Decree
9 and this covenant may be amended to include other hazardous substances or areas as additional
10 information may warrant. Ecology retains all of its authority relative to any substance or area
11 not covered by this Decree. In addition, this Decree does not settle any potential liability GSC
12 may incur for acquiring any further interest in the Site not addressed under this Decree.

13 This Covenant Not to Sue shall have no applicability whatsoever to:

- 14 1. Criminal liability.
15 2. Liability for damages to natural resources.
16 3. Any Ecology action, including cost recovery, against PLPs not a party to
17 this Decree.

18 If factors not known at the time of entry of this Decree are discovered and present a
19 previously unknown threat to human health or the environment, the Court shall amend this
20 Covenant Not to Sue.

21 B. Reopeners: Ecology specifically reserves the right to institute legal or
22 administrative action against GSC to require it to perform additional remedial actions at the
23 Properties and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the
24 following circumstances:

- 25 1. Upon GSC's failure to meet the requirements of this Decree.
26

1 2. If and when this Decree is amended to provide for a final cleanup action,
2 upon failure of the cleanup action to meet the cleanup standards identified in Ecology's
3 Cleanup Action Plan (CAP).

4 3. Upon Ecology's determination that remedial action beyond the terms of
5 this Decree is necessary to abate an imminent and substantial endangerment to human
6 health or the environment.

7 4. Upon the availability of new information regarding factors previously
8 unknown to Ecology, including the nature or quantity of hazardous substances at the Site,
9 and Ecology's determination, in light of this information, that further remedial action is
10 necessary at the Site to protect human health or the environment.

11 5. If and when this Decree is amended to provide for a final cleanup action,
12 upon Ecology's determination that additional remedial actions are necessary to achieve
13 cleanup standards within the reasonable restoration time frame set forth in the CAP.

14 C. Except in the case of an emergency, prior to instituting legal or
15 administrative action against GSC pursuant to this section, Ecology shall provide GSC with
16 fifteen (15) calendar days notice of such action.

17 **XX. CONTRIBUTION PROTECTION**

18 With regard to claims for contribution against GSC, the Parties agree that GSC is
19 entitled to protection against claims for contribution for matters addressed in this Decree as
20 provided by RCW 70.105D.040(4)(d).

21 **XXI. LAND USE RESTRICTIONS**

22 If this Decree is amended to provide for a final cleanup action that requires an
23 Environmental (Restrictive) Covenant or Covenants to be recorded pursuant to
24 WAC 173-340-440, or if Ecology determines that portions of the Site may require
25 Environmental (Restrictive) Covenant or Covenants to be recorded pursuant to
26 WAC 173-340-440, the following section will apply: In consultation with GSC, Ecology will

1 prepare the Environmental (Restrictive) Covenant consistent with WAC 173-340-440 and
2 RCW 64.70. After approval by Ecology, GSC shall record the Environmental (Restrictive)
3 Covenant with the office of the King County Auditor. The Environmental (Restrictive) Covenant
4 shall restrict future activities and uses of the Site as agreed to by Ecology and GSC. GSC shall
5 provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty
6 (30) days of the recording date.

7 XXII. FINANCIAL ASSURANCES

8 If this Decree is amended to provide for a final cleanup action that includes engineered
9 and/or institutional controls, or if Ecology determines that portions of the Site may require
10 engineered and/or institutional controls prior to a final cleanup action, that require financial
11 assurances under WAC 173-340-440(11), the following section will apply: Pursuant to
12 WAC 173-340-440(11), GSC shall coordinate with MBHA in order to maintain sufficient and
13 adequate financial assurance mechanisms to cover all costs associated with the operation and
14 maintenance of the remedial action at the Properties, including institutional controls, compliance
15 monitoring, and corrective measures.

16 Within sixty (60) days of an amendment providing for a final cleanup action that includes
17 engineered and/or institutional controls that require financial assurances under
18 WAC 173-340-440(11), GSC shall assist MBHA in submitting to Ecology for review and
19 approval an estimate of the costs that it will incur in carrying out the terms of this Decree,
20 including operation and maintenance, and compliance monitoring. Within sixty (60) days after
21 Ecology approves the aforementioned cost estimate, GSC shall assist MBHA in providing proof
22 of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

23 GSC shall assist MBHA in adjusting the financial assurance coverage and provide
24 Ecology's project coordinator with documentation of the updated financial assurance for:

25 A. Inflation, annually, within thirty (30) days of the anniversary date of the
26 entry of this Decree; or if applicable, the modified anniversary date established in accordance

1 with this section, or if applicable, ninety (90) days after the close of MBHA's and GSC's fiscal
2 year if the financial test or corporate guarantee is used.

