

Ordinance No. 120648

Council Bill No. 113891

AN ORDINANCE relating to the Fleets and Facilities Department; authorizing the sale of Lots 1-9, Block 48, Replat of Mercer's 2nd, according to the plat thereof recorded in Volume 10 of Plats, page 34, Records of King County, Washington, at fair market value and execution of a Purchase and Sale Agreement and Deed in connection therewith; and designating the disposition of sales proceeds.

CF No. _____

Date Introduced: <u>OCT 8 2001</u>		
Date 1st Referred: <u>OCT 8 2001</u>	To: (committee)	<u>BUDGET</u>
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>11-26-01</u>	Full Council Vote: <u>8-0</u>	
Date Presented to Mayor: <u>11-26-01</u>	Date Approved: <u>11/30/01</u>	
Date Returned to City Clerk: <u>12/1/01</u>	Date Published: <u>3pm</u>	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department
Council Bill/Ordinance sponsored by: [Signature]

Committee Action:

11-16-01 Pass As Amended 8-1
(No: McIver)

11-26-01 Passed 8-0 (Absent: M)

This file is complete and ready for presentation to Full Council. Comm

Law Department

Law Dept. Review

OMP
Review

City Clerk
Review

Mc
The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____

Jan Page

Councilmember

Committee Action:

Budget

11-16-01 Pass As Amended 8-1

(No: Mc Iver)

11-26-01 Passed 8-0 (Absent: Mc Iver)

This file is complete and ready for presentation to Full Council.

Committee: _____

(Initial/Date)

Law Department

Law Dept. Review

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Attachments A/B/C*

ORDINANCE 120648

1
2 AN ORDINANCE relating to the Fleets and Facilities Department; authorizing the sale of Lots
3 1-9, Block 48, Replat of Mercer's 2nd, according to the plat thereof recorded in Volume
4 10 of Plats, page 34, Records of King County, Washington, at fair market value and
5 execution of a Purchase and Sale Agreement and Deed in connection therewith; and
6 designating the disposition of sales proceeds.

7 WHEREAS, the Queen Anne Neighborhood Plan includes specific goals and policies to add
8 market rate and affordable housing units to help meet the Urban Center's 20 year growth
9 targets, create new jobs in the Urban Center, improve the pedestrian environment, and
10 develop the first section of the Potlatch Trail between Seattle Center and Lake Union; and

11 WHEREAS, in 1969, the City acquired the property described in Section 1 of this ordinance
12 pursuant to authority granted by Ordinance 80654; and

13 WHEREAS, the availability of the property has been circulated to other City and government
14 agencies, and no responses of interest have been received; and

15 WHEREAS, 500 Mercer Partners, LLC has requested to purchase such property at its fair value;
16 and

17 WHEREAS, the Fleets and Facilities Director believes that it is in the best interest of the City to
18 sell the excess property to 500 Mercer Partners, LLC; **NOW, THEREFORE,**

19 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

20 Section 1. The real property legally described as Lots 1-9, Block 48, Replat of
21 Mercer's 2nd, according to the plat thereof recorded in Volume 10 of Plats, page 34, Records of
22 King County, Washington, is hereby declared to be surplus.

23 Section 2. The Fleets and Facilities Director ("Director") is hereby authorized to
24 execute and deliver, for and on behalf of The City of Seattle, a Purchase and Sale Agreement
25 ("Agreement") substantially in the form attached hereto as " Attachment 1" pursuant to which the
26 property described in Section 1 shall be sold to 500 Mercer Partners, LLC for Four Million Five
27 Hundred Fifty Thousand Dollars (\$4,550,000) plus a sum equal to Five Hundred Ninety-one
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1 Thousand Dollars (\$591,000) to be used by the City as an Affordable Housing Subsidy, with said
2 funds to be appropriated and transferred at a later date.

3 Section 3. The Director is further authorized, for and on behalf of the City, to execute
4 a Deed and such other agreements and documents to effect the closing of such conveyance in
5 accordance with the terms and conditions of the Agreement.

6 Section 4. The Director is hereby designated as the authorized representative of The
7 City of Seattle in connection with the administration of the Agreement and is authorized to grant
8 such consents and approvals as he shall deem appropriate to carry out the intent of this ordinance.

9 Section 5. Net proceeds of the sale shall be used, first, to reimburse costs incurred and
10 paid by the Fleets and Facilities Department in connection with the sale, which reimbursement
11 shall be deposited into the Fleets and Facilities Fund (50330) (or if such fund has not been
12 created when such proceeds are received, then into the Executive Services Department Facilities
13 Services Subfund (50330)). The remainder of such proceeds shall be deposited in the
14 Unrestricted Subaccount (00164) of the Cumulative Reserve Subfund.

15 Section 6. Any act consistent with the authority and prior to the effective date of this
16 ordinance, including but not limited to execution of the Purchase and Sale Agreement, is hereby
17 ratified and confirmed.
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1 Section 7. This ordinance shall take effect and be in force thirty (30) days from and
2 after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)
3 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
4

5 Passed by the City Council the 26th day of November, 2001, and signed by me in
6 open session in authentication of its passage this 26th day of November, 2001.
7

8
9 Margaret C. Payer
10 President of the City Council

11 Approved by me this 30th day of NOVEMBER, 2001.
12

13 Paul Schell
14 Paul Schell, Mayor

15 Filed by me this 3rd day of Dec., 2001.
16

17 Jedrich E. Papp
18 City Clerk
19

20 (Seal)

21 Attachment 1 -- Purchase and Sale Agreement with its various attachments
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CONDITIONAL CONTRACT FOR SALE OF LAND

This Agreement is entered into by and between **THE CITY OF SEATTLE** (hereinafter called "City"), a municipal corporation of the State of Washington, and **500 MERCER PARTNERS, LLC** (hereinafter called "Purchaser"), a limited liability company organized under the laws of the State of Washington, the business address for which is 2115 Sixth Avenue, Seattle, Washington 98121.

RECITALS

A. The City currently leases a parking lot located on the City-owned property next to the Tower Records-Books-Videos store at 500 Mercer Street for use as a parking lot under lease by and between the City and MTS, Inc ("Lease"). The Tower Records store is located on Lots 10-12 of Block 48, Replat of Blocks 44 to 53, inclusive, Mercer's 2nd Addition to North Seattle, according to the plat thereof recorded in Vol. 9 of Plats, page 54, records of King County, Washington; EXCEPT that portion of Lots 10 through 12, inclusive, in said block, now included in 5th Avenue North as widened as provided by City of Seattle Ordinance No. 100337 (referred to herein as "the Adjacent Property").

B. The Purchaser desires to acquire that City owned property, the Adjacent Property, and to comprehensively redevelop the whole block.

C. The City is willing to sell such City-owned property to the Purchaser subject to the conditions set forth in this Agreement, which include means of reserving legal rights with respect to a portion of such City-owned property to implement the City's plans for the Potlatch Trail, the Purchaser's acquisition of the Adjacent Property on or by a date agreed to herein, the Purchaser's executing an agreement with the City respect to a portion of the Adjacent Property to implement the City's plans for the Potlatch Trail, and the Purchaser's commitment to pay an Affordable Housing Subsidy to the City and to make other commitments related to the long-term use of such allowance.

NOW, THEREFORE,

The parties hereto, for and in consideration of the promises and mutual obligations herein undertaken, hereby agree as follows:

1. **Agreement to Convey Parcel.** Subject to all of the terms and conditions of this Agreement, the City agrees to convey to the Purchaser that certain real property located at 525 Mercer Street in the City of Seattle more particularly described as follows:

Lots 1-9, inclusive, Block 48, Replat of Blocks 44 to 53 inclusive, Mercer's 2nd Addition to North Seattle, according to the plat thereof recorded in Volume 9 of Plats, page 54, in King County, Washington; EXCEPT that portion of Lots 7 through 9, said block, now included in 5th Avenue North as widened as provided by City of Seattle Ordinance No. 100337.

(hereinafter referred to as "the Property"), subject to the Potlatch Trail Agreement described in Subsections 7.6, 8.2 and 8.3.

Attachment 1

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2. **Payment of Purchase Price and Affordable Housing Subsidy.** The Purchaser agrees to, and shall, pay the City for the Property the sum of FOUR MILLION FIVE HUNDRED FIFTY THOUSAND NO/100 DOLLARS (\$4,550,000) in cash, at Closing, including the Earnest Money Deposit (the "Purchase Price"). In addition to the Purchase Price, Purchase shall pay to the City, in cash at closing, the sum of FIVE HUNDRED NINETY-ONE THOUSAND DOLLARS (\$591,000) (the "Affordable Housing Subsidy") to be used in accordance with the provisions of the Regulatory Agreement or Option & Regulatory Agreement attached hereto as Exhibits C and D (the "Regulatory Agreements"). Concurrently with Closing, Buyer shall execute and deliver to the City the Regulatory Agreements and their supporting documents, to be held in trust by the City pending the City's decision as to whether to use the subsidy on the Property or not. At Closing the parties shall record a memorandum (the "Regulatory Memorandum") against the Property and the Adjacent Property in form reasonably acceptable to both parties (form to be agreed upon prior to payment of the Earnest Money Deposit) giving record notice of the Regulatory Agreements.

3. **Conveyance.** At Closing, upon payment of the Purchase Price as provided in Section 2 and all other amounts required to be paid by the Purchaser hereunder, the City shall convey title to the Property by Bargain & Sale Deed substantially in the form attached hereto as Exhibit A, which deed is hereby approved as to form by the Purchaser.

4. **Title Insurance.**

4.1 **Commitment; Permitted Exceptions.** Attached hereto as Exhibit B is a title insurance commitment dated June 20, 2001 (the "Commitment") together with Supplemental Report No. 2 dated Oct. 2, 2001. The special exceptions referenced on Schedule B of the Commitment as exceptions 1, 2, 3, 4, 5, and 7, as well as the Potlatch Trail Agreement referenced in Subsections 7.6, 8.2 and 8.3 below are hereinafter referred to as the "Permitted Exceptions."

4.2 **Prohibited Exceptions.** The City shall not take any action whatsoever after the date of this Agreement that would cause the Property to be encumbered by any lien, encumbrance, covenant, easement or other matter that would survive Closing (collectively, "Prohibited Exceptions") without the prior consent of the Purchaser, which will not be unreasonably withheld if the proposed encumbrance does not require the payment of any money, and has no material effect on (i) the economic value of the Property; or (ii) the Purchaser's plans for the development of the Property. Any encumbrances that may be removed by the payment of money (judgment liens, consensual security interests, special assessments and the like) are Prohibited Exceptions and shall be paid by the City at Closing. If any matter affecting title to the Property becomes the subject of a supplement to the Commitment issued after the date of the Commitment and is not a Prohibited Exception, the following process shall apply:

(a) The Purchaser shall have thirty (30) days after the date of the supplement to notify the City of any objections the Purchaser has to the matter therein newly disclosed, with any exception not timely objected to being a Permitted Exception. The City shall have thirty (30) days after receipt of the Purchaser's objections to notify the Purchaser whether the City will remove any exception to which the Purchaser has timely objected. If the City provides no such notice within the thirty (30) day period, then the City shall be deemed to have agreed to remove



all of the exceptions requested to be removed by the Purchaser prior to Closing.

(b) In the event that the City provides notice that it will not remove all exceptions objected to by the Purchaser prior to Closing, and the Parties cannot agree on an adjustment to the Purchase Price and/or other terms of this Agreement, then within thirty (30) days after the date of the City's notice to Purchaser of the City's intent not to remove one or more of the exceptions, the Purchaser may, at its sole option:

(i) Notify the City of the Purchaser's intent to waive any exceptions which that the City has not agreed to remove, and accept title to the Property subject to such exceptions (which exceptions shall thereupon be deemed to be Permitted Exceptions); or

(ii) Terminate this Agreement by written notice to the City and Escrow Agent, in which event this Agreement shall terminate, the Earnest Money Deposit and all interest earned thereon shall be refunded to the Purchaser, and neither party shall have any further rights, duties or obligations under this Agreement except as specifically provided otherwise.

4.2 Form of Title Policy. The City shall furnish the Purchaser with title to the Property in the condition so that Pacific Northwest Title Insurance Company ("Title Company") will be prepared to issue or commit to issue to the Purchaser an extended coverage ALTA owner's policy of title insurance (Form B 1970) in the amount of the Purchase Price insuring fee title to the Property vested in the Purchaser free and clear of all matters except Permitted Exceptions, the lien of current real property taxes not yet due and payable, and those matters excluded from coverage by the standard exceptions and exclusions contained in the form of title insurance policy required hereby, together with any endorsements reasonably required by the Purchaser ("Title Policy").

4.3 Cost of Title Report. In the event that this Agreement is terminated prior to Closing, the Purchaser shall bear the cost of the Title Commitment, but otherwise the cost of the standard title insurance coverage contemplated by this Agreement shall be borne by the City. The Purchaser shall be responsible for securing and paying for any ALTA "as-built" survey required for extended title insurance coverage and any additional premium required in connection with such extended coverage; provided, that the inability of the Purchaser to secure such survey shall not delay Closing, and in the event such survey is not delivered to the Purchaser prior to the Closing Date, Closing shall proceed with the Title Company issuing only a standard Title Policy to the Purchaser.

5. Earnest Money Deposit. The Purchaser shall deliver to the Escrow Agent for application as provided in this Agreement, TWO HUNDRED TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$227,500.00) (the "Earnest Money Deposit") within One Hundred and Twenty (120) days after City Approval as defined in Subsection 8.1. below. The Earnest Money Deposit shall be deposited in an interest bearing account, and any interest earned thereon shall become a part of the Earnest Money Deposit. At Closing, the Earnest Money Deposit, together with any interest accrued thereon, shall be applied toward the Purchase Price. If this Agreement is terminated prior to Closing, the Earnest Money Deposit

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shall be held by the Escrow Agent until such time as the Purchaser becomes entitled to return of such deposit under the terms hereof or until the City becomes entitled to be paid such deposit under the provisions of this Agreement.

6. **Purchaser's Right to Enter Property; Permit Applications; Indemnification (Obligation).**

6.1 **Authorization to Enter Property & Undertake Inspections & Tests.** The Purchaser and authorized officers, employees, agents, consultants and contractors of the Purchaser shall have the right, at reasonable times prior to Closing, to enter upon the Property and make inspections or tests of the Property at the Purchaser's sole expense and liability (including without limitation Phase 2 hazardous materials borings and testing, and geotechnical borings); *provided*, that Purchaser agrees to and shall hold the City harmless from, and indemnify and defend the City against all liability, including but not limited to any lien, that arises from any activity undertaken by or on behalf of the Purchaser on the Property pursuant to this Agreement, excluding any liability relating to hazardous materials on the Property, subject to the following conditions:

(a) If reasonably feasible all borings shall be fully completed within five (5) days after commencement of the first boring; unless initial borings disclose the need for further borings.

(b) Unless authorized by the City (acting reasonably) the drilling rig used for each such boring shall not occupy more than five (5) parking spaces on the Property.

(c) All waste derived from the borings shall be stored in sealed 55 gallon drums on the Property for no longer than three (3) weeks, at a location to be determined by the City.

(d) No person shall commence any investigative work on the Property without first giving prior notice (either in writing or by telephone) to the manager of the Tower Records-Books-Video store at 500 Mercer Street advising such manager of the date and time of any intended drilling or entry for any other purpose, and the extent and nature of the investigative activity.

(e) No person shall commence any form of digging, drilling, or other invasive form of investigation of the Property without having first installed a safety barrier or barricade surrounding the perimeter of each site where such investigative work will be performed, in order to protect against bodily injury and property damage directly or indirectly resulting from or arising out of such work.

(f) The Purchaser shall deliver to the City's Fleets & Facilities Director (hereinafter "the Director") a complete written copy of any and all testing results obtained from any and all environmental assessments conducted by or on behalf of the Purchaser with regard to the Property, including, without limitation, any Level 2 ESA environmental assessment, which copy shall be delivered to the Director within ten (10) days after its receipt by the Purchaser.

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Furthermore, the Purchaser shall deliver to the Director a complete written copy of all testing results analysis obtained from any and all other investigatory activities on the Property.