3 B. Changes in cost estimates, within thirty (30) days of issuance of Ecology's
4 approval of a modification or revision to the CAP that result in increases to the cost or expected
5 duration of remedial actions. Any adjustments for inflation since the most recent preceding
6 anniversary date shall be made concurrent with adjustments for changes in cost estimates. The
7 issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date
8 established under this section to become the date of issuance of such revised or modified CAP.

9 XXIII. INDEMNIFICATION

10 GSC agrees to indemnify and save and hold the State of Washington, its employees, and
11 agents harmless from any and all claims or causes of action (1) for death or injuries to persons,
12 or (2) for loss or damage to property to the extent arising from or on account of acts or omissions
13 of GSC, its officers, employees, agents, or contractors in entering into and implementing this
14 Decree. However, GSC shall not indemnify the State of Washington nor save nor hold its
15 employees and agents harmless from any claims or causes of action to the extent arising out of
16 the negligent acts or omissions of the State of Washington, or the employees or agents of the
17 State, in entering into or implementing this Decree.

18 XXIV. COMPLIANCE WITH APPLICABLE LAWS

19 A. All actions carried out by GSC pursuant to this Decree shall be done in
20 accordance with all applicable federal, state, and local requirements, including requirements to
21 obtain necessary permits, except as provided in RCW 70.105D.090.

22 B. Pursuant to RCW 70.105D.090(1), GSC are exempt from the procedural
23 requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring
24 or authorizing local government permits or approvals. However, GSC shall comply with the
25 substantive requirements of such permits or approvals. The exempt permits or approvals and the
26 applicable substantive requirements of those permits or approvals, will be identified in the CAP.

1 GSC has a continuing obligation to determine whether additional permits or
2 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
3 action under this Decree. In the event either GSC or Ecology determines that additional permits
4 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
5 action under this Decree, it shall promptly notify the other party of this determination. Ecology
6 shall determine whether Ecology or GSC shall be responsible to contact the appropriate state
7 and/or local agencies. If Ecology so requires, GSC shall promptly consult with the appropriate
8 state and/or local agencies and provide Ecology with written documentation from those agencies
9 of the substantive requirements those agencies believe are applicable to the remedial action.
10 Ecology shall make the final determination on the additional substantive requirements that must
11 be met by GSC and on how GSC must meet those requirements. Ecology shall inform GSC in
12 writing of these requirements. Once established by Ecology, the additional requirements shall
13 be enforceable requirements of this Decree. GSC shall not begin or continue the remedial action
14 potentially subject to the additional requirements until Ecology makes its final determination.

15 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
16 exemption from complying with the procedural requirements of the laws referenced in
17 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary
18 for the state to administer any federal law, the exemption shall not apply and GSC shall comply
19 with both the procedural and substantive requirements of the laws referenced in
20 RCW 70.105D.090(1), including any requirements to obtain permits.

21 XXV. REMEDIAL ACTION COSTS

22 GSC shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
23 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or
24 its contractors for, or on, pursuant to this Decree under RCW 70.105D, including remedial
25 actions and Decree preparation, negotiation, oversight, and administration. These costs shall
26 include work performed both prior to and subsequent to the entry of this Decree. Ecology's costs

1 shall include costs of direct activities and support costs of direct activities as defined in
2 WAC 173-340-550(2). For all costs incurred subsequent to the entry of this Decree, GSC shall
3 pay the required amount within thirty (30) days of receiving from Ecology an itemized statement
4 of costs that includes a summary of costs incurred, an identification of involved staff, and the
5 amount of time spent by involved staff members on the project. A general statement of work
6 performed will be provided upon request. Itemized statements shall be prepared quarterly.
7 Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of
8 receipt of the itemized statement of costs will result in interest charges at the rate of twelve
9 percent (12%) per annum, compounded monthly.

10 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has
11 authority to recover unreimbursed remedial action costs by filing a lien against real property
12 subject to the remedial actions.

13 **XXVI. IMPLEMENTATION OF REMEDIAL ACTION**

14 If Ecology determines that GSC has failed to make sufficient progress or failed to
15 implement the remedial action required by this Decree, in whole or in part, Ecology may, after
16 notice to GSC, perform any or all portions of the remedial action or at Ecology's discretion allow
17 GSC the opportunity to correct. GSC shall reimburse Ecology for the costs of doing such work
18 in accordance with Section XXV (Remedial Action Costs).

19 Except where necessary to abate an emergency situation, GSC shall not perform any
20 remedial actions at the Site outside those remedial actions required by this Decree, unless
21 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XVI
22 (Amendment of Decree).

23 **XXVII. PERIODIC REVIEW**

24 If this Decree is amended to provide for a final cleanup action that requires a periodic
25 review under WAC 173-340-420(2), the following section will apply: As remedial action,
26 including groundwater monitoring, continues at the Site, the Parties agree to review the progress

1 of remedial action at the Site, and to review the data accumulated as a result of monitoring the
2 Site as often as is necessary and appropriate under the circumstances. At least every five (5)
3 years after the initiation of cleanup action at the Site, the Parties shall meet to discuss the status
4 of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days
5 prior to each periodic review, GSC shall submit a report to Ecology that documents whether
6 human health and the environment are being protected based on the factors set forth in
7 WAC 173-340-420(4). Under Section XIX (Covenant Not to Sue), Ecology reserves the right to
8 require further remedial action at the Site under appropriate circumstances. This provision shall
9 remain in effect for the duration of this Decree.

10 **XXVIII. PUBLIC PARTICIPATION**

11 Ecology shall maintain the responsibility for public participation at the Site. However,
12 GSC shall cooperate with Ecology, and shall:

13 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public
14 notices and fact sheets at important stages of the remedial action, such as the submission of work
15 plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering
16 design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and
17 prepare and distribute public notices of Ecology's presentations and meetings.

18 B. Notify Ecology's project coordinator prior to the preparation of all press releases
19 and fact sheets, and before major meetings with the interested public and local governments.
20 Likewise, Ecology shall notify GSC prior to the issuance of all press releases and fact sheets,
21 and before major meetings with the interested public and local governments. For all press
22 releases, fact sheets, meetings, and other outreach efforts by GSC that do not receive prior
23 Ecology approval, GSC shall clearly indicate to its audience that the press release, fact sheet,
24 meeting, or other outreach effort was not sponsored or endorsed by Ecology.

1 C. When requested by Ecology, participate in public presentations on the progress
2 of the remedial action at the Site. Participation may be through attendance at public meetings to
3 assist in answering questions, or as a presenter.

4 D. When requested by Ecology, arrange and/or continue information repositories at
5 the following locations:

- 6 1. Beacon Hill Public Library
7 2821 Beacon Avenue S.
Seattle, WA 98144
- 8 2. Downtown Public Library
9 1000 Fourth Avenue
Seattle, WA 98104
- 10 3. Ecology's Northwest Regional Office
11 3190 160th Avenue SE
Bellevue, WA 98008-5452

12 At a minimum, copies of all public notices, fact sheets, and documents relating to public
13 comment periods shall be promptly placed in these repositories. A copy of all documents related
14 to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in
15 Bellevue, Washington.

16 **XXIX. DURATION OF DECREE**

17 The remedial program required pursuant to this Decree shall be maintained and continued
18 until GSC has received written notification from Ecology that the requirements of this Decree
19 have been satisfactorily completed. This Decree shall remain in effect until dismissed by the
20 Court. When dismissed, Section XIX (Covenant Not to Sue) and Section XX (Contribution
21 Protection) shall survive.

22 **XXX. CLAIMS AGAINST THE STATE**

23 GSC hereby agrees that it will not seek to recover any costs accrued in implementing the
24 remedial action required by this Decree from the State of Washington or any of its agencies; and
25 further, that GSC will make no claim against the State Toxics Control Account or any local
26 Toxics Control Account for any costs incurred in implementing this Decree. Notwithstanding

1 the foregoing, nothing in this Decree shall be construed to prevent GSC from receiving Public
2 Funds as provided in RCW 70.105D.070(3)(q), nor limit or address funding that may be provided
3 under WAC 173-322A or any other public source including, but not limited to, any other
4 authorized public funding. Except as provided above, GSC expressly reserves its rights to seek
5 to recover any costs incurred in implementing this Decree from any other PLP.