6.2 Repair Obligation. In the event that this Agreement terminates without Closing, Purchaser covenants and agrees to repair any damage to the Property occasioned by the Purchaser's entry upon the Property or the conduct of any inspection, study or survey by or for Purchaser. Unless otherwise excused by the City, immediately upon the termination of any of the activities undertaken by or for the Purchaser pursuant to Subsection 6.1, the Purchaser shall have the Property restored, at no cost or expense to the City, to as good a condition as the Property had before entry onto the Property by or on behalf of the Purchaser. Without limiting the generality of the foregoing, the Purchaser shall: (a) remove from the Property, at no cost or expense to the City, any and all waste derived from the borings, including, without limitation, any and all storage drums; (b) sweep, wash, and repair (and repaint stall dividing markings, if necessary) any parking area that has been damaged by any of the activities undertaken pursuant to this section by or for the Purchaser; and (c) fully repair any other portions of the Property damaged by any invasive testing or sampling. Notwithstanding anything to the contrary herein, the Purchaser shall not be required to correct any conditions of the Property related to the presence of Hazardous Materials except conditions resulting from the Purchaser's bringing any Hazardous Materials onto the Property (as compared to the discovery of any Hazardous Materials on the Property). Such repair shall be to the condition in which the Property existed immediately prior to Purchaser's initial entry upon the Property pursuant to the license granted herein.

6.3 Indemnification Obligation. The Purchaser shall indemnify and hold harmless the City, the lessee of the Property, and any officer, employee or agent of each of them from and against any costs, loss, expense (including attorneys fees), damage or liability whatsoever incurred (including but not limited to that associated with the imposition of any lien) as a result of the entry upon the Property and conduct of the inspection, study or survey or any other activity on the Property by or on behalf of Purchaser in connection with or pursuant to this Agreement. Notwithstanding the foregoing, the Purchaser's repair, defense and indemnification obligations under this section shall not extend to the correction of any condition that is discovered by the Purchaser to be present on, under or about the Property.

6.4 Insurance Obligation. The Purchaser shall maintain in full force and effect, at its sole expense, at all times while it or any of its officers, employees, agents, consultants or contractors is occupying all or any portion of the Property or is undertaking directly or indirectly, any activity upon the Property, a policy or policies of commercial general public liability insurance issued by one or more insurance carriers licensed to do business in Washington and having a rating of A-:VII or better in A. M. Best's Key Rating Guide, providing coverage against liability for injury to or death of any person and loss of or damage to any property occurring on the Property. Said liability insurance shall be in an amount of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence. Such insurance shall name The City of Seattle as an additional insured. The Purchaser shall provide the Director with policy declaration pages evidencing the coverage described herein prior to entering onto the Property or undertaking any activity thereon.

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6.5 City's Cooperation. The City agrees that the City and its employees will cooperate with the Purchaser during the Purchaser's investigation and survey and provide such access to the Property and such information about the Property as the Purchaser shall reasonably require; provided, that the information to be provided to the Purchaser shall be limited to the following:

"The Potlatch Trail - Connecting Elliott Bay and South Lake Union - Concept Plan March 26, 2001" Schematic Design Document 2001

"South Lake Union Transportation Impacts - Phase 1 Report for City of Seattle" by Parsons Brinckerhoff Quade & Douglas

Subsurface data (original boring logs) for investigations of subsurface conditions at Mercer St., Roy St., Taylor Ave. N. and Fifth Ave. N.

6.6 Purchaser's Applications for Permits. To facilitate the Purchaser's timely development of the Property, the Purchaser shall have the right, prior to Closing, to make applications to the appropriate governmental authorities for the development of the Property. Nothing in this Section 6, however, shall obligate the City to approve or issue any permit to the Purchaser for the Property other than as required by law or ordinance.

7. Conditions Precedent to Closing by the Purchaser. The Purchaser shall be obligated to complete this transaction only upon satisfaction or waiver of the following conditions:

7.1 Title Conveyed. The City is able to convey title to the Property as described in Section 4 hereof, subject only to the Permitted Exceptions.

7.2 Title Policy Issuable. The Title Company is able to issue to the Purchaser the Title Policy.

7.3 Determination of Suitability of Property for Purchaser's Purposes. Within one hundred twenty (120) days after the date of City Approval (as defined in Subsection 8.a below), the Purchaser shall have decided that the Property is suitable for its intended purposes.

7.4 Vacation of Alley Bisecting Property. The north-south alley between Mercer and Roy Streets bisecting or adjacent to portions of the Property shall have been vacated on terms and conditions acceptable to the Purchaser in its discretion ("Alley Vacation"); *Provided*, that if this condition is not satisfied on or before the Termination Date (defined in Section 10.1 as the first anniversary of the date this Agreement is executed), the Termination Date set forth in Section 10.1 shall be extended by 180 days

7.5 City Approval Given. City Approval (as defined in Section 8.1 below) shall have been given, and the Purchaser shall have approved, in its discretion, any terms and conditions imposed in the ordinance authorizing execution of this Agreement. The City shall have provided to the Purchaser the form of ordinance (as defined in Section 8.1 below) to be submitted to the City Council within sixty (60) days after full execution of this Agreement.

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7.6 Agreement Regarding Potlatch Trail. The Purchaser and the City shall have agreed upon the terms of a ten (10) foot wide easement, dedication for public use, or other mechanism granting perpetual legal rights to the City for public use of an area extending twelve (12) feet above the surface level) along the entire 5th Avenue North and Roy Street sides of the Property, as well as along the Fifth Avenue side of the Adjacent Property (the "Potlatch Trail Agreement"). The Purchaser shall have the right to build over and below the area affected by the Potlatch Trail Agreement. The City shall provide a proposed form of the Potlatch Trail Agreement covering the Property and the Adjacent Property to the Purchaser within One Hundred Twenty (120) days after the full execution of this Agreement for the Purchaser's review and approval. The Parties shall work together in a timely manner to complete the form of the Potlatch Trail Agreement. The Potlatch Trail Agreement shall provide that it shall be extinguished to the extent the Seller elects to move the Potlatch trail to an entirely different location.

7.7 Purchase of Adjacent Property. Purchaser shall be in a position to purchase or shall have purchased the Adjacent Property, on terms satisfactory to Purchaser, concurrently with Closing on the Property.

7.8 Satisfaction or Waiver of Other Conditions; City Compliance and Correctness of City's Warranties. All other conditions of this Agreement to be satisfied or waived by the Purchaser shall have been satisfied or waived, and the City shall have complied with all of its obligations under this Agreement, and City's warranties shall be true and correct.

8. Conditions Precedent to Performance of Agreement by the City

The City shall be obligated to complete this transaction only upon satisfaction or waiver of the following conditions:

8.1 City Approval Granted. Authorization shall have been granted, by ordinance of The City of Seattle, for the execution of this Agreement on behalf of the City, which ordinance shall have been approved as to form and substance by the Purchaser, such ordinance shall have become effective, and this Agreement shall have been executed on behalf of the City (collectively, "City Approval").

8.2 Purchaser's Acquisition of Adjacent Property and Grant to City Potlatch Trail Rights. At least five (5) days before Closing, Purchaser shall have purchased the Adjacent Property or shall have delivered evidence to the Escrow Agent, with a copy to the Director, that the Purchaser is in a position to purchase the Adjacent Property concurrently with Closing on the Property and grant to the City the easement, dedication or other legal rights contemplated in Subsection 7.6 that will burden a portion of the Property and Adjacent Property for the Potlatch Trail.

8.3 Potlatch Trail Agreement. The Purchaser shall have delivered to the Escrow Agent at least five (5) days before Closing a fully executed Potlatch Trail Agreement in a form that has been accepted by the City, that burdens the Property and the Adjacent Property, for recording at Closing

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8.4 Purchaser's Compliance with Agreement. The Purchaser shall have complied with all its obligations under this Agreement.

8.5 Correctness of Purchaser's Warranties. The representations and warranties made by the Purchaser in this Agreement shall be true on and as of the date of Closing with the same effect as though such representations and warranties had been made on and as of the date of Closing.

9. Closing.

9.1 Closing Date. Closing on the Purchaser's acquisition of the Property under this Agreement shall take place at the offices of Pacific Northwest Title Insurance Company, Inc. Closing shall occur upon the later to occur of the following: (i) within thirty (30) days after the satisfaction or removal of all conditions precedent to Closing by the party for which such condition is a condition precedent, or (ii) within one (1) year after City Approval (as defined in Subsection 8.1 above; provided that if all of the conditions to Closing set forth in Sections 7 and 8 above have not been satisfied or waived by the party for which such condition is a condition precedent before the first anniversary of the date this Agreement is executed by all parties (the "Termination Date"), the termination provisions of Subsections 9.3 and 9.4 below shall apply. Notwithstanding the foregoing, the Termination Date is subject to extension by 180 days in connection with delays in obtaining the alley vacation, as provided in Subsection 7.4 above. "Closing" shall mean the execution, delivery and recording (as appropriate) of all documents, the payment of all funds into escrow as provided herein, including but not limited to the separate closing on the Purchaser's acquisition of the Adjacent Property (which may either be prior to or concurrent with the Closing on the Property), and the subsequent disbursement of the proceeds from the purchase and sale of the Property, as appropriate, by the Escrow Agent.

9.2 Recording. At Closing, the Escrow Agent shall be instructed to record the Deed, including all of its attachments, and the Regulatory Memorandum. The escrow fee charged in connection with this Closing shall be paid by the Purchaser. The Purchaser shall pay the cost of recording the Deed and any documents required by the Purchaser's financing. Each party shall sign and deliver such escrow instructions and other documents as are reasonably necessary to effect Closing as contemplated herein.

9.3 Closing Costs in the Case of a Default. If Closing fails to occur due to fault of one of the parties, then such party shall be solely responsible for all escrow and title insurance cancellation charges (in addition to any other liabilities imposed by this Agreement in connection with a default).

9.4 Termination Date. If any condition or contingency described in this Agreement has not been either satisfied or waived within the applicable time allowed, or the Termination Date if no period is provided herein, then the party benefiting from such condition shall have the right to terminate this Agreement by written notice; provided, that a party that is solely at fault for the non-removal or non-satisfaction of the outstanding condition may not give such notice of termination. In the event of termination as a result of any failure of a condition to Closing, the Earnest Money shall be immediately returned to Buyer. All rights and remedies

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available in the case of a default by a party shall survive any such termination, including the right to require specific performance by Purchaser.

10. Covenants and Warranties of the City.

10.1 Confidentiality. The City agrees that following the execution of this Agreement by the City and the Purchaser, so long as this Agreement has not been terminated and so long as the Purchaser is not in default hereunder, the City shall not initiate contact with any individual or entity concerning the sale of the Property or furnish non-public information to any entity or individual in connection with any acquisition proposal, or permit the Property to be advertised or held out for sale by any agent or employee of the City; without first obtaining the written consent of the Purchaser for such action.

10.2 Representations and Warranties. In addition to any express agreements of the City contained herein, the City hereby warrants and represents, as of the date hereof and as of Closing, that:

(i) The City has the legal power, right and authority to enter into this Agreement and the instruments and documents that are to be executed by the City and are referenced herein, and to consummate the transaction contemplated hereby; and

(ii) Upon obtaining City Approval, all requisite action will have been taken by the City to authorize the execution on behalf of the City of this Agreement and the instruments and documents that are to be executed on behalf of the City and are referenced herein, and to consummate the transaction contemplated hereby; and

(iii) The individual executing this Agreement, and the instruments and documents referenced herein, on behalf of the City has the legal power, right and actual authority to bind the City to the terms and conditions thereof; and

(iv) The City has not entered into any contract with respect to the Property that will be binding on the Property after the date of Closing, other than the Lease and the contract(s) disclosed to the Purchaser in writing by the City; and

(v) The City has not received any notice of any pending litigation, bankruptcy or other proceeding affecting the Property other than the notice(s) disclosed to the Purchaser in writing by the City; and

(vi) The City has not entered into any lease or rental agreement affecting the Property, recorded or unrecorded, or any easement, covenant, condition or restriction affecting the Property, other than as disclosed in the Title Commitment or as otherwise disclosed to the Purchaser, in writing, by the City; and

(vii) Except as disclosed by the Title Commitment, there are no assessments or special assessments pending against the Property; and

(viii) If any Hazardous Material is discovered by the Purchaser on the Property prior to Closing, the Purchaser shall have the right to terminate this Agreement

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and recover its Earnest Money, in addition to all other rights and remedies available at law or in equity (except as limited by this Agreement).

11. **Covenants and Warranties of the Purchaser.** In addition to any express agreements of the Purchaser contained herein, the following constitute warranties and representations of the Purchaser and shall be true and accurate as of the date of execution hereof and the date of Closing, and shall survive the Closing of this transaction and the delivery of deed hereunder. The Purchaser hereby warrants and represents the following to the City:

11.1 The Purchaser has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby; and

11.2 All requisite corporate action has been taken by the Purchaser in connection with the entering into of this Agreement and the instruments and documents that are to be executed by the Purchaser and are referenced herein, and to consummate the transaction contemplated hereby; and

11.3 The individual(s) executing this Agreement and the instruments and documents that are to be executed by the Purchaser and are referenced herein on behalf of the Purchaser has/have the legal power, right and actual authority to bind the Purchaser to the terms and conditions thereof; and

11.4 The Purchaser will not apply to the City for any funding in connection with the purchase and/or development of the Property covered by this Agreement.

12. **"AS IS" Purchase; No City Representation Made Regarding Condition of Property.** The City makes no representation or warranty whatsoever as to the environmental or any other condition of the Property (except as set forth specifically in this Agreement). The Purchaser hereby releases the City and its officials, employees, and agents from any and all claims, demands and liabilities (other than claims for indemnification asserted in response to third party claims asserted against Purchaser) arising out of, or in any way connected with, any alleged or actual past, present, or future presence of any Hazardous Substance in, on, under or emanating from the Property, or any portion thereof or improvement thereon, from any cause whatsoever; it being intended that the Purchaser shall so release the City and its officials, employees, and agents without regard to any fault or responsibility of the City or the Purchaser, or any of their respective officials, employees or agents. For the purposes of this Agreement, the term "Hazardous Substance" shall mean any petroleum product or compound containing the same; flammable material; radioactive material; polychlorinated biphenyl ("PCB") or compound containing the same; asbestos or asbestos-containing material in any friable form; underground or above-ground storage tank; or any substance or material that is now or hereafter becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to environmental protection, contamination or cleanup. The Purchaser's release of the City and its officials, employees and agents shall survive Closing and applies even if the Purchaser is not culpable, negligent, or in violation of any law, ordinance, rule or regulation.

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13. **Possession.** Subject to the Lease, the Purchaser shall be entitled to exclusive possession of the Property upon recording of the Deed.

14. **Risk of Loss.** The City shall deliver the Property to the Purchaser at Closing in the same condition existing as of the date hereof. Risk of loss or of damage to the Property shall be borne by the City until the date of Closing. Thereafter, the Purchaser shall bear the risk of loss. In the event of loss of or damage to the Property or any portion thereof prior to the date upon which the Purchaser assumes the risk, the Purchaser may terminate this Agreement and the Earnest Money Deposit shall be refunded.

15. **Escrow Closing Agent.** This transaction shall be closed by a licensed and bonded escrow agent.

16. **Closing Costs and Prorations.** The Purchaser agrees to and shall pay the entire escrow fee. The City agrees to and shall pay for the costs of the preliminary title commitment for standard title insurance coverage issued by Pacific Northwest Title Insurance Company, Inc, and the policy to be issued thereunder. The Purchaser shall pay any additional premium required for extended coverage title insurance. Real estate taxes for the year of Closing, rents, assessments and utilities constituting liens against the Property shall be prorated as of Closing. The parties warrant and covenant to each other (said warranty and covenant to survive Closing) that they have not involved any real estate agent in this transaction and that no commission is due to any real estate agent as a result of this transaction.

17. **Default.** If either party to this Agreement shall fail or refuse to perform or satisfy a material obligation under this Agreement, the party not performing its obligations shall be in default and the non-defaulting party may elect from the following remedies.

17.1 **Purchaser's Remedies.** In the event the City defaults in any of its material obligations under this Agreement, the Purchaser, at the Purchaser's option, may (1) specifically enforce this Agreement; or (2) recover damages from the City and rescind this Agreement and require the return of the Purchaser's Earnest Money Deposit.