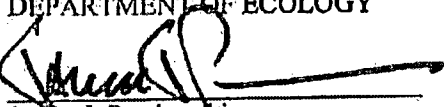
6 **XXXI. EFFECTIVE DATE**

7 This Decree is effective only upon the date (Effective Date) that title to the Property vests
8 in MBHA and GSC, following entry of this Decree by the Court. If MBHA and GSC do not
9 purchase the Properties by June 30, 2018, the parties shall meet and confer regarding the status
10 of MBHA's and GSC's pending purchase of the Properties. After this conference, the parties
11 may determine that this Decree shall be null and void, and MBHA and GSC will be under no
12 obligation to perform the work required by this Decree.

13 **XXXII. WITHDRAWAL OF CONSENT**

14 If the Court withholds or withdraws its consent to this Decree, it shall be null and void at
15 the option of any party and the accompanying Complaint shall be dismissed without costs
16 and without prejudice. In such an event, no party shall be bound by the requirements of this
17 Decree.

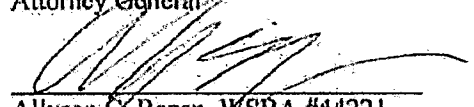
18 STATE OF WASHINGTON
19 DEPARTMENT OF ECOLOGY

20 
21 James J. Pendowski
22 Program Manager
23 Toxics Cleanup Program
24 360-407-7177

25 Date: 5/30/18

26 GRAND STREET COMMONS LLC

ROBERT W. FERGUSON
Attorney General


Allyson C. Bazan, WSBA #44221
Assistant Attorney General
360-586-3589

Date: 5/30/18

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16 and without prejudice. In such an event, no party shall be bound by the requirements of this
17 Decree.

18 STATE OF WASHINGTON
19 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

20 _____
21 James J. Pendowski
22 Program Manager
23 Toxics Cleanup Program
24 360-407-7177

Allyson C. Bazan, WSBA #44221
Assistant Attorney General
360-586-3589

25 Date: _____

Date: _____

26 GRAND STREET COMMONS LLC

PROSPECTIVE PURCHASER
CONSENT DECREE

1 By: Belshaw Partners LLC, Member
By: Lake Union Partners Seattle, LLC, its Co-Manager
2 By: Joe Ferguson, its Manager
206-829-9452

3 Date: 5/31/18
4

5 MOUNT BAKER HOUSING ASSOCIATION

6
7 By: Michael Rooney, its Executive Director
206-725-4152

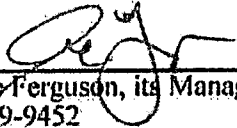
8 Date: _____
9

10 HAL BELSHAW LLC

11
12 By: HAL Real Estate, Inc., its Manager
By: Jonathan Manheim, its President
13 206-839-9870

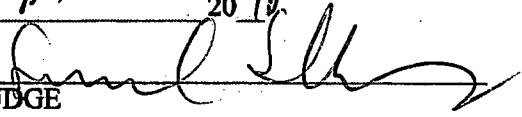
14 Date: _____

15 LAKE UNION PARTNERS SEATTLE, LLC

16
17 
18 By: Joe Ferguson, its Manager
206-829-9452

19 Date: 5/31/18

20 ENTERED this 6th day of Sept 20 18

21
22 
23 JUDGE


Samuel S. Chung

24
25
26

1 By: Belshaw Partners LLC, Member
2 By: Lake Union Partners Seattle, LLC, its Co-Manager
3 By: Joe Ferguson, its Manager
4 206-829-9452

5 Date: 5/31/18

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14 206-839-9870

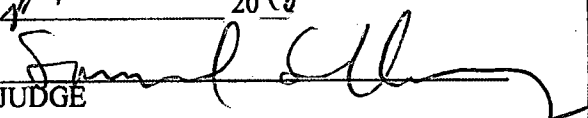
15 Date: _____

16 LAKE UNION PARTNERS SEATTLE, LLC

17 By: Joe Ferguson, its Manager
18 206-829-9452

19 Date: _____

20 ENTERED this 6th day of Sept 2018

21 
22 JUDGE

23 Samuel S. Chung

24
25
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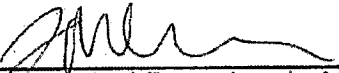
3 Date: _____
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7 By: Michael Rooney, its Executive Director
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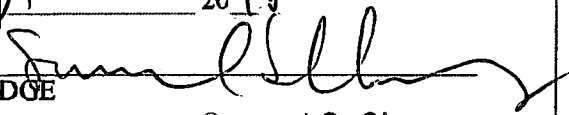
14 Date: 05/31/18
15

16 LAKE UNION PARTNERS SEATTLE, LLC

17 By: Joe Ferguson, its Manager
18 206-829-9452

19 Date: _____
20

21 ENTERED this 6th day of Sept 2018

22 
23 JUDGE
Samuel S. Chung

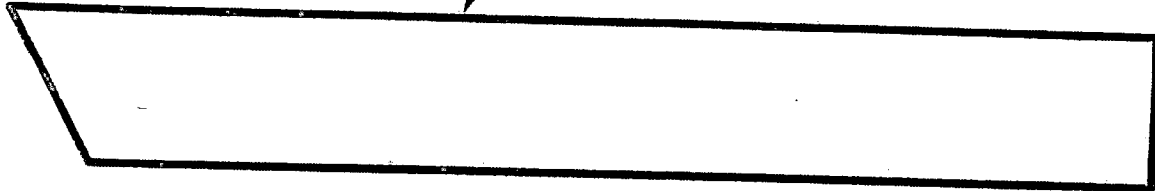
24
25
26

EXHIBIT A

Judkins Park and Playfield

23RD AVE S

Future Judkins Park Light Rail Station



S ATLANTIC ST

22ND AVE S

S MASSACHUSETTS ST

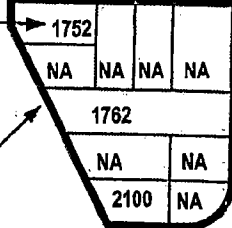
23RD AVE S

VALENTINE PL S

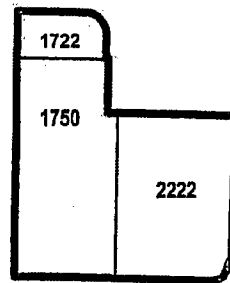
RAINIER AVE S

S STATE ST

Seattle Collision Center Parcel (former Penthouse Drapery)



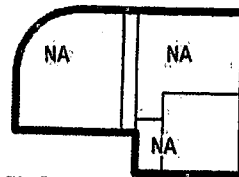
Belshaw Parcels



Belshaw Parcels

S GRAND ST

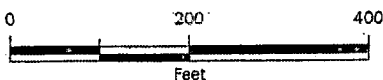
21ST AVE S



Belshaw Parcels

S HOLGATE ST

24TH AVE S



NA = No Address

City of Seattle, Department of Transportation, 2018. All rights reserved. This map is for informational purposes only and does not constitute an offer of any product or service. For more information, please contact the City of Seattle, Department of Transportation, at 206-435-7000.

1752 Rainier Avenue S

File No.: 20376387-410-MP2

EXHIBIT B
LEGAL DESCRIPTION

LOT 10 IN BLOCK 26 OF SANDER'S SUPPLEMENTAL PLAT, ACCORDING TO PLAT RECORDED IN VOLUME 1 OF PLATS AT PAGE 210, IN KING COUNTY, WASHINGTON;

EXCEPT PORTION CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 29945 FOR RAINIER AVENUE;

SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.

PARCEL MAP

**EXHIBIT B
LEGAL DESCRIPTION**

PARCEL A:

LOTS 1 AND 2, BLOCK 26 OF SANDER'S SUPPLEMENTAL PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 210, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL B:

LOTS 1 AND 2, BLOCK 1 OF CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL C:

LOT 3, AND THAT PORTION OF LOT 8 LYING EAST OF RAINIER AVENUE, BLOCK 26, SANDERS SUPPLEMENTAL PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 210, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH LOT 3, BLOCK 1, CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL D:

LOT 4 AND THAT PORTION OF LOT 7, LYING EAST OF RAINIER AVENUE, BLOCK 26, SANDERS SUPPLEMENTAL PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 210, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL E:

LOT 9, BLOCK 26, SANDERS SUPPLEMENTAL PLAT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 210, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 29945 FOR RAINIER AVENUE AS PROVIDED BY ORDINANCE NO. 6047 OF THE CITY OF SEATTLE.

PARCEL F:

LOT 4, BLOCK 1, CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON.