17.2 **City's Remedies.** In the event the Purchaser defaults in any of its material obligations under this Agreement, the City, at the City's option, and as its sole remedy, forfeit the Purchaser's Earnest Money Deposit as liquidated damages.

18. **Attorneys' Fees.** In the event that either party hereto brings an action or proceeding for a declaration of any of the rights of a party under this Agreement, for injunctive relief, for an alleged breach or default of, or for any other action arising out of, this Agreement, the prevailing party shall be entitled to, in addition to those costs and disbursements provided by statute and any other damages or relief awarded, a reasonable sum as attorneys' fees, paralegal fees, expert fees, costs and expenses incurred in such action or proceeding, including any appeal thereof, regardless of whether such action proceeds to final judgment. If the City prevails, its attorneys' fees shall be computed on the basis of those of a private attorney in downtown Seattle who practices in a firm having at least as many attorneys as are employed in the Seattle City Attorney's Office, and who has experience comparable to the City's attorney.

19. **Notices.** All notices provided to the Purchaser or the City pursuant to this Agreement

shall be in writing and either delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the following respective addresses unless either party notifies the other of a change of its address in the same manner as any other notice is to be given hereunder:

For Purchaser: Alan J. Winningham, Managing Member
500 Mercer Properties, LLC
2115 Sixth Avenue
Seattle, Washington 98121

With a copy to: Vincent B. DePillis, Esq.
Real Property Law Group PLLC
1218 Third Ave, Suite 1900
Seattle, Washington 98101

For City: Joan Rosentock
The City of Seattle
Fleets and Facilities Department
14th Floor, Alaska Building
618 2nd Avenue
Seattle, Washington 98104

With a copy to: Gordon Davidson, Esq.
Assistant City Attorney
Law Department
The City of Seattle
600 - 4th Avenue, 10th Floor
Seattle, WA 98104

20. **Time of Essence; Counting of Days.** Time is of the essence of this Agreement. Any extension of time granted for performance of any obligation to this Agreement shall not be considered an extension of time for the performance of any other obligation under this Agreement. If the time for performance of any obligation, or giving of any notice hereunder expires on a day on which the administrative office of the Director is not open to the public, the time for the giving of such notice or the performing of such obligation shall be extended to 4:45 PM on the next day on which the administrative office of the Director is open to the public.

21. **Assignment.** Purchaser's rights under this Agreement may not be assigned without the prior written consent of the Director.

22. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and legal representatives.

23. **Amendment.** The parties hereto reserve the right to amend this Agreement from time to time as they deem necessary. All modifications to this Agreement shall be in writing and signed by an authorized representative of each of the parties hereto.

24. **Waivers.** The waiver of any of the terms or conditions of Agreement must be in writing

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and signed by the authorized representative of the party waiving such term or condition.

25. **Governing Law and Venue.** This Agreement shall be governed by and interpreted in accordance with Washington law. Any litigation arising out of or in connection with this Agreement shall be conducted in King County, Washington.

26. **Headings.** The headings of the paragraphs of this Agreement are inserted solely for the convenience of the parties, and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

27. **Entire Agreement.** Purchaser and the City agree that this Agreement constitutes the full and complete understanding between Purchaser and the City. This Agreement, including the exhibits and addenda attached and forming a part of the Agreement (if any), contains all of the covenants, promises, agreements, and conditions, between the parties. No verbal agreement or conversation between any City officer, agent associate or employee prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement. Any such verbal agreement shall be considered unofficial information and in no way binding on either party. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

28. **Survival.** The Purchaser and the City agree that all representations, warranties and agreements made herein shall not merge in, but shall survive, the Closing of this transaction and the delivery of any deed hereunder. All of the Purchaser's indemnification, payment, and repair obligations shall survive the expiration or earlier termination of this Agreement.

29. **Condemnation.** If, prior to the date of Closing, all or any part of the Property is taken by condemnation by a governmental authority other than The City of Seattle or any agency, commission, department or entity in any way related thereto ("Superior Governmental Authority"), the Purchaser may elect to cancel this Agreement by giving the City notice to that effect, whereupon the Escrow Agent shall immediately return the Earnest Money Deposit and all interest earned thereon to the Purchaser and both parties shall be relieved and released from any liability hereunder to the other. Alternatively, the Purchaser may elect to take title to the Property in accordance with the terms and conditions of this Agreement without reduction of the Purchase Price and shall be entitled to receive from the Superior Governmental Authority any condemnation award or benefit. If the Purchaser purchases the Property and complies with all of the terms of this Agreement, the City shall assign to Purchaser all of its right, title and interest in and to any such condemnation award or benefit, if any, that may be owing to the owner of the Property as a result of such condemnation or taking of, or damage or change to the Property. The foregoing notwithstanding, the City does not assign to Purchaser the proceeds from any insurance policy maintained by the City with regard to the Property and retains any and all such proceeds.

30. **Purchaser's Signature.** By the signature of its authorized representative below, Purchaser acknowledges its willingness and agreement to purchase the Property on the terms and conditions contained in this Agreement.

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31. **Tax Deferred Exchange.** The Purchaser may elect to incorporate this transaction into a tax deferred exchange under Section 1031 of the Internal Revenue Code. In furtherance thereof, the City agrees to allow the Purchaser to assign this Agreement to a third party exchange intermediary for the purpose of effecting the exchange. The City agrees to cooperate with the exchanging party in effecting such exchange; provided that the City shall not be required to incur any liability as a result of such cooperation. The failure of the exchange to qualify as an exchange under Section 1031 shall not constitute grounds for rescission by either party and shall not be deemed to be a failure of consideration.

32. **Exhibits.** The following exhibits are attached hereto and by this reference are incorporated herein:

- | | |
|-----------|--|
| Exhibit A | Bargain & Sale Deed with Permitted Exceptions, together with the following attachments: |
| Exhibit B | Title Commitment |
| Exhibit C | Option & Regulatory Agreement, Right of First Refusal and Other Resale Restrictions relating to Affordable Homeownership Units |
| Exhibit D | Regulatory Agreement, Promissory Note, and Deed of Trust relating to Rental Housing Units |

33. **Entire Agreement.** Purchaser and the City agree that this Agreement constitutes the full and complete understanding between Purchaser and the City. This Agreement, including the exhibits and addenda attached and forming a part of the Agreement (if any), contains all of the covenants, promises, agreements, and conditions, between the parties. No verbal agreement or conversation between any City officer, agent associate or employee prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement. Any such verbal agreement shall be considered unofficial information and in no way binding on either party. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, each of the parties hereto have executed this Agreement by having its authorized representative affix his/her signature in the appropriate space below:

500 MERCER PARTNERS, LLC

THE CITY OF SEATTLE

By: _____
Alan J. Winningham
Managing Member

By: _____
John Franklin,
Fleets and Facilities Director
Authorized by Ordinance _____

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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ___ day of _____, 2001, personally appeared before me John M. Franklin, to me known to be the Director of Fleets & Facilities of the municipal corporation that executed the within and foregoing agreement and acknowledged said agreement to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned and on oath stated that he was authorized to execute said agreement.

WITNESS my hand and official seal the date and year first above written.

Print name: _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission expires _____.

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ___ day of _____, 2001, personally appeared before me Alan J. Winningham, to me known to be the Managing Member of 500 Mercer Partners, LLC, the limited liability company that executed the within and foregoing agreement and acknowledged said agreement to be the free and voluntary act and deed of said party, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said agreement for said entity.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Print name: _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission expires _____.

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WHEN RECORDED RETURN TO:

Alan J. Winningham, Managing Member
500 Mercer Properties, LLC
2115 Sixth Avenue
Seattle, Washington 98121

BARGAIN AND SALE DEED
SUBJECT TO CONDITIONS REGARDING AFFORDABLE HOUSING SUBSIDY

Reference numbers of related documents: NOT APPLICABLE

Grantee: 500 MERCER PARTNERS, LLC

Grantor: THE CITY OF SEATTLE

Legal Description:

1. Abbreviated form: Lots 1-12, Block 48, Mercer's 2nd Add. to North Seattle V9/P54
2. Additional legal description is on pages 1 and 2 of document.

Assessor's Property Tax Parcel Account Number(s): 545830-0345-04

THE GRANTOR, THE CITY OF SEATTLE, for and in consideration of Four Million Five Hundred Fifty Thousand Dollars (\$4,550,000.00), plus an additional Affordable Housing Subsidy in the amount of Five Hundred Ninety-one Thousand Dollars (\$591,000.00), all in hand paid, grants, bargains, sells, conveys and confirms to the GRANTEE, **500 MERCER PARTNERS, LLC**, the following described real estate:

Lots 1-9, inclusive, Block 48, Replat of Blocks 44 to 53 inclusive, Mercer's 2nd Addition to North Seattle, according to the plat thereof recorded in Volume 9 of Plats, page 54, in King County, Washington; EXCEPT that portion of Lots 7 through 9, said block, now included in 5th Avenue North as widened as provided by City of Seattle Ordinance No. 100337.

Situate in the City of Seattle, County of King, State of Washington;

all subject to the Permitted Exceptions set forth in Exhibit A attached hereto.

The Grantor, for itself and for its successors in interest, does by these presents expressly limit the covenants of the deed to those herein expressed, and excludes all covenants arising or to arise by

THIS DEED IS EXPRESSLY GRANTED SUBJECT TO THE CONDITIONS SET FORTH IN THE AGREEMENTS DESCRIBED IN THE MEMORANDUM RECORDED CONCURRENTLY HERewith

By: John Franklin, Fleets & Facilities Director Pursuant to Ordinance _____

I certify that I know or have satisfactory evidence that John Franklin is the person who appeared before me, and said person acknowledged that he signed this Deed, on oath stated that he was authorized to execute said Deed and acknowledged it as the Fleets & Facilities Director of THE CITY OF SEATTLE to be the free and voluntary act of such party for the uses and purposes mentioned in the Deed.

(Signature) (Print or Type Name)
NOTARY PUBLIC in and for the State of Washington, residing at _____
My commission expires _____.

Page 2 of 2

COMMITMENT FOR TITLE INSURANCE ISSUED BY

PACIFIC NORTHWEST TITLE INSURANCE COMPANY, INC.

PACIFIC NORTHWEST TITLE INSURANCE COMPANY, INC., a Washington corporation, herein called the Company, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A, upon payment of the premiums and charges therefor; all subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by the Company, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of the Company.

Signed under seal for the Company, but this Commitment shall not be valid or binding until it bears an authorized Countersignature.

IN WITNESS WHEREOF, Pacific Northwest Title Insurance Company, Inc. has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.



President [Signature]
Countersigned by: Julie Goodman
Authorized Signatory
PACIFIC NORTHWEST TITLE CO.
Company
SEATTLE, WA.
City, State

American Land Title Association Commitment - 1966 (Rev. 3/78)

Exhibit B

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

PACIFIC NORTHWEST TITLE COMPANY
OF WASHINGTON, INC.
215 Columbia Street
Seattle, Washington 98104-1511

Senior Title Officer, Julie Goodman (juliegoodman@pnwt.com)
Title Officer, LaVonne Bowman (lavonnebowman@pnwt.com)
Assistant Title Officer, Kathy Turner (kathyturner@pnwt.com)
Senior Title Technician, Jeanette Post (jeanettepost@pnwt.com)
Senior Title Technician, Daisy Lorenzo (daisylorenzo@pnwt.com)
Unit No. 8

FAX No. (206)343-8403
Telephone Number (206)343-1328

Armada Retail
215 6th Avenue
Seattle, WA 98121
Attention: Alan Winningham

Title Order No.: 440647

A. L. T. A. COMMITMENT
SCHEDULE A

Effective Date: June 20, 2001, at 8:00 a.m.

1. Policy(ies) to be issued:

ALTA Owner's Policy	Amount	TO BE AGREED UPON
Standard (X) Extended ()	Premium	
	Tax (8.8%)	

Proposed Insured:

TO FOLLOW

NOTE: IF EXTENDED COVERAGE FOR OWNERS OR LENDERS WILL BE REQUIRED FOR A PENDING TRANSACTION, PLEASE NOTIFY US AT LEAST ONE WEEK PRIOR TO CLOSING SO THAT WE MAY INSPECT THE PREMISES.

2. The Estate or interest in the land described herein and which is covered by this commitment is fee simple.
3. The estate or interest referred to herein is at Date of Commitment vested in:

THE CITY OF SEATTLE, a municipal corporation

(NOTE: SEE SPECIAL EXCEPTION NUMBER 9 REGARDING EXECUTION OF THE FORTHCOMING DOCUMENT(S) TO BE INSURED).

4. The land referred to in this commitment is situated in the County of King, State of Washington, and described as follows:

As on Schedule A, page 2, attached.

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Order No. 440647

A.L.T.A. COMMITMENT
SCHEDULE A
Page 2

The land referred to in this commitment is situated in the county of King, State of Washington, and described as follows:

Lots 1 through 9, inclusive, Block 48, Replat of Blocks 44 to 53 inclusive, Mercer's Second Addition to North Seattle, according to the plat thereof recorded in Volume 9 of Plats, page 54, in King County, Washington;

END OF SCHEDULE A

NOTE FOR INFORMATIONAL PURPOSES ONLY:

The following may be used as an abbreviated legal description on the documents to be recorded, per amended RCW 65.04. Said abbreviated legal description is not a substitute for a complete legal description within the body of the document.

Lots 1-9, Block 48, Mercer's 2nd Add. to North Seattle, V9/P54

NOTICE:
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PACIFIC NORTHWEST TITLE COMPANY OF WASHINGTON, INC.
A.L.T.A COMMITMENT
Schedule E Order No. 440647

I. The following are the requirements to be complied with:

- A. Instruments necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record.
- B. Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

II. Schedule B of the Policy or Policies to be issued (as set forth in Schedule A) will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

- A. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

B. GENERAL EXCEPTIONS:

1. Rights or claims of parties in possession not shown by the public records.
2. Public or private easements, or claims of easements, not shown by the public record.
3. Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the premises.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records, or Liens under the Workmen's Compensation Act not shown by the public records.
5. Any title or rights asserted by anyone including but not limited to persons, corporations, governments or other entities, to tide lands, or lands comprising the shores or bottoms of navigable rivers, lakes, bays, ocean or sound, or lands beyond the line of the harbor lines as established or changed by the United States Government.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
7. Any service, installation, connection, maintenance, capacity, or construction charges for sewer, water, electricity or garbage removal.
8. General taxes not now payable or matters relating to special assessments and special levies, if any, preceding the same becoming a lien.
9. Indian tribal codes or regulations, Indian treaty or aboriginal rights, including, but not limited to, easements or equitable servitudes.

C. SPECIAL EXCEPTIONS: As on Schedule B, attached.

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A.L.T.A. COMMITMENT
SCHEDULE B
Page 2

Order No. 440647

SPECIAL EXCEPTIONS:

NOTE FOR INFORMATION PURPOSES ONLY:

EFFECTIVE JANUARY 1, 1997, AND PURSUANT TO AMENDMENT OF WASHINGTON STATE STATUTES RELATING TO STANDARDIZATION OF RECORDED DOCUMENTS, THE FOLLOWING FORMAT AND CONTENT REQUIREMENTS MUST BE MET. FAILURE TO COMPLY MAY RESULT IN REJECTION OF THE DOCUMENT BY THE RECORDER.

FORMAT:

MARGINS TO BE 3" ON TOP OF FIRST PAGE, 1" ON SIDES AND BOTTOM - 1" ON TOP, SIDES AND BOTTOM OF EACH SUCCEEDING PAGE. RETURN ADDRESS IS ONLY ITEM ALLOWED WITHIN SAID 3" MARGIN. NOTHING WITHIN 1" MARGINS.

FONT SIZE OF 8 POINTS OR LARGER AND PAPER SIZE OF NO MORE THAN 8 1/2" BY 14".

NO ATTACHMENTS ON PAGES SUCH AS STAPLED OR TAPED NOTARY SEALS; PRESSURE SEALS MUST BE SMUDGED.

INFORMATION WHICH MUST APPEAR ON THE FIRST PAGE:

RETURN ADDRESS, WHICH MAY APPEAR WITHIN THE UPPER LEFT HAND 3" MARGIN.

TITLE OR TITLES OF DOCUMENT.

IF ASSIGNMENT OR RECONVEYANCE, REFERENCE TO RECORDING NUMBER OF SUBJECT DEED OF TRUST.

NAMES OF GRANTOR(S) AND GRANTEE(S) WITH REFERENCE TO ADDITIONAL NAMES ON FOLLOWING PAGES, IF ANY.

ABBREVIATED LEGAL DESCRIPTION (LOT, BLOCK, PLAT NAME, OR SECTION, TOWNSHIP, RANGE AND QUARTER QUARTER SECTION FOR UNPLATTED).

ASSESSOR'S TAX PARCEL NUMBER(S).

(continued)

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A.L.T.A. COMMITMENT
SCHEDULE B
Page 3

SPECIAL EXCEPTIONS (continued):

1. Easement for utilities in vacated alley for the benefit of the City of Seattle as reserved in Ordinance Number 46050.
2. AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:

BY AND BETWEEN: Harold L. Worthington, a bachelor;
and C.C. Bagley and Myrtle P.
Bagley, husband and wife

DATED: December 29, 1923
RECORDED: January 23, 1924
RECORDING NUMBER: 1824343

REGARDING:

It is hereby agreed that the parties hereto, their heirs and assigns, shall at all times own and possess as appurtenant to their respective portions of the said block, an easement over the said alley as laid out on said plat, for ingress and egress to and from their respective parcels aforesaid, provided, that either party hereto may at any time erect gates closing the said alley on street lines, and may securely lock the same, provided keys to all locks be furnished the other party hereto.

3. AGREEMENT AND THE TERMS AND CONDITIONS THEREOF:

BY AND BETWEEN: Harold L. Worthington, a bachelor;
and C.C. Bagley and Myrtle P.
Bagley, husband and wife

DATED: December 18, 1923
RECORDED: February 29, 1924
RECORDING NUMBER: 1838554
REGARDING: Party wall

4. Right to make necessary slopes for cuts and fills upon property here in described as provided by City of Seattle Ordinance No. 19723 and 100327.
5. Right to make necessary slopes for cuts or fills upon property herein described as condemned in King County Superior Court Cause No. 746324.

(continued)

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Order No. 440647

A.L.T.A. COMMITMENT
SCHEDULE B
Page 4

6. The property herein described is carried on the tax rolls as exempt; however, it will become taxable from the date of transfer to a taxable entity.

TAX ACCOUNT NUMBER: 545830-0345-04
AFFECTS: Parcel A

NOTE: PLEASE CONTACT THE KING COUNTY ASSESSORS OFFICE TO VERIFY THE TAX AMOUNT DUE, AS EXEMPT TAXES ARE SUBJECT TO CHANGE WITHOUT NOTICE, THE TELEPHONE NUMBER IS 206-296-5151.

7. LEASE, AND THE TERMS AND CONDITIONS THEREOF:

LESSOR: The City of Seattle, a municipal corporation
LESSEE: Queen Anne Record Sales, Inc., d/b/a Tower Records
FROM: The first day of April 1977
DATED: March 15, 1977
RECORDED: April 6, 1977
RECORDING NUMBER: 7704060526
AFFECTS: Parcel A

8. Unrecorded leaseholds, if any; rights of vendors and holders of security interests on personal property installed upon said property and rights of tenants to remove trade fixtures at the expiration of the term.
9. Satisfactory showing of authorization for the proposed conveyance by City of Seattle, in accordance with applicable statutes must be submitted.
10. Until the amount of the policy to be issued is provided to us, and entered on the commitment as the amount of the policy to be issued, it is agreed by every person relying on this commitment that we will not be required to approve any policy amount over \$100,000, and our total liability under this commitment shall not exceed that amount.
11. Title is to vest in persons not yet revealed and when so vested will be subject to matters disclosed by a search of the records against their names.

(continued)

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NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

Order No. 440647

A.L.T.A. COMMITMENT
SCHEDULE B
Page 5

12. Payment of Real Estate Excise Tax, if required.

The property described herein is situated within the boundaries of local taxing authority of City of Seattle.

Present Rate of Real Estate Excise Tax as of the date herein is 1.78%.

NOTE 1: The legal description submitted has been modified as set forth herein to comply with the record and the presumed intention of the parties to the transaction. THE SAME SHOULD BE EXAMINED AND APPROVED BY SAID PARTIES PRIOR TO CLOSING.

NOTE 2: Upon notification of cancellation, there will be a minimum cancellation fee of \$50.00 plus tax of \$4.40.

END OF SCHEDULE B

Title to this property was examined by:

Myron Sizer

Any inquires should be directed to one of the title officers set forth in Schedule A.

cc PNWT/Seattle/Megan

vlc

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0010 10101
Sent by: JetFax M920

4254431328;

10/17/01 2:27PM; JetFax #477; Page 2/2

AO 102 028
TJO 102 246



TO: Armada Retail
2115 6th Avenue
Seattle, WA 98121
Attn: Alan Winningham

215 Columbia Street
Seattle, Washington
98104

SUPPLEMENTAL REPORT #2

cc: Pacific Northwest Title
215 Columbia Street
Seattle, WA 98104
Attn: Megan

PNWT Order Number: 440647
Seller: City of Seattle
Buyer/Borrower: To Follow

The following matters affect the property covered by this order:

The legal description has been amended to read as follows:

Lots 1 through 9, inclusive, Block 48, Replat of Blocks 44 to 53 inclusive, Mercer's Second Addition to North Seattle, according to the plat thereof recorded in Volume 9 of Plats, page 54, in King County, Washington;

EXCEPT that portion of Lots 7 through 9, said block, now included in 5th Avenue North as widened as provided by City of Seattle Ordinance No. 100337.

- The following paragraph has been amended to read as follows:
 1. Easement for utilities in formerly vacated alley for the benefit of the City of Seattle as reserved in Ordinance Number 46050 and the right to construct, maintain and operate thereon, underground public utilities and poles and wires for overhead public utilities as contained in deed recorded under Recording Number 2311436 and accepted by Ordinance NO. 62264 in which a 16 foot strip was donated to the City of Seattle and dedicated to the public use forever for alley purposes.
- Except as to the matters reported hereinabove, the title to the property covered by this order has NOT been re-examined

Dated as of October 2, 2001 at 8:00 a.m.

PACIFIC NORTHWEST TITLE COMPANY
By: Julie Goodman
Title Officer
Phone Number: 206-343-1328

KM

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Return Address:

Office of Housing
The City of Seattle
8th Floor, 618 Second Ave.
Seattle, WA 98104
Attn.: Thomas Mack

**OPTION & REGULATORY AGREEMENT AFFECTING
DEVELOPMENT AND SALE OF CONDOMINIUM HOUSING UNITS
ON LOTS 1 - 12, INCLUSIVE, BLOCK 48, RE-PLAT OF MERCER'S 2ND ADD'N
ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 10 OF PLATS, PAGE 34,
RECORDS OF KING COUNTY, WASHINGTON**

Reference numbers of related documents:
NOT APPLICABLE

Borrower:
500 MERCER PARTNERS, LLC

Beneficiary:
THE CITY OF SEATTLE

Legal Description:
1. Abbreviated form: Lots 1-12, Block 48, Mercer's 2nd Add. to North Seattle V9/P54
2. Additional legal description is on page 2 of document.

Assessor's Property Tax Parcel Account Number(s): 545830-0345-04

THIS OPTION & REGULATORY AGREEMENT is entered into as of _____,
200__, by and between **500 MERCER PARTNERS, LLC**, a Washington limited liability company
("Grantor"), and **THE CITY OF SEATTLE** (the "City"), a Washington municipal corporation.

RECITALS

WHEREAS, the City and Grantor desire to ensure that decent, safe and sanitary condominium housing units are provided for Low-Income Families in the building(s) hereafter located on the real property in Seattle, Washington, legally described as follows (which, including all improvements now or hereafter thereon, is referred to as the "Property"):

Lots 1-12, inclusive, Block 48, Replat of Blocks 44 to 53 inclusive, Mercer's 2nd Addition to North Seattle, according to the plat thereof recorded in Volume 9 of Plats, Page 54, in King County, Washington; EXCEPT that portion of Lots 7 through 12, said block, now included in 5th Avenue North as widened as provided by City of Seattle Ordinance No. 100337.

WHEREAS, subject to certain conditions, the City is willing to assist the Grantor's efforts to sell such condominium housing units by making certain City financing available to qualified Low-Income Families desiring to purchase such condominium housing units to thereby assist them in the acquisition of such housing; and

WHEREAS, the City and Grantor desire that use of a portion of the Property be restricted to serving as housing for Low-Income Families, and in consideration of the City's agreement to make available to Low-Income Families financial assistance for the their acquisition of condominium housing on the Property, Grantor has agreed to place certain restrictions on the Property;

NOW, THEREFORE, the parties hereto agree as follows:

Part I: Property-Specific Terms

Item	Terms
Grantor's Mailing Address and Phone	500 Mercer Partners, LLC 2115 Sixth Avenue Seattle, WA 98121 Phone: (206) 443-1940 Fax: (206) 443-1329 Attn.: Alan J. Winningham, Managing Member
Property Address	500 Mercer Street Seattle, WA 98109
Land Use Designation	Multifamily Mixed Use - NC-40 V
Type of Housing (If both, give numbers of Affordable Homeownership Units in each category)	Permanent
Special population to be served, if any	General Population

Part II: General Provisions

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, for the purposes of this Agreement, each of the terms set forth in quotations in this section shall have the meaning set forth immediately after the quoted term:

"Affordable Homeownership Units" means the condominium housing Units on the Property that are to be constructed on the Property and offered for sale to the legal representative of Low-Income Families qualified to receive a portion of the Affordable Housing Subsidy for Low Income Families, together with all rights and interests in the Property appurtenant to those Units.

"Affordable Housing Subsidy" means the sum of \$591,000 paid by the Grantor to the City coincidentally with and upon the Closing of Grantor's acquisition of the Property from the City, as a subsidy for the City's Affordable Housing Program, and accrued interest earned thereon.

"Annual Income" means the annual income of a Family as determined, unless otherwise approved in writing by the City, in accordance with 24 CFR Section 5.609 or successor provision, and unless otherwise approved in writing by OH shall be calculated for purposes of determining eligibility in accordance with 24 CFR Section 92.203(d) or successor provision, subject to any interpretations, modifications or assumptions that may be promulgated by HUD.

"City," when used with respect to discretionary authority, means the Director of the Office of Housing of The City of Seattle or such official's functional successor or designee.

"Days" means calendar days other than Saturdays, Sundays and legal holidays.

"Family" has the meaning set forth in 24 CFR Section 5.403, or successor provision, and includes an individual person.

"HUD" means the United States Department of Housing and Urban Development or any successor agency.

"Low-Income Family" means a Family whose Annual Income does not exceed eighty percent (80%) of Median Income.

"Median Income" means median Family income for the Seattle area, as published from time to time by HUD, as adjusted for Family size by HUD for purposes of income limits in the Section 8 subsidy program or any successor program. If, in any year, HUD does not specify a Median Income as adjusted for a particular Family size, but HUD does specify a "very low-income" or "50%" limit for the Seattle area for such Family size based generally on 50% of median Family income, as adjusted, then Median Income for such Family size shall be twice such "very low-income" or "50%" limit. If HUD does not publish adjustments for a particular Family size in any year, either for Median Income or for "very low-income" or "50%" limits, then adjustments to Median Income for that Family size shall be as determined by the City, in its discretion; however, if a Family size used for purposes of rent limits is not an integer and HUD specifies a Median Income or "very low-income" or "50%" limit for the next higher and lower

Family sizes that are integers, then the Median Income for such Family size shall be determined by the City by averaging the Median Incomes for such next higher and lower integral Family sizes as determined under this paragraph. If HUD ceases to provide Median Income data, then the City may determine "Median Income" and adjustments based on any data for the Seattle area or an area including Seattle, published or reported by a federal, state, or local agency, as the City shall select in its sole discretion, adjusted to Family size in such manner as the City shall determine in its sole discretion.

"OH" means The City of Seattle's Office of Housing or any other department or agency that shall succeed to its functions with respect to low-income housing.

"Property" means the land described in the recitals above and all buildings, structures, fixtures, equipment and other improvements now or hereafter constructed or located thereon.

"Unit" means a dwelling unit, housekeeping unit, guest room, or single room occupancy unit, as defined, where applicable, in Seattle Municipal Code Chapter 22.204.

Section 2. City's Choice Regarding Expenditure of Affordable Housing Subsidy; Effectiveness of Option & Regulatory Agreement.

A. City's Choice to Expend the Affordable Housing Subsidy on the Property or Elsewhere. The City shall determine, in the exercise of its sole discretion, and give notice to the Grantor on or by the first anniversary of the Grantor's acquisition of a portion of the Property from the City (the Closing Date), whether the Affordable Housing Subsidy shall be used to subsidize housing units on the Property or at some other location within the City of Seattle. Silence shall be deemed an election to expend the Affordable Housing Subsidy on the Property.

B. Effectiveness of Option & Regulatory Agreement Affecting the Development and Sale of Condominium Housing Units on the Property Depends Upon Existence of Certain Conditions. This Option & Regulatory Agreement affecting the development and sale of condominium housing units on the Property shall be effective only if (1) the City elects to expend the Affordable Housing Subsidy on the Property, and (2) the Units on the Property are initially developed as condominium housing Units. If either (a) the City elects to use the Affordable Housing Subsidy at some location other than the Property, or (b) if the Units that are initially developed on the Property are rental housing Units, rather than condominium Units, then the Grantor shall be relieved of all obligations whatsoever under this Option & Regulatory Agreement affecting the development and sale of condominium housing Units on the Property; and this Option & Regulatory Agreement affecting the development and sale of condominium housing Units on the Property shall be of no further force and effect, and the City shall promptly record a memorandum so stating.

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Section 3. Assignable Option to be Provided by Grantor to City for Benefit of Low-Income Families; Duration of Option.

The Grantor hereby grants to the City, for the benefit of the legal representative(s) of Low-Income Families qualified, from time to time, by the City, the right to purchase the number and mix (types) of Affordable Homeownership Units on the Property determined pursuant to Subsection 4.A hereof, on the terms and conditions specified in this Option & Regulatory Agreement. The right to purchase an Affordable Homeownership Unit granted by this Option is divisible and exercisable on a Unit-by-Unit basis, and shall be assigned by the City on a Unit-by-Unit basis to the legal representative of a Low-Income Family chosen by Grantor. As provided in Section 5 below, Grantor is responsible for finding and choosing Low Income Families. The City's role shall be limited to verifying eligibility. The term "legal representative" as used in this agreement, means a natural person which is a member of the Low Income Family. The City shall identify potential purchasers by notice to the Grantor. After the City has identified a legal representative of a Low-Income Family as qualified to purchase an Affordable Homeownership Unit on the Property and entitled to exercise the right to purchase such a Unit on the terms and conditions specified herein, using a portion of the Affordable Housing Subsidy, Grantor shall give prompt written notice to the City whether it elects to sell the Unit to such Buyer. This Option shall run with the land, be a burden upon the Property and all portions thereof, and shall be binding upon any purchaser, grantee, owner or lessee of any portion of the Property and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Property and any other person or entity having any right, title or interest therein, for the term of this Option & Regulatory Agreement. Unless this Option & Regulatory Agreement is voided pursuant to Subsection 2.C hereof, this Option shall remain effective until the number and mix of Affordable Homeownership Units identified by the City pursuant to Subsection 4.A have been sold to the legal representatives of Low-Income Families who have exercised the Option granted herein to purchase such Units. Upon satisfaction of the requirements that the required sales have occurred, the City shall promptly record a memorandum releasing the Property from this Agreement.

Section 4. Terms & Conditions of Sale of Affordable Housing Units to City's Assignees Qualified to Receive Financing from Affordable Housing Subsidy.

A. Number and Mix of Units to be Offered for Sale to Low-Income Families. If Grantor elects to construct Condominium Units, the Grantor commits to make available and offer for sale to the Low Income Families as Assignees of the City's Option to purchase Affordable Homeownership Units and qualified to receive a portion of the Affordable Housing Subsidy, the number and mix (e.g., Studios, One-Bedroom Units, and Two-Bedroom Units) of Affordable Homeownership Units on the Property specified in a notice from the City to Grantor, which number shall be the maximum number of such Units that can be effectively subsidized by the Affordable Housing Subsidy for Low Income Households, as determined by the City in the exercise of its discretion, or fifteen percent (15%) of the total number of housing Units developed on the Property, whichever is less. Grantor shall decide, in its sole discretion, which of the Units in the Property shall be sold pursuant to this Agreement, subject only to the

requirement the appropriate Unit mix be maintained. The OH shall have the right to use the Affordable Housing Subsidy and any other City-administered funds to subsidize the purchase of Affordable Homeownership Units by Low-Income Families as contemplated in this Agreement; *Provided*, that in no event shall the Grantor be obligated to sell to one or more Low-Income Families a greater number of Affordable Homeownership Units than can be effectively subsidized by the Affordable Housing Subsidy for Low Income Families, as determined by the City in the exercise of its discretion, or fifteen percent (15%) of the total number of housing Units developed on the Property, whichever is less.

B. Initial Maximum Sales Price for Affordable Homeownership Units. The Grantor shall offer the Affordable Homeownership Units for sale at no more than the lowest of the prices specified immediately below:

(1) the average of the actual prices paid within the 180 Days immediately prior to the offering for sale of that Affordable Homeownership Unit, by buyers of substantially unrestricted, market-rate condominium housing Units of the comparable view and type (*i.e.*, number of bedrooms) on the Property; or

(2) if the price described in Subsection 4.B(1) cannot be computed because no such Unit has been sold in the specified period, the average price paid by buyers of substantially unrestricted, market-rate, condominium housing Units of the comparable view and type in one or more developments that are deemed by an independent appraiser selected by the parties acting reasonably to be comparable to that on the Property; or

(3) the price listed below for the particular type of Affordable Homeownership Unit being sold; *Provided*, that if the actual square footage of any of the Affordable Homeownership Unit types varies from the size specified below for that type, the Grantor shall adjust the price listed below for that type of Unit based on the actual square footage of the Unit to be sold times the square foot price shown below; and *Provided, further*, that the maximum price set forth immediately below shall be subject to further adjustment as provided in Subsection 4.C:

Affordable Homeowner- ship Unit Type	Size	Price/Sq.Ft.	Initial Maximum Price
Studio	450 sq. ft.	\$309	\$139,250
One-Bedroom	550 sq. ft.	\$319	\$175,750
Two-Bedroom	750 sq. ft.	\$365	\$273,750

C. Adjustment of Price Per Square Foot and Maximum Sales Price for Affordable Homeownership Units. If, on January 1, 2004, all of the Affordable Homeownership Units have not been sold, the Price Per Square Foot and the Initial Maximum Price set forth in Subsection

4.B(3) for each type of Unit that remains available for sale shall be increased by five percent (5%). As of January 1, 2005, and each January 1st thereafter, if any of the Affordable Homeownership Units still remains unsold, the Price per Square Foot and the Maximum Price for each type of Unit that remains unsold, as last adjusted pursuant to this subsection, shall be further increased by five percent (5%).

D. Amenities of Affordable Homeownership Units. The exterior finishes of Affordable Homeownership Units shall not be distinguishable from that of other Units on the Property. Affordable Homeownership Units shall have the same level of finish as the building standard interior finish package offered in other Units in the building. It shall not be a default hereunder to offer interior finish package upgrades to other Units.

E. Parking. The Affordable Homeownership Units that are Studio Units and One-Bedroom Units need not include the right to the use of one reserved parking space per Unit within the respective purchase prices identified in or pursuant to Subsection 4.B or 4.C. The Grantor shall ensure, however, that any buyer of such a Unit is given the opportunity to purchase the right to the use of a reserved parking space at the same price that is quoted to any potential buyer of any comparable Unit on the Property that is not an Affordable Homeownership Unit who desires the right to the use of a second or additional reserved parking space. The Grantor shall ensure that the buyer of any Two-Bedroom Affordable Homeownership Unit is entitled to the use of one reserved parking space without additional charge.

Section 5. Grantor's Responsibility for Finding Buyers & Selling Units.

The Grantor shall be responsible for all aspects of finding buyers and handling the sale of Affordable Homeownership Units to Low-Income Families, except that the OH, or its designee, shall administer the Affordable Housing Subsidy and verify eligibility and identify by notice to Grantor, those individuals who are qualified by the OH to receive financing using the Affordable Housing Subsidy for the purchase of a Unit and entitled to exercise the Option granted in Section 3 hereof with respect to an Affordable Homeownership Unit. The OH shall require the legal representative of each Low-Income Family who purchases an Affordable Homeownership Unit to execute loan documents requiring repayment, with interest, of any financial assistance received by the Low-Income Family from the OH, including but not limited to a portion of the Affordable Housing Subsidy. The OH shall also require a legal representative of each such Low-Income Family to execute a right of first refusal or other resale restriction agreement with the OH as the beneficiary, that can be assigned at the OH's discretion to the legal representative of any other Low-Income Family. The final form of the loan documents, right of first refusal and any other resale restriction agreement shall be substantially the same as shown in Exhibit A hereto, or such other form as is approved by the Grantor, which approval shall not be unreasonably withheld.

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Section 6. Notices.

Except as provided herein, any notice, demand or request hereunder (hereinafter individually and collectively called a "notice") shall be given in writing to the party's address set forth immediately below.

IF TO THE GRANTOR: 500 Mercer Partners, LLC
2115 Sixth Ave.
Seattle, WA 98121
Attn.: Alan J. Winningham

IF TO THE CITY: The City of Seattle
Office of Housing
618 Second Avenue, 8th Floor
Seattle, Washington 98104
Attention: Director

Such addresses may be changed by notice to the other parties given in the same manner as above provided. Every notice shall be given by one of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. A notice shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to Subsection 6(c), forty-eight (48) hours following deposit in the U.S. mail. Any notice to Grantor in accordance with this section shall be sufficient notice to any and every other person or entity holding any kind of interest in the Property.

Section 7. Remedies; Enforceability.

In the event of a violation by Grantor or any of its successors in interest of any of the provisions of this Option & Regulatory Agreement, the City may notify Grantor or its successor in writing of the violation. Grantor or its successor shall have thirty (30) Days from the date of such notice to cure such violation. Notwithstanding the foregoing, if the violation is of such a nature that it may not practicably be cured within such thirty (30) Days, the City shall not be entitled to exercise its remedies so long as Grantor commences cure of such violation within the thirty-day period and diligently pursues the cure to completion within ninety (90) Days after such notice, or within such longer time frame as is reasonably required to cure the default in question. If Grantor or its successor does not cure (or, if the preceding sentence applies, commence the curing) of the violation within the cure period allowed herein or if Grantor does not diligently pursue such cure consistent with the requirements of the preceding sentence, the City may, in its discretion, pursue any and all remedies provided hereunder or available at law or in equity. Grantor agrees that such remedies

shall include, without limitation, specific performance, preliminary and permanent injunctive relief, monetary damages, and recovery of all costs and attorneys' fees incurred in enforcing this Option & Regulatory Agreement.

Section 8. Waivers.

No waiver of any breach or violation shall be binding unless in writing signed by an authorized representative of the City and no waiver or delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the City to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

Section 9. Legal Fees & Costs. In the event that either party hereto brings an action or proceeding for a declaration of any of the rights of a party under this Agreement, for injunctive relief, for an alleged breach or default of, or for any other action arising out of, this Agreement, the prevailing party shall be entitled to, in addition to those costs and disbursements provided by statute and any other damages or relief awarded, a reasonable sum as attorneys' fees, paralegal fees, expert fees, costs and expenses incurred in such action or proceeding, including any appeal thereof, regardless of whether such action proceeds to final judgment. If the City prevails, its attorneys' fees shall be computed on the basis of those of a private attorney in downtown Seattle who practices in a firm having at least as many attorneys as are employed in the Seattle City Attorney's Office, and who has experience comparable to the City's attorney.

Section 10. Recordation; Amendments; Termination.

A. Recording. Grantor shall cause this Option & Regulatory Agreement to be duly recorded in the Office of the King County Recorder as an encumbrance upon the Property prior to offering any of the Units for sale, and shall deliver to the City a copy of this Option & Regulatory Agreement showing such recording information.

B. Amendments; Termination. The provisions hereof shall not be amended or revised except by an instrument in writing, duly executed on behalf of the City and of Grantor or its successor in title, and duly recorded. This Option & Regulatory Agreement shall not be terminated prior to the expiration of the stated term hereof except by an instrument executed on behalf of the City and duly recorded. In either case, no such writing shall be binding upon the City unless duly executed by the Mayor or the Director of OH or such official's functional successor.

Section 11. No Conflict with other Documents.

Grantor represents and warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that the Property is not and will not be subject to any requirements or restrictions in conflict with the provisions hereof.

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Section 12. Severability.

The invalidity of any clause, part or provision of this Option & Regulatory Agreement shall not affect the validity of the remaining portions thereof.

Section 13. Governing Law; Venue.

This Option & Regulatory Agreement shall be governed by the laws of the State of Washington. Grantor, for itself and its successors and assigns, consents to the jurisdiction of the courts of the State of Washington and to venue of any proceedings hereunder in King County, Washington.

Section 14. Time.

Time is of the essence with respect to each party's obligations hereunder.

Section 15. Obligations of Successors; Estoppel.

This Option & Regulatory Agreement shall be binding upon Grantor and all other persons named as Grantor herein, and any person who succeeds to Grantor's rights and obligations as "Declarant" under RCW 64.34 (a "Successor Declarant"). Upon any transfer to a successor the prior Declarant shall be deemed released from any liability hereunder accruing after the date of the transfer, and the Successor Declarant shall be deemed to have assumed any liability hereunder accruing subsequent to the date of the transfer. At any time and from time to time upon ten (10) days prior written notice from Grantor (the "Estoppel Notice"), the City shall provide Grantor with a written certification (an "Estoppel Certificate") for the benefit of Grantor and any of Grantor's lenders, buyers, equity participant, or other interested person. The Estoppel Certificate shall state that Grantor is in full compliance with this Agreement, or if the City believes that Grantor is in default under any provision of this Agreement, shall specify in detail the nature and extent of any such default. In the absence of a complying and timely response by the City, Grantor shall be deemed fully in compliance with the terms of this Agreement as of the date the City receives the Estoppel Notice.

IN WITNESS HEREOF, each of the parties hereto has caused this Option & Regulatory Agreement to be signed by its duly authorized representative, as of the day and year indicated in the acknowledgement of that party's representative's signature.

500 MERCER PARTNERS, LLC

THE CITY OF SEATTLE

By _____
Alan J. Winningham
Managing Member

By: _____
Cynthia A. Parker
Director, Office of Housing

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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

LLC ACKNOWLEDGMENT

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Alan J. Winningham, to me personally known (or proved on the basis of satisfactory evidence) to be the Managing Member of 500 Mercer Partners, LLC, the limited liability company that executed the within and foregoing instrument as Grantor, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for such limited liability company.

WITNESS my hand and seal hereto affixed the day and year in this certificate above written.

Date: _____

NOTARY PUBLIC in and for the State of
Washington residing at: _____

My commission expires: _____
PRINT NAME: _____

Use this space for Notary Seal/Stamp

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

CITY ACKNOWLEDGMENT

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CYNTHIA A. PARKER, to me known (or proved by satisfactory evidence) to be the Director of the Office of Housing of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, for the purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Date: _____

NOTARY PUBLIC in and for the State of
Washington residing at: _____

My commission expires: _____
PRINT NAME: _____

Use this space for Notary Seal/Stamp

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Return Address:

Office of Housing
The City of Seattle
8th Floor, 618 Second Ave.
Seattle, WA 98104
Attn.: Thomas Mack

REGULATORY AGREEMENT
CONTAINING COVENANTS AND EASEMENTS AFFECTING
DEVELOPMENT AND SALE OF RENTAL HOUSING UNITS
ON LOTS 1 - 12, INCLUSIVE, BLOCK 48, RE-PLAT OF MERCER'S 2ND ADD'N
ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 10 OF PLATS, PAGE 34,
RECORDS OF KING COUNTY, WASHINGTON

Reference numbers of related documents:
NOT APPLICABLE

Borrower:
500 MERCER PARTNERS, LLC

Beneficiary:
THE CITY OF SEATTLE

Legal Description:
1. Abbreviated form: Lots 1-12, Block 48, Mercer's 2nd Add. to North Seattle V9/P54
2. Additional legal description is on page 2 of document.

Assessor's Property Tax Parcel Account Number(s): 545830-0345-04

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT is entered into as of _____, 200_, by and between **500 MERCER PARTNERS, LLC**, a Washington limited liability company ("Borrower"), and **THE CITY OF SEATTLE** (the "City"), a Washington municipal corporation, as Beneficiary.

RECITALS

WHEREAS, the City and Borrower desire to provide decent, safe and sanitary housing for low-income households in the building(s) now or hereafter located on the real property at the address stated below in Seattle, Washington, legally described as follows (which, including all improvements now or hereafter thereon, is referred to as the "Property"):

Lots 1-12, inclusive, Block 48, Replat of Blocks 44 to 53 inclusive, Mercer's 2nd Addition to North Seattle, according to the plat thereof recorded in Volume 9 of Plats, Page 54, in King County, Washington; EXCEPT that portion of Lots 7 through 12, said block, now included in 5th Avenue North as widened as provided by City of Seattle Ordinance No. 100337.

WHEREAS, the City has committed, subject to certain conditions, to make a loan to Borrower (the "Loan"), for the purpose of acquiring and developing the Property; and

WHEREAS, the City and Borrower desire that the use of all or a portion of the Property be restricted to serving as housing for Low-Income Families for twenty (20) years, and in consideration of the City's agreement to make the Loan, Borrower has agreed to place certain restrictions on the Property;

NOW, THEREFORE, Borrower hereby agrees to and does hereby grant to the City and impose upon the Property, and upon any interest in the Property now held or hereafter acquired by Borrower, the following covenants, restrictions, charges and easements, which shall run with the land, be a burden upon the Property and all portions thereof, and shall be binding upon any purchaser, grantee, owner or lessee of any portion of the Property and any other person or entity having any right, title or interest therein and upon the respective heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee of any portion of the Property and any other person or entity having any right, title or interest therein, for the term of this Regulatory Agreement.

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Part I: Property-Specific Terms

Item	Terms
Borrower's Mailing Address and Phone	500 Mercer Partners, LLC 2115 Sixth Avenue Seattle, WA 98121 Phone: (206) 356-0949 Fax: (206) 374-3073 Attn.: Alan J. Winningham, Managing Member
Loan Amount	\$591,000.00
Fund Source(s) for this Loan	Affordable Housing Subsidy /500 Mercer Partners LLC
Property Address	500 525 Mercer Street Seattle, WA 98109
Land Use Designation	Multifamily Mixed Use (indicate zone) NC-40 V
Type of Housing (If both, give numbers of City-funded Units in each category)	Permanent 10 Transitional 0
# of other Low-Income Units	0
Total City-funded Units	10
Special population to be served, if any	General Population

Part II: General Provisions

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms set forth in quotations in this section shall have the meanings set forth immediately after the quoted term for the purposes hereof:

"Adjusted Income" means income as adjusted and determined in accordance with 24 CFR Section 5.611, or successor provision, using "Annual Income" as defined herein, subject to any interpretations, modifications or assumptions that may be promulgated by HUD.

"Affordable Housing Subsidy" means the sum of \$591,000 paid by the Borrower to the City coincidentally with and upon the Closing of Borrower's acquisition of the Property from the City, as a subsidy for the City's Affordable Housing Program, which funds have been loaned to Borrower pursuant to a Promissory Note and Deed of Trust executed simultaneously with this Regulatory Agreement.

"Annual Income" means the annual income of a Family as determined, unless otherwise approved in writing by the City, in accordance with 24 CFR Section 5.609 or successor provision, and unless otherwise approved in writing by OH shall be calculated for purposes of determining eligibility in accordance with 24 CFR Section 92.203(d) or successor provision, subject to any interpretations, modifications or assumptions that may be promulgated by HUD.

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"City," when used with respect to discretionary authority, means the Director of the Office of Housing of The City of Seattle or such official's functional successor or designee.

"City-funded Units" means the ten (10) Units to be constructed on the Property that are to be used as Low-Income Housing under this Agreement, together with all rights and interests in the Property appurtenant to those Units.

"Days" means calendar days other than Saturdays, Sundays and legal holidays.

"Deed of Trust" means the deed of trust executed and delivered by Borrower to the City to secure the repayment of the Loan and the performance of the agreements made in the Promissory Note and this Regulatory Agreement, granting a mortgage lien on and security interest in the Property.

"Fair Market Rent" means the fair market rent for existing housing for comparable Units as established by HUD under 24 CFR Section 888.111 or successor regulation.

"Family" has the meaning set forth in 24 CFR Section 5.403, or successor provision, and includes an individual person.

"HUD" means the United States Department of Housing and Urban Development or any successor agency.

"Loan" means the loan made by the City to Borrower to finance certain of the acquisition, development, construction and/or renovation costs of the Property.

"Loan Documents" means the Promissory Note, the Deed of Trust, this Regulatory Agreement, all documents attached as exhibits to or incorporated by reference in any of the foregoing, and any amendments to any of the foregoing duly executed and delivered by the City and Borrower.

"Low-Income Family" means a Family whose Annual Income does not exceed 65% of Median Income.

"Low-Income Housing" means housing for Low-Income Families, consisting solely of Units with Rent and occupancy restricted as Low-Income Units in accordance with the terms of Section 2 of this Regulatory Agreement.

"Management Agent" means any person or entity retained by or on behalf of Borrower to manage the Property, or the lessee or sublessee under any master or operating lease or sublease for the Property, but shall not include Borrower or any employee of Borrower acting as such in management of the Property.

"Median Income" means median Family income for the Seattle area, as published from time to time by HUD, as adjusted for Family size by HUD for purposes of income limits in the Section 8 subsidy program or any successor program. If, in any year, HUD does not specify a Median Income as adjusted for a particular Family size, but HUD does specify a "very low-income" or "50%" limit for the Seattle area for

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such Family size based generally on 50% of median Family income, as adjusted, then Median Income for such Family size shall be twice such "very low-income" or "50%" limit. If HUD does not publish adjustments for a particular Family size in any year, either for Median Income or for "very low-income" or "50%" limits, then adjustments to Median Income for that Family size shall be as determined by the City, in its discretion; however, if a Family size used for purposes of rent limits is not an integer and HUD specifies a Median Income or "very low-income" or "50%" limit for the next higher and lower Family sizes that are integers, then the Median Income for such Family size shall be determined by the City by averaging the Median Incomes for such next higher and lower integral Family sizes as determined under this paragraph. If HUD ceases to provide Median Income data, then the City may determine "Median Income" and adjustments based on any data for the Seattle area or an area including Seattle, published or reported by a federal, state, or local agency, as the City shall select in its sole discretion, adjusted to Family size in such manner as the City shall determine in its sole discretion.

"OH" means The City of Seattle's Office of Housing or any other department or agency that shall succeed to its functions with respect to low-income housing.

"Promissory Note" means the Promissory Note executed and delivered by Borrower to the City evidencing the Borrower's obligation to repay the Loan.

"Property" means the land described in the recitals above and all buildings, structures, fixtures, equipment and other improvements now or hereafter constructed or located thereon.

"Rent" shall include all amounts paid directly or indirectly for the use or occupancy of a Unit and of common areas of the Property.

"Renter" means the legal representative of a Low Income Family that rents a City-funded Unit.

"Unit" means a dwelling unit, housekeeping unit, guest room, or single room occupancy unit, as defined, where applicable, in Seattle Municipal Code Chapter 22.204.

"Utility Allowance" shall mean a dollar amount approved by the City for the utilities and services that are payable by a Renter in addition to Rent, which amount, unless otherwise directed by HUD, shall be equal to the utility allowance published from time to time by the Seattle Housing Authority ("SHA") for the type of Unit that the City determines has utilities and services that are most nearly comparable to those for that Renter's City-funded Unit; Provided, that if the City determines that no reasonably comparable figures are available from SHA, the utility allowance shall be such amount as the City determines from time to time is an adequate allowance for utilities and services (to the extent such items are not paid for Renters by Borrower). The Utility Allowance shall not include charges for telephone services.

Section 2. City's Choice Regarding Expenditure of Affordable Housing Subsidy; Effectiveness of Regulatory Agreement, Loan and Deed of Trust.

A. City's Choice to Expend the Affordable Housing Subsidy on the Property or Elsewhere.
The City shall determine, in the exercise of its sole discretion, and give notice to the Borrower within one (1) year after the Borrower's acquisition of the Property (the Closing Date), whether the Affordable Housing Subsidy shall be used to subsidize housing units on the Property or at some other location within

the City of Seattle. Silence shall be deemed an election to expend the Affordable Housing Subsidy on the Property. If the City elects not to use the Affordable Housing Subsidy on the Property, the City shall promptly record a memorandum so indicating, and indicating that this Regulatory Agreement and the Loan Documents are of no further force or effect.

B. Effectiveness of Regulatory Agreement and Loan Documents Depends Upon Existence of Certain Conditions. The Loan Documents shall be effective **only** if (1) the City elects to expend the Affordable Housing Subsidy on the Property, *and* (2) the Units on the Property are initially developed as rental housing. If either (a) the City elects to use the Affordable Housing Subsidy at some location other than the Property, or (b) if the Units that are initially developed on the Property are condominiums rather than rental housing, then the Purchaser shall be relieved of all obligations whatsoever under the Loan Documents, the Loan Documents shall be of no further force and effect, and the City shall promptly record a notice so indicating.

C. Advancing the Loan. If this Agreement comes into effect in accordance with the preceding two paragraphs, the City shall advance the Loan (\$591,000) to Borrower. Such advance shall be made within five (5) days after the date that Borrower has: (i) obtained building permits for the buildings containing the Units; and (ii) has actually commenced excavation on the Property.

Section 3. Low-Income Housing Opportunity to be Provided by Borrower.

A. General. In the event Borrower elects to develop rental housing on the Property, Borrower shall develop and own the following types and numbers of Units, and appropriate facilities related thereto, as Low-Income Housing that are City-funded Units:

Unit Type	Size in Square Feet	Number of Units
Studio	450	4
One-Bedroom	550	3
Two Bedroom	750	3

After such Units have been developed, Borrower shall manage, operate, and be renting or have available for rent, on a continuous basis during the term hereof, all of such Units, subject to the other provisions of this Agreement. Borrower shall not be deemed in default if City-funded Units remain vacant for the usual re-renting periods, or if they are vacant as a result of repairs or refurbishment, or if a City Funded Unit is converted to a market rate unit as a result of any increase in a Renter's Family Income.

B. No Discrimination Against Participant in Section 8 or HOME Program. No City-funded Unit shall be refused for leasing to a holder of a Certificate of Family Participation under 24 CFR Part 982 (Section 8 Tenant-Based Assistance: Unified Rule) or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective Renter as a holder of such certificate, voucher or comparable HOME tenant-based assistance document.

C. [Reserved].

D. Section 8 Requirements. At any time when rent for any City-funded Unit is subsidized by HUD or SHA under any "Section 8" program, Rent for such City-funded Unit, including amounts paid by HUD or SHA, shall not exceed the level permitted under HUD regulations for such program and any applicable Housing Assistance Payments contract ("HAP Contract"). However, nothing in this subsection shall affect Borrower's obligation to comply with the Rent and occupancy restrictions in Subsection 3.E below.

E. Reservation of City-funded Units for Low-Income Families; Maximum Allowable Rent. Each City-funded Unit shall be rented solely to, or reserved for rent solely to, a Renter whose Family Annual Income, as of the later of the date hereof or the time of his/her initial occupancy, is no greater than sixty-five percent (65%) of Median Income, as adjusted annually, and as adjusted for Family size. After the initial rental of a City-funded Unit to an eligible Renter, such Renter's Annual Income may increase up to 80% of Median Income, and such Renter will remain eligible to rent a City-funded Unit. If a Renter's Annual Family Income exceeds 80% of Median Income, Section 3.I. below (Over-Income Renters) shall apply. Each type of City-funded Unit shall be rented at a monthly Rent that, together with the Utility Allowance, is no higher than one-twelfth (1/12th) of the applicable percentage set forth below:

Type of Unit	Maximum Rent and Utility Allowance
Studio	30% of 65% of Median Income for a One-Person Family
One Bedroom	30% of 65% of Median Income for a Two-Person Family
Two Bedroom	30% of 65% of Median Income for a Three-Person Family

The City shall notify Borrower in writing, once every year, of any change in allowable Rents and Utility Allowances, as calculated under the foregoing formulas. Borrower shall adjust Rents and Utility Allowances annually, after completion of the Annual certification process described below.

F. Substitution of City-funded Units. If the Property includes residential Units in addition to the City-funded Units, then during the term of this Regulatory Agreement, the Borrower shall have the right to substitute other Units in the Property as City-funded Units from time to time, consistent with the terms of this subsection. After any substitution the total number of City-funded Units shall remain ten (10) in number, and each substituted Unit must be comparable in size (especially but not limited to the number of bedrooms), features, and amenities to the originally designated City-funded Unit for which it is substituted. No Unit may be removed from the category of City-funded Unit unless such Unit is vacant, and no Unit may be made a substitute City-funded Unit unless (i) such Unit either is vacant or is occupied by a Family that would then qualify to commence occupancy in the City-funded Unit for which such Unit is being substituted, and (ii) the Rent and Utility Allowance for such Unit after the date of substitution is no higher than the Maximum Rent and Allowance that could be charged consistent with this Regulatory Agreement for the Unit for which it is being substituted, disregarding any provisions hereof regarding increased Rent that may be charged to over-income Renters.

G. Eviction Restrictions. The Borrower shall not evict any Low Income Family from a City-funded Unit solely because such Family's income increased after the date of its initial occupancy. Notwithstanding any such increase, the Unit in which such Family lives, shall continue to be counted as a City-funded Unit occupied by a Low Income Family, until such date as Borrower is entitled under this

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Agreement to raise the Rent in such Unit to the market rate. The Borrower may not terminate the tenancy of any Low Income Family because of the refusal of its legal representative to pay an amount for the monthly Rent and Utility Charges in excess of the maximum amount permitted hereunder, or for any reason other than "just cause" under Seattle Municipal Code Section 22.206.160 or its successor. To the extent permitted by law, a Renter may be evicted for falsification of income or other material information misrepresentation in a rental application, certification or lease agreement.

H. Rent Schedule: Annual Increases

Note: This Subsection 3.H does not allow Rent for any City-funded Unit to exceed the maximum allowed under any applicable provision of Subsection 3.E above. In addition, to the extent that any other provisions of this Regulatory Agreement require a lower Rent or a Rent based on Family income, such other provisions shall prevail over this Subsection 3.H.

The maximum initial Rents, the designations of City-funded Units by income class and, and the initial Utility Allowances, shall be as set forth on the attached Schedule A unless otherwise approved in writing by the City. Upon advance notice to a Renter as required by law and by the terms of such Renter's lease (but in no event less than 30 days), Borrower may increase monthly Rent for that Renter's City-funded Unit to the extent such increase is consistent with this Regulatory Agreement, but not more frequently than one increase per year. For purposes of this Regulatory Agreement, the effective date of any Rent increase shall be the same for all City-funded Units; however, instead of implementing a Rent increase fully as to all City-funded Units on the effective date, the Borrower may defer or phase-in increases for some or all City-funded Units occupied by a Family with an Annual Income, as most recently certified, at or below the maximum level for initial occupancy of its respective type of Unit, provided that any differences in Rent for similar Units must be consistent with all applicable laws and regulations. Borrower shall prepare a new Rent Schedule at least thirty (30) days before the effective date of each increase, showing the total Rent to be charged for each City-funded Unit (when any deferred or phased increases are fully implemented, if applicable), and the applicable Utility Allowance. The aggregate amount of any Rent increase shown on each such Schedule shall not exceed the annual percentage change in Median Income, as determined by HUD or that agency's functional successor.

I. Income Verification: Over-Income Renters.

(1) At the time any potential Renter is screened by Borrower, Borrower shall use all reasonable efforts to verify that the potential Renter's Family Annual Income does not exceed the amount permitted by Section 3.E above upon initial occupancy. Borrower shall be entitled to rely on a W-2 form, federal income tax return, or current pay stub in making any such initial verification, or subsequent annual verification. Borrower shall obtain from each Renter, no less frequently than annually, a certification of Family size and Family Annual Income in a form reasonably acceptable to the City. Borrower shall have no obligation to conduct income and family size verifications more often than annually; provided that if Borrower is in possession of evidence admissible in a court of law that a Renter's Annual Family Income has increased significantly (e.g., a second wage earner has joined the Family), or if the City requests that Borrower verify the Annual Income and Family size of any Renter, Borrower shall obtain such a certification or verify the Annual Income and size of the Renter's Family. Borrower shall request of a Renter Annual Income and size verification within thirty (30) days after the date of City's request to Borrower with respect to the particular Renter.

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(2) If evidence is obtained through any certification or recertification of income that the Annual Income of a Family in any of the City-funded Units on the Property exceeds eighty percent (80%) Median Family Annual Income at the specified time, Borrower may notify the Renter and the City that, beginning on a date no earlier than one year after the date of such certification of Annual Income, the Renter shall be charged a market rate of rent. Borrower shall set such market rate in the notice to the City and to the Renter, based on Borrower's estimate of the future market rate in its good faith discretion. Until such one year period has expired, the City-funded Unit in question shall continue to be counted as a City-funded Unit, regardless of the income level of the Renter (as long as the identity of the Renter remains the same). If at the time the rent increase is scheduled to go into effect, the Renter can demonstrate that the Renter's income has declined to below eighty percent (80%) of Median Family Income, the Rent increase shall be ineffective; provided that if in the meantime, Borrower has rented an alternative Unit as a City-funded Unit, in anticipation of the conversion of a City-funded Unit to a market rate Unit, the formerly over income Renter must pay the scheduled market rent, unless and until one of the ten City-funded Units becomes vacant.

(3) Borrower is not required to anticipate the conversion of a City-funded Unit to a market rate Unit, nor to terminate the tenancy of a market rate tenant to accommodate a Renter. If a City-funded Unit is lost as a result of any such conversion, Borrower shall rent the first available Unit with the same number of bedrooms to a qualified Renter. Borrower may exclude from such obligation fifteen percent (15%) of the Units in the Project, to be identified by Borrower to City if and when the issue first arises. If, during the four (4) months immediately after such conversion, a Unit having the same number of bedrooms does not become available for rental, the Borrower shall give notice of that circumstance to the City and indicate whether or not any Units having a fewer number of bedrooms are available for rent. The City may, but is not obligated to, accept a Unit with fewer bedrooms in substitution. The City may continue to require that the Borrower make available for rent to a qualified Renter, a Unit having the same number of bedrooms as the converted Unit consistent with the terms of this Agreement. The City and Borrower acknowledge that over the Term of this Agreement there will be times when the actual number of occupied City-funded Units will be either more or less than 10 Units, depending on when Renters leave, vacancy rates, etc. Such variation shall not give rise to a claim for reimbursement or default by either party, provided that the variation is not due to a default hereunder.

(4) Borrower shall maintain in a readily accessible file in its office for at least five (5) years after such information is obtained, all certifications and documentation obtained under this subsection, and shall make any such information available to the City or HUD for inspection and copying promptly upon City or HUD request.

J. Excessive Rents.

(1) If the City makes a preliminary determination that Borrower has charged or collected Rent, or imposed a Rent increase, in excess of the limits hereunder, the City may give Borrower notice of such determination. If the City gives the Borrower such notice and within thirty (30) days after the date of such notice, Borrower fails to deliver notice to the City that Borrower disputes such City preliminary determination, the City's determination shall be final and binding. Any notice from Borrower that it disputes the City's determination that a Rent increase exceeds permissible limits, or that excess Rent has been collected, or the amount of any excess determined by the City, shall state in detail the basis for

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Borrower's disagreement with the City's preliminary determination. If Borrower gives notice that it disputes the City's preliminary determination, the parties shall meet and attempt to resolve their differences regarding the City's determination within thirty (30) days after the date of the City's receipt of the Borrower's response. If agreement is not reached within such thirty (30) day period, the matter shall be submitted to an independent CPA for resolution, with the parties dividing the cost of such CPA equally. Pending resolution of any dispute as described in this subparagraph, Borrower shall not be required to refund any Rent but may be required to rescind or reduce Rent increases so that Rent does not exceed levels agreed by both parties to be permissible under this Agreement. No claim for excessive rent shall be brought more than two (2) years after the Rent in question is paid.

(2) Concurrently with any final determination that any Rent increase exceeds the limits established hereunder or that Rent has been collected by Borrower or any of its agents in excess of the limits established hereunder, the City may (i) require the Borrower to rescind or reduce Rent or any Rent increase applicable to Renters so that Rent is within such limits; and/or (ii) to the extent necessary to offset any excess Rent collected plus interest thereon at the rate of twelve percent (12%) per annum, require one or more of the following: (A) that Borrower make refunds to the Renters making overpayments; (B) that Borrower reduce Rent that are charged to Renters to a point below levels otherwise permissible hereunder for a limited period of time; and/or (C) that Borrower limit future Rent increases chargeable to Renters to a point below amounts otherwise permissible for a limited period of time. If any Rent exceeding the limits hereunder, plus interest thereon, is not refunded promptly upon the City's demand and after the conclusion of any dispute resolution process under Subsection 2.J(1), such Rent and interest thereon may be recovered in an action brought by the City for recovery of such amounts on behalf of Renters (but the City shall not be obligated to bring any such action). If Borrower, notwithstanding a final determination requiring reduction in Rent hereunder, fails to give notice to Renters of such reduction within ten (10) days after the date of such final determination, the City may give such notice to Renters directly.

K. Copy of Section to Renters. Concurrently with the renting of any City-funded Unit, Borrower shall provide each Renter with a copy of this section. Within ten (10) days after any modification of the Rent or any of the occupancy limitations set forth herein, Borrower shall provide each Renter with a written summary of such modification or a copy of this section, as revised.

L. Renter Selection. In choosing Renters for the City-funded Units, Borrower shall comply with all applicable housing laws, and shall adopt and apply written Renter selection criteria consistent with all applicable law and regulations.

M. Condition of City-funded Units. The exterior finishes of City-funded Units shall not be distinguishable from that of other Units on the Property. City-funded Units shall have a level of interior finish consistent with the building standard finish level of comparable Units in the Building. Borrower shall not be in default if it elects to upgrade the finish on certain Units to a higher level.

N. Parking for City-funded Units. Borrower shall not be obligated to provide, without additional charge, use of a vehicle parking space to the Renter of any of the City-funded Units. Nothing herein, however, shall be deemed to modify the requirements imposed by law or ordinance regarding the number of vehicle parking spaces that must be provided on-site in connection with or as a condition of the development of the Property.

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Section 4. Reporting.

Borrower shall make annual certifications to the City that Borrower is in compliance with this Regulatory Agreement. Such certifications shall be submitted on or by March 1st of each year and shall include the most current Rent Schedule (showing which Units are City-funded Units), a calculation justifying each increase in Rent from the previous Rent Schedule and explaining such increase's consistency with this Regulatory Agreement, and the actual Rent being charged to each Renter, together with an explanation of any change in Borrower's Renter selection criteria. Such annual certification shall also disclose the nature and extent of any modification, alteration or improvement during the prior year costing Five Hundred (\$500) or more dollars in 2003 dollars that has been made to any Unit, identified by Unit Number. Within ninety (90) days after the date of the City's request, Borrower shall deliver to the City whatever other information pertaining to the City-funded Units and the management and operation thereof that the City requests.

Section 5. Term; Covenants Run with the Land; Revival After Foreclosure.

A. Term of Regulatory Agreement. Unless this Regulatory Agreement is voided because of the nonexistence of required conditions, as described in Subsection 2.B hereof, or is terminated in accordance with Section 8 hereof, this Regulatory Agreement shall continue in full force and effect until the twentieth (20th) anniversary of the earlier of: (i) the date that the Project receives a permanent certificate of occupancy; or (ii) the date that each of the City-funded Units has been initially occupied by a Renter under a rental agreement for a term of one (1) or more months.

B. Covenants, Conditions, Restrictions, Charges & Easements Run with the Land. The parties hereto expressly intend that the covenants, conditions and restrictions, charges and easements set forth in the Loan Documents shall be deemed covenants running with the land and shall pass to and be binding upon Borrower's successors in title and upon the respective heirs, executors, administrators, devisees, successors and assigns thereof. Borrower shall not transfer the Property or any portion thereof or interest therein to any successor unless (1) the successor agrees, in writing, to be bound by the provisions of the Loan Documents to the same extent as the transferor, to the extent of any liability arising after the date of the Transfer and (2) the City receives a copy of such agreement prior to the transfer. The execution and delivery of such agreement to the City shall be a condition precedent to the effectiveness of any transfer of any interest in the Property to such successor, but the covenants herein shall be binding on any such transferee regardless of whether such written agreement is obtained. This Regulatory Agreement has priority over the Deed of Trust and shall survive any payment, release, satisfaction or cancellation of the Loan or the Deed of Trust occurring prior to the expiration of the period referred to in Subsection 5.A. The covenants herein are independent of and in addition to the covenants in the Note and Deed of Trust. Upon transfer of the Property, Borrower (and any succeeding transferor) shall be relieved of any liability arising under the Loan Documents after the date of the transfer, but shall not be relieved of any obligations under the Loan Documents arising prior to date of the transfer unless expressly so agreed in writing by the City.

Section 6. Vacancies; Nondiscrimination; Affirmative Marketing. Borrower shall make good faith efforts to rent all vacant City-funded Units. Borrower shall comply with all applicable fair housing and nondiscrimination laws, ordinances and regulations, and SMC Chapter 14.08, each as now in effect or hereafter amended. Borrower shall adopt and follow an affirmative marketing policy designed to attract eligible persons from all racial, ethnic, and gender groups in the housing market to available City-funded

Units. Borrower shall maintain records of its affirmative marketing efforts and shall include in its annual report to the City, in such detail as the City shall request, information on affirmative marketing efforts and the results thereof.

Section 7. Insurance and Indemnity.

A. Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured, by an insurance company legally entitled to do business in the State of Washington, against loss by fire and other hazards included within the term "broad form" coverage (excluding earthquake and flood), and such additional insurance as shall be required from time to time by Borrowers first position mortgagee. Borrower shall provide to City, promptly upon any request by City, evidence satisfactory to the City, in the exercise of its discretion, of Borrower's compliance with this section.

B. Indemnification. Borrower shall defend, indemnify and hold harmless the City and its officials and employees from and against any and all liability, loss, damage, cost or expense suffered by or threatened against any of them by reason of a breach of the requirements of this Regulatory Agreement. This indemnification obligation shall include all costs of alterations to the Property (including architectural, engineering, legal and accounting costs), all fines, fees and penalties, and all legal and other expenses incurred in connection with the Property being in violation of any such laws, regulations, ordinances, covenants, restrictions or conditions. The foregoing indemnification obligation shall survive any foreclosure or deed in lieu thereof.

Section 8. Termination/Suspension upon Casualty or Condemnation.

A. Casualty. Borrower shall not be deemed in default under this Agreement, nor shall the term hereof be extended, as a result of any casualty that causes a City-funded Unit to be vacant, provided that any work of repair is commenced and completed with reasonable promptness. During such period of repair, any damaged but vacant City-funded Unit shall continue to count as a City-funded Unit, and shall be deemed occupied for purposes of this Agreement. If the damage to the Property is so extensive that the damage has not been repaired within 180 days following the casualty (and Borrower has nevertheless elected to reconstruct Units on the Property), the term of this Agreement shall be extended by a period equal to the time that elapses from the end of the 180 day reconstruction period until all City-funded Units are again available for occupancy. After any material damage to the Property, Borrower may elect not to reconstruct Units on the Property, by written notice to the City. If Borrower so elects, Borrower shall pay to City an amount equal to the principal amount of the Loan, multiplied by a fraction, the numerator of which is the number of days remaining in the term of this Agreement, and the denominator of which is 7300 (20 years x 365 days). Upon such payment, the Loan shall be deemed repaid in full, the Note shall be cancelled, and the Deed of Trust reconveyed. Borrower need not provide alternative City-funded Units in the Property during any repair period. The decision as to when, whether, and what to build on the Property after a casualty that results in the complete vacation of the Building, shall rest solely with Borrower.

B. Condemnation. If all or any part of the Property is condemned, all condemnation proceeds shall belong to Borrower. If the entire Property is condemned, or if so much is condemned as to require demolition of all of the Units to make possible the re-use of the portion of the Property not so condemned, this Agreement shall terminate as of the date of the condemnation, and Borrower shall pay to City an amount equal to the principal amount of the Loan, multiplied by a fraction, the numerator of which is the

number of days remaining in the term of this Agreement, and the denominator of which is 7300 (20 years x 365 days). Upon such payment, the Loan shall be deemed repaid in full, the Note shall be cancelled, and the Deed of Trust reconveyed. If, however, only a portion of the Property is condemned and demolition of all of the Units is not required to make reasonable use of the portion of the Property not so condemned, then this Agreement shall remain in effect but (1) the number of City-funded Units shall be reduced by the number of such Units that were in the portion of the Property that was condemned; (2) the Unit mix described in Subsection 3.A shall be adjusted to the extent necessary to achieve, to the greatest extent possible, the same proportions as are expressed in Subsection 3.A (for example, if three City-funded Units are condemned, the Unit mix shall become three (3) Studios, two (2) One-bedroom Units and two (2) Two-bedroom Units); and (3) Borrower shall pay to City an amount equal to the principal amount of the Loan, multiplied by a fraction, the numerator of which is the number of days remaining in the term of this Agreement, and the denominator of which is 7300 (20 years x 365 days) multiplied by a fraction, the numerator of which is the number of City-funded Units that were in the portion of the Property that was condemned, and the denominator of which is 10.

Section 9. Maintenance of Property.

A. General. Borrower at all times shall maintain the Property in good and tenantable condition and repair; shall neither commit nor suffer waste; and shall promptly comply with all applicable laws, codes and regulations applicable to the Property and the requirements of all federal, state and local authorities and pay all fees and charges in connection therewith. Borrower shall not cause or permit any conditions that would constitute a nuisance. If Borrower fails to comply with any of the requirements of this section, then within thirty (30) days after the date of notice to Borrower of a violation thereof, Borrower shall have prepared, in consultation with the City, a plan reasonably acceptable to the City to remedy the violation as promptly as feasible, and Borrower shall diligently pursue such plan to completion within the time period specified therein. If Borrower fails to develop or to implement such a plan in a timely manner or if the City determines, in its discretion, that emergency action is necessary in order to protect the Renters City-funded Units, the City may, but shall not be obligated to, make the repairs or pay the costs to cure any non-compliance with this section and recover from Borrower, as damages, any costs incurred by the City in connection therewith. Any such amount shall constitute a lien on the Property and shall bear interest at the rate of twelve percent per annum until paid.

B. Modifications. Borrower shall not undertake any modification or alteration of the Property that would have a material adverse effect on the value of the Property or on any City-funded Unit, including without limitation any effective reduction in the number of rentable City-funded Units, without the prior written consent of the City, which may be withheld or conditioned in the City's good faith discretion.

Section 10. Grant of Easement. Borrower hereby irrevocably grants an easement in gross to the City and its agents and employees, for the duration of this Regulatory Agreement, subject to the rights of residential and commercial tenants under applicable laws and ordinances, to enter the Property at any time during business hours, and on such advance notice as can reasonably be provided in the circumstances when the City determines, in its good faith and discretion, that an emergency makes such entry necessary for the protection of any Renter or the public, and to enter the Property at any other time on reasonable notice in advance to Borrower or Borrower's agent, for any of the following purposes:

- A. to inspect the condition of the Property and determine compliance with the covenants hereof;
- B. to interview one or more Renters in any City-funded Unit and to verify income information, occupancy levels and any other matters relevant to this Regulatory Agreement;
- C. to inspect and copy any documents maintained by Borrower or its agent at the Property relevant to this Regulatory Agreement; and
- D. in the event of default hereunder not cured within any applicable cure period, to perform repairs as provided herein or take any other action permitted hereunder.

Section 11. Leases. Borrower shall rent City-funded Units only pursuant to a form lease or rental agreement that has been prepared by or for Borrower and is subject to City approval, which approval shall not be unreasonably withheld. The Borrower shall provide a copy of the form of lease currently in use to the City promptly upon any request by the City. The form lease or rental agreement shall comply with all applicable laws; shall not include any provision prohibited by any applicable law or regulation; shall prohibit subletting or assignment of the lease without the express written approval of Borrower, which approval shall not be granted by Borrower if the result would be any violation of the Rent or occupancy restrictions herein; and shall state that information about the limitations on Rent and Rent increases pursuant to this Regulatory Agreement is available from OH. Borrower shall fully comply with all of the terms conditions and provisions of all leases of City-funded Units, so that the same shall not become in default and shall do all that is necessary or advisable to preserve all such leases in force. Borrower shall not, without the express written consent of OH, accept payment of Rent for any City-funded Unit more than two (2) months in advance.

Section 12. Estoppel Certificates. At any time and from time to time upon ten (10) days prior written notice from Borrower (the "Estoppel Notice"), the City shall provide Borrower with a written certification (an "Estoppel Certificate") for the benefit of Borrower and any of Borrower's lenders, buyer, equity participant, or other interested person. The Estoppel Certificate shall state that Borrower is in full compliance with this Agreement, or if the City believes that Borrower is in default under any provision of this Agreement, shall specify in detail the nature and extent of any such default. City shall have the right to extend such ten (10) period to ninety (90) days from the date of the Estoppel Notice by written notice to Borrower given within the initial (10) days of receiving the Estoppel Notice, for purposes of conducting an audit of the City-funded Units. In the absence of a complying and timely response by the City, Borrower shall be deemed fully in compliance with the terms of this Agreement as of the date the City receives the Estoppel Notice.

Section 13. No Assumption of Obligations by City. Nothing in this Regulatory Agreement shall be construed to impose on the City any obligation or liability not expressly provided herein. This Regulatory Agreement is not intended to create any duties on the part of the City to any tenant or occupant of the Property, nor to confer on any tenant or occupant of the Property or any other person any right or claim against the City or any of its agents or employees in the event of any action or failure to act by the City hereunder.

Section 14. Notices. Except as provided herein, any notice, demand or request hereunder (hereinafter individually and collectively called a "notice") shall be given in writing to the party's address set forth immediately below.

IF TO THE BORROWER: Alan J. Winningham, Managing Member
500 Mercer Properties, LLC
2115 Sixth Avenue
Seattle, Washington 98121

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IF TO THE CITY:

The City of Seattle
Office of Housing
618 Second Avenue, 8th Floor
Seattle, Washington 98104
Attention: Director

Such addresses may be changed by notice to the other parties given in the same manner as above provided. Every notice shall be given by one of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. A notice shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to Subsection (c), forty-eight (48) hours following deposit in the U.S. mail. Any notice to Borrower in accordance with this section shall be sufficient notice to any and every other Borrower person or entity holding any kind of interest in the Property.

Section 15. Transfer of Covenants. Borrower, upon sale of the Property and the investment of the net sale proceeds in replacement Low-Income Housing subject to covenants and an easement identical to those stated herein for a term at least equal to the remaining term hereof, all on terms and conditions set forth in the Loan Documents, may obtain the release of the Property from this Regulatory Agreement and the Loan Documents. No such release shall be effective until evidenced by an instrument signed by an authorized representative of the City and duly recorded.

Section 16. Remedies; Enforceability. In the event of a violation by Borrower or any of its successors in interest of any of the provisions of this Regulatory Agreement, the City may notify Borrower or its successor in writing of the violation. Borrower or its successor shall have thirty (30) days from the date of such notice to cure such violation. Notwithstanding the foregoing, if the violation is of such a nature that it may not practicably be cured within such thirty (30) days, the City shall not be entitled to exercise its remedies so long as Borrower commences cure of such violation within the thirty-day period and diligently pursues the cure to completion within ninety (90) days after such notice, or within such longer time frame as is reasonably required to cure such violation, acting diligently. If Borrower or its successor does not cure (or, if the preceding sentence applies, commence the curing) of the violation within the cure period allowed herein or if Borrower does not diligently pursue such cure consistent with the requirements of the preceding sentence, the City may, in its discretion, pursue any and all remedies provided hereunder or available at law or in equity. Borrower agrees that such remedies shall include, without limitation, the following:

A. **Receivership.** The City may petition a court of competent jurisdiction for the appointment of a receiver to assume full management, control and possession of the Property and to exercise all rights provided herein or available under applicable law. The receiver shall remain in control of the Property until any one of the following events occurs:

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- (1) The Property is transferred pursuant to a foreclosure sale or deed in lieu of foreclosure;
- (2) The court determines, after an evidentiary hearing, that there was no basis for appointment of a receiver hereunder;
- (3) All defaults hereunder and any other Events of Default under the Loan Documents have been cured to the reasonable satisfaction of the City (or waived by the City in its sole discretion); all fees and expenses of the City in connection with such defaults and all related proceedings have been reimbursed by Borrower; and the court has been satisfied that the Borrower is ready, willing and able, financially and otherwise, to resume operation of the Property in full compliance with this Regulatory Agreement;
- (4) The court has transferred control of the Property to a substitute receiver proposed or consented to by the City; or
- (5) This Regulatory Agreement has terminated in accordance with its terms.

Borrower shall not petition the court for a transfer of Property control to Borrower except for the reasons stated above unless so requested by the City, in which case Borrower shall join in a petition to reinstate the Borrower's control of the Property.

Neither the receiver nor the City shall be deemed to have assumed any liability of Borrower or any other person relating to the Property, except that the receiver shall be responsible, to the extent permitted by applicable law and the orders of the court, for renting Units in the Property; collecting Rent and applying such Rent to Property expenses, including the receiver's reasonable fees and expenses and debt service falling due on any mortgage indebtedness permitted by the Loan Documents or otherwise approved in writing by the City, with any surplus (after reimbursement to the City of any advances made pursuant to the terms hereof and, so long as the Deed of Trust encumbers the Property, after deposits in reserve accounts as required by the Loan Documents) deposited in the registry of court for determination of the persons entitled thereto; and otherwise managing and preserving the Property in accordance with this Regulatory Agreement, but the receiver shall have no liability to Borrower for any act or omission of the receiver except for gross negligence or willful misconduct.

B. Specific Performance; Injunctive Relief; Damages; Fees & Costs. In addition or in the alternative, the City shall be entitled to specific performance, preliminary and permanent injunctive relief, monetary damages, restitution, and recovery of all costs and attorneys' fees incurred in enforcing this Regulatory Agreement including without limitation the costs of any repairs or other actions reasonably necessary with respect to the Property and the reasonable value of any services provided by City employees in connection therewith.

The rights and remedies specified in this section are in addition to, and not in substitution for, the City's rights and remedies for excessive Rent under Subsection 3.J above, provided that unless required by federal law or regulations the City shall not seek additional remedies under this section for charging of excessive Rent unless a determination under such subsection shall have become final and Borrower shall have failed or refused to comply with the requirements of the City under that section after thirty (30)

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days' prior written notice of such requirements, which notice shall constitute the notice and opportunity to cure required by this section.

Section 17. Waivers. No waiver of any breach or violation shall be binding unless in writing signed by an authorized representative of the City and no waiver or delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the City to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times.

Section 18. Legal Fees & Costs. In the event that either party hereto brings an action or proceeding for a declaration of any of the rights of a party under this Agreement, for injunctive relief, for an alleged breach or default of, or for any other action arising out of, this Agreement, the prevailing party shall be entitled to, in addition to those costs and disbursements provided by statute and any other damages or relief awarded, a reasonable sum as attorneys' fees, paralegal fees, expert fees, costs and expenses incurred in such action or proceeding, including any appeal thereof, regardless of whether such action proceeds to final judgment. If the City prevails, its attorneys' fees shall be computed on the basis of those of a private attorney in downtown Seattle who practices in a firm having at least as many attorneys as are employed in the Seattle City Attorney's Office, and who has experience comparable to the City's attorney.

Section 19. Recordation; Amendments; Termination.

A. **Recording.** Borrower shall cause this Regulatory Agreement to be duly recorded in the Office of the King County Recorder as an encumbrance upon the Property prior to the Deed of Trust and shall deliver to the City a copy of this Regulatory Agreement showing such recording information.

B. **Amendments; Termination.** The provisions hereof shall not be amended or revised except by an instrument in writing, duly executed on behalf of the City and of Borrower or its successor in title, and duly recorded. This Regulatory Agreement shall not be terminated prior to the expiration of the stated term hereof except by an instrument executed on behalf of the City and duly recorded. In either case, no such writing shall be binding upon the City unless duly executed by the Mayor or the Director of OH or such official's functional successor.

Section 20. No Conflict with other Documents. Borrower represents and warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that the Property is not and will not be subject to any requirements or restrictions in conflict with the provisions hereof.

Section 21. Severability. The invalidity of any clause, part or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

Section 22. Governing Law; Venue. This Regulatory Agreement shall be governed by the laws of the State of Washington. Borrower, for itself and its successors and assigns, consents to the jurisdiction of the courts of the State of Washington and to venue of any proceeding hereunder in King County, Washington.

Section 23. Time. Time is of the essence of Borrower's obligations hereunder.

Section 24. Obligations of Borrower and co-Borrower(s). If more than one party is signing this Regulatory Agreement as Borrower, then: (a) if any co-signer not named as "Borrower" herein is the lessor under a lease of the Property to Borrower ("Master Lease"), then such co-signer agrees that neither it nor its successor as lessor shall take any action, or omit any action required by the terms of the Master Lease, with the effect of impairing Borrower's ability to comply with its obligations hereunder; (b) so long as Borrower is owner of the Property or is the lessee of the Property under the Master Lease (if any), Borrower shall discharge all obligations placed upon Borrower hereunder, and shall hold its co-signer(s) harmless from any liability hereunder. Notwithstanding the foregoing, this Regulatory Agreement shall be binding upon Borrower and all other persons named as Borrower herein, and their respective interests in the Property and respective successors and assigns, jointly and severally, and the City shall have the right to enforce any provision hereof against any or all of such parties and interests; provided that upon transfer of the Property, liability shall be apportioned between predecessor and successor as provided in Section 5.B.

IN WITNESS HEREOF, each of the parties hereto has caused this Regulatory Agreement to be signed by its duly authorized representative, as of the day and year indicated in the acknowledgement of that party's representative's signature.

500 MERCER PARTNERS, LLC

THE CITY OF SEATTLE

By _____
Alan J. Winningham
Managing Member

By: _____
Cynthia A. Parker
Director, Office of Housing

Schedule A: Designations and Initial Rents for HOME-funded Units and Other City-funded Units

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

LLC ACKNOWLEDGMENT

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Alan J. Winningham, to me personally known (or proved on the basis of satisfactory evidence) to be the Managing Member of 500 Mercer Partners, LLC, the limited liability company that executed the within and foregoing instrument as Borrower, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for such limited liability company.

WITNESS my hand and seal hereto affixed the day and year in this certificate above written.

(Signature) (Print or Type Name)
NOTARY PUBLIC in and for the State of Washington, residing at _____
My commission expires _____

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SEAL→

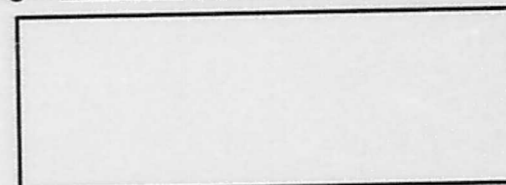
STATE OF WASHINGTON)
) ss CITY ACKNOWLEDGMENT
COUNTY OF KING)

On this _____ day of _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared CYNTHIA A. PARKER, to me known (or proved by satisfactory evidence) to be the Director of the Office of Housing of The City of Seattle, the municipal corporation that executed the within and foregoing instrument, for the purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

(Signature) (Print or Type Name)
NOTARY PUBLIC in and for the State of Washington, residing at _____
My commission expires _____

SEAL→



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PROMISSORY NOTE

\$591,000.00

Seattle, Washington
Date: _____, 200__

1) Promise to Pay. For value received, **500 MERCER PARTNERS, LLC**, a Washington limited liability company (hereinafter referred to, together with all other persons who shall become liable on this Note, as "Borrower"), promises to pay in lawful money of the United States of America, to the order of **THE CITY OF SEATTLE** ("Lender"), a Washington municipal corporation, at 103 Municipal Building, Seattle, WA 98104, or such other place as the holder of this Note may designate in writing from time to time, the principal sum of **FIVE HUNDRED NINETY-ONE THOUSAND AND 00/100 DOLLARS (\$591,000.00)**, or so much thereof as may be advanced hereunder, with interest thereon as provided below. All amounts payable hereunder shall be paid without any set-off or deduction of any nature.

2) Regulatory Agreement. This Note is made pursuant to the terms and conditions of a Regulatory Agreement between Lender and Borrower dated on or about the date hereof (the "Regulatory Agreement"). Capitalized terms not defined herein shall have the meanings set forth in the Regulatory Agreement unless the context otherwise clearly requires. This Note, the Regulatory Agreement, and the Deed of Trust of even date herewith securing this Note ("Deed of Trust"), are included in the definition of "Loan Documents" in the Regulatory Agreement. If there is any conflict between the terms of this Promissory Note and the terms of the Regulatory Agreement, the Regulatory Agreement shall control. Disbursement of the funds evidenced by this Note is to be made subject to the terms and conditions of the Regulatory Agreement.

3) Maturity. The principal amount of the Loan evidenced hereby is due and payable on the date the Regulatory Agreement expires.

4) Ordinary Interest. Ordinary Interest shall accrue at the rate of eight percent (8%) simple interest per annum from the date of each advance of loan funds until the principal becomes due and will be computed on the outstanding principal balance as it exists from time to time. Any amounts past due hereunder, including accrued Ordinary Interest, shall bear interest at twelve percent (12%) per annum or the highest rate permitted by applicable law, whichever shall be less.

5) Deferral; Forgiveness. Borrower shall pay Ordinary Interest at the earlier of the Maturity Date or any other date when the principal shall become due under the terms of this Note or the Loan Documents, except that if no Event of Default under the Regulatory

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Agreement has occurred prior to the Maturity Date, then all unpaid principal and accrued interest on this Note shall be forgiven on the Maturity Date.

6) Default and Acceleration. Any material uncured default under the Regulatory Agreement shall constitute a default under this Note, and under the Deed of Trust. After the occurrence of any such default, the holder of this Note shall have the right, without notice or demand, to declare all amounts owing hereunder immediately due and payable.

7) Prepayment. This Note may not be prepaid at any time, except as provided in the Regulatory Agreement.

8) Costs and Attorneys' Fees. In case Borrower defaults in payment of this Note, Borrower shall pay all of Lender's costs of collection, including but not limited to reasonable attorney's fees incurred by Lender or the holder of this Note, whether or not suit is instituted. If any legal proceedings are instituted relating to this Note, including without limitation any arbitration, bankruptcy, trial or appellate proceedings, the non-prevailing party shall pay the costs, including reasonable attorney's fees of the substantially prevailing party in all such proceedings. If the City is the holder of this Note and the City is the substantially prevailing party, its attorneys' fees shall be computed on the basis of those of a private attorney in downtown Seattle who practices in a firm having at least as many attorneys as are employed in the Seattle City Attorney's Office, and who has experience comparable to the City's attorney.

9) Waivers. Borrower hereby waives presentment and demand for payment, notice of dishonor, protest, notice of protest, and any other notice not specifically required by the Regulatory Agreement.

10) Security. This Note is secured by a Deed of Trust covering property situated in King County, Washington, and shall be construed, enforced and otherwise governed by the laws of the State of Washington. The holder of this Note shall not be required to pursue any remedy under the Deed of Trust or any other Loan Documents prior to bringing an action on this Note.

11) Time. Time is of the essence of all of the provisions of this Note.

12) Application of Payments. Any payments received hereunder shall be applied first, to any costs or fees owing hereunder; next, either to any Contingent Interest then due or to accrued Ordinary Interest owing hereunder, as applicable; and the balance, if any, to reduction of principal.

13) Non-recourse. Borrower shall not have any liability for payment of this Note other than to have the Property and all other Collateral under the Deed of Trust (as defined in the Deed of Trust) to satisfy the obligations hereunder. Upon transfer of the Property in accordance with the provisions of the Regulatory Agreement and assumption of liability

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under the Loan Documents by the transferee in accordance with the Regulatory Agreement,
the maker of the Note shall be deemed released.

500 MERCER PARTNERS, LLC, a Washington limited liability company

By: _____
Alan J. Winningham, Managing Member

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 200__, before me, the undersigned, a Notary
Public in and for the State of Washington, duly commissioned and sworn, personally appeared Alan
J. Winningham, to me personally known (or proved on the basis of satisfactory evidence) to be the
Managing Member of 500 Mercer Partners, LLC, the Washington limited liability company that
executed the within and foregoing instrument, and acknowledged said instrument to be the free and
voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath
stated that he was authorized to execute the said instrument.

NOTARY PUBLIC in and for the State of Washington

Residing at _____

Print Name: _____

My Commission expires _____

SEAL:

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After recording return to:
City of Seattle
Office of Housing
Eighth Floor, 618 Second Ave.
Seattle, WA 98104
Attn.: Thomas Mack

**DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT,
AND FIXTURE FILING**

Grantor:

1. 500 Mercer Partners, LLC, a Washington limited liability company

Grantee(s):

1. Pacific Northwest Title Insurance Company of Washington, Trustee
2. THE CITY OF SEATTLE, Beneficiary

Legal Description:

1. Abbreviated form: Lots 1-12, Block 48, Mercer's 2nd Add. to North Seattle, V9/P54
2. Additional legal description is on page 2 of document.

Assessor's Property Tax Parcel Account Number(s): 545830-0345-04

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING ("Deed of Trust") is made as of the _____ day of _____, 200__, among 500 Mercer Partners, LLC, a Washington limited liability company ("Grantor"), whose address is 2115 Sixth Avenue, Seattle, WA 98121; **Pacific Northwest Title Insurance Company of Washington**, a Washington corporation, as Trustee; and **The City of Seattle**, a municipal corporation organized and existing under the laws of the State of Washington, as Beneficiary, whose address is 618 Second Avenue, Eighth Floor, Seattle, Washington, 98104, Attention: Director, Office of Housing.

1. **Granting Clause.** Grantor irrevocably grants, bargains, sells, and conveys to Trustee in trust, with power of sale, all Grantor's estate, right, title, interest, claim and demand, now owned or hereafter acquired, in and to the following (the "Property"):

(a) the property in King County, Washington, located at 500 and 525 Mercer Street, Seattle, WA and legally described as follows:

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Lots 1-12, inclusive, Block 48, Replat of Blocks 44 to 53 inclusive, Mercer's 2nd Addition to North Seattle, according to the plat thereof recorded in Volume 9 of Plats, Page 54, in King County, Washington; EXCEPT that portion of Lots 7 through 12, said block, now included in 5th Avenue North as widened as provided by City of Seattle Ordinance No. 100337.

(b) all land lying in streets and roads adjoining the Property, and all access rights and easements pertaining to the Property;

(c) all the lands, tenements, privileges, reversions, remainders, air rights, development rights, access rights, irrigation and water rights and stock, oil and gas rights, royalties, minerals and mineral rights, hereditaments and appurtenances belonging or in any way pertaining to the Property;

(d) all buildings, structures, improvements, furnishings, fixtures, equipment, and replacements and additions thereto now or hereafter attached to or located on the Property or used in the operation of the Property including, but not limited to, heating and incinerating apparatus and equipment, boilers, water heaters, tanks, engines, motors, dynamos, generating equipment, computers, computer workstations and terminals, telephone and other communication systems, piping and plumbing fixtures, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing and detection apparatus, security systems, gas and electric fixtures, light fixtures, irrigation equipment, carpeting, underpadding, elevators, escalators, partitions, mantles, built-in mirrors, window shades, blinds, screens, storm sash, awnings, furnishings of public spaces, halls and lobbies, and shrubbery and plants (All property mentioned in this Subsection (d) shall be deemed part of the realty and not severable wholly or in part without material injury to the Property); and

(e) all rents, issues and profits of the Property, all existing and future leases of the Property (including extensions, renewals and subleases