EXHIBIT B
(Continued)

PARCEL G:

THAT PORTION OF LOTS 5 AND 6, BLOCK 26, SANDER'S SUPPLEMENTAL PLAT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 219, IN KING COUNTY, WASHINGTON, LYING EASTERLY OF RAINIER AVENUE SOUTH.

PARCEL H:

LOT 5, BLOCK 1, CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 41, IN KING COUNTY, WASHINGTON.

PARCEL I:

LOTS 8 THROUGH 14, INCLUSIVE, BLOCK 5, CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF VACATED ALLEY ADJOINING OR ABUTTING THEREON, WHICH UPON VACATION, ATTACHED TO SAID PREMISES BY ORDINANCE NO. 114505, RECORDED UNDER RECORDING NUMBER 8905241034.

PARCEL J:

**BEGINNING 299 90 FEET SOUTH OF INTERSECTION OF THE WEST LINE OF 23RD AVENUE SOUTH WITH THE SOUTH LINE OF S MASSACHUSETTS STREET;
THENCE WEST 135 04 FEET;
THENCE SOUTHERLY 185.06 FEET TO NORTH LINE OF GRAND STREET;
THENCE EASTERLY ALONG GRAND STREET 109.92 FEET;
THENCE ON A CURVE TO THE LEFT A RADIUS OF 15 FEET A DISTANCE OF 18.59 FEET;
THENCE NORTHEASTERLY 35.27 FEET TO A POINT ON THE WEST LINE OF 23RD AVENUE SOUTH 44.09 FEET NORTH OF NORTH LINE OF GRAND STREET;
THENCE NORTHERLY ALONG WEST LINE OF 23RD AVENUE SOUTH TO POINT OF BEGINNING;
IN SECTION 9, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON.**

PARCEL K:

LOTS 6 AND 7, BLOCK 5, CREEDMOOR ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION CONVEYED TO THE CITY OF SEATTLE BY DEED RECORDED UNDER RECORDING NUMBER 8902070880.

EXHIBIT B
(Continued)

PARCEL L:

THE SOUTH HALF OF LOT 5 AND ALL OF LOT 6, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF VOLUME 1 OF PLATS' PAGE 123 RECORDS OF KING COUNTY, WASHINGTON:

EXCEPT THE WEST 30 FEET OF SAID LOTS 5 AND 6.

PARCEL M:

THE NORTH 15 FEET OF LOT 1 AND ALL OF LOTS 2 AND 3, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 123, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION OF LOTS 2 AND 3 AS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 76454 FOR STREET PURPOSES, AS PROVIDED IN CITY OF SEATTLE ORDINANCE NO. 21630.

PARCEL N:

THE NORTH HALF OF LOT 5 AND THE WEST 30 FEET OF THE SOUTH HALF LOT 5 AND ALL OF LOT 4, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 123, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL O:

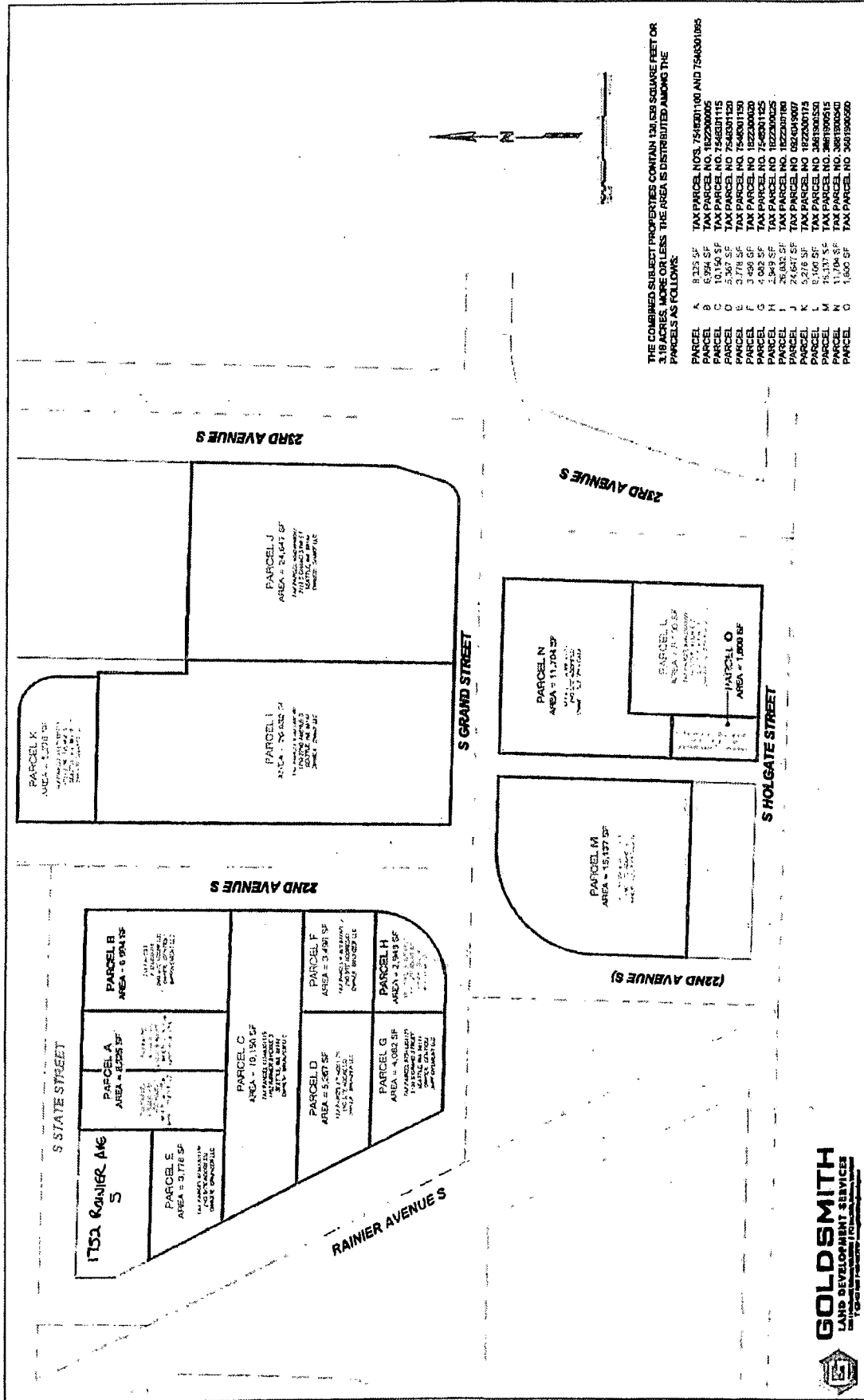
THE WEST 30 FEET OF LOT 6, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 123, RECORDS OF KING COUNTY, WASHINGTON.

ALL SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.

PARCEL MAP



EXHIBIT B



GOLD SMITH
LAND DEVELOPMENT SERVICES
10000 1st Avenue, Suite 100, Seattle, WA 98108
206.461.1111

EXHIBIT C

After recording, return to:
Stokes Lawrence, P.S.
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101
Attn: Sean Griffec

MEMORANDUM OF PURCHASE AND SALE AGREEMENT

Reference Number(s) of related documents: N/A

Grantor: GRAND STREET COMMONS LLC
a Washington limited liability company

Grantee: MOUNT BAKER HOUSING ASSOCIATION
a Washington public benefit corporation

Legal Description: LTS 1-6, BK 14, JOS C KINNEAR'S ADDITION TO THE CITY OF SEATTLE VOL 1, PG 123.

Additional legal is on page 6 of document

Tax Parcel No(s): 388190-0550-03
388190-0560-01
388190-0515-07
388190-0540-06

MEMORANDUM OF PURCHASE AND SALE AGREEMENT

THIS MEMORANDUM OF PURCHASE AND SALE AGREEMENT (this "Memorandum") is made this ____ day of _____, 2018 by and between GRAND STREET COMMONS LLC, a Washington limited liability company ("Grantor"), having an address at 2030 Dexter Avenue North, Seattle, Washington 98109 and MOUNT BAKER HOUSING ASSOCIATION, a Washington public benefit corporation ("Grantee"), having an address at 1423 31st Avenue South, Seattle, Washington 98144. Each of Grantor and Grantee shall individually be referred to as a "Party" and collectively the "Parties".

Background

A. Grantor (as Seller) and Grantee (as Purchaser) entered into that certain Purchase and Sale Agreement dated _____, 2018 (the "South Block PSA") regarding real property bounded by Rainier Avenue South, South Grand Street, 23rd Avenue South, and Rainier Avenue South and more particularly described on Exhibit A hereto (the "South Block Property").

B. In a related but separate transaction, Grantor purchased multiple parcels including the South Block Property pursuant Purchase and Sale Agreement dated as of July 14, 2017 as amended with Brunzer, LLC, Snarf, LLC, Sleepy Koala, LLC and Centioli Improvement LLC (collectively, "Centioli").

C. Pursuant to the terms of the South Block PSA, Grantor (as Seller) desires to sell, and Grantee (as Purchaser) desires to purchase all of Grantor's right, title and interest in the South Block Property within 36 months of the date of this Memorandum.

D. The Parties desire to record this Memorandum to put third parties on notice of the same.

NOW, THEREFORE, the Parties state as follows:

1. All capitalized terms used, but not otherwise defined herein shall have the meanings ascribed to them in the South Block PSA.

2. Pursuant to the terms of the South Block PSA, sale of the South Block Property is anticipated to close within 36 months of the date of this Memorandum.

3. The real property subject to sale pursuant to the South Block PSA is described on Exhibit A hereto.

4. This Memorandum of Purchase and Sale Agreement is for informational purposes only and nothing contained herein shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the South Block PSA. In the event of any inconsistency between the terms of the South Block PSA and this instrument, the terms of the South Block PSA shall prevail.

5. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns.

[signature pages to Memorandum of Purchase and Sale Agreement follow]

STATE OF WASHINGTON)

County of King)

ss.

I certify that I know or have satisfactory evidence that _____
_____ are the persons who appeared before me, and
said person acknowledged that he/she signed this instrument, on oath stated that he/she
was authorized to execute the instrument and acknowledged it as the Co-Manager of
GRAND STREET COMMONS LLC, a Washington limited liability company, to be the
free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____, 2018.

[PRINT NAME] _____

NOTARY PUBLIC for the State of
Washington, residing at _____

My appointment expires: _____

Exhibit A

PARCEL L:

THE SOUTH HALF OF LOT 5 AND ALL OF LOT 6, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE(S) 123, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THE WEST 30 FEET OF SAID LOTS 5 AND 6.

PARCEL M:

THE WEST 30 FEET OF LOT 6, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 123, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL N:

THE NORTH 15 FEET OF LOT 1 AND ALL LOTS 2 AND 3, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE(S) 123, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION OF LOTS 2 AND 3 AS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 76454 FOR STREET PURPOSES.

PARCEL O:

THE NORTH HALF OF LOT 5 AND THE WEST 30 FEET OF THE SOUTH HALF LOT 5 AND ALL OF LOT 4, BLOCK 14, JOS. C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 123, RECORDS OF KING COUNTY, WASHINGTON.

APNs: 388190-0550-03, 388190-0560-01, 388190-0515-07 and 388190-0540-06.

EXHIBIT D: SCOPE OF WORK AND SCHEDULE

Scope of Work

Pursuant to the Prospective Purchaser Consent Decree (PPCD), Grand Street Commons LLC (GSC) will provide the necessary financial resources and tools to purchase the Properties and will coordinate with the Mt. Baker Housing Association (MBHA) in completing cleanup work. MBHA is serving as the lead performing party for the cleanup of the Site and GSC will support and assist MBHA's work by providing cleanup funding, using its best efforts to secure Additional Funding for the project, and providing land entitlement and redevelopment plans. In addition, if for any reason MBHA is unable to perform its obligations for the Site, GSC will complete an Remedial Investigation and Feasibility Study (RI/FS) for the Properties.

Further, should MBHA be unable to perform its obligations for the Site, GSC shall complete an RI work plan for the Properties for Ecology review. Once approved by Ecology, GSC shall produce a Final RI work plan for the Properties and shall conduct the work required by the Final RI work plan for the Properties. At the conclusion of the RI work, GSC shall provide an Agency Review RI/FS report for the Properties for Ecology review. Once approved by Ecology, GSC shall produce a Public Review Draft RI/FS report for the Properties for public review and comment. At the conclusion of the public comment period, and after incorporating any changes resulting from the public comment period, GSC shall produce a Final RI/FS report for the Properties.

Please refer to Exhibit C, the Scope of Work and Schedule, attached to the MBHA PPCD for the Grand Street Commons Site, for information regarding the lead performing party, MBHA, and its cleanup work and schedule for the Site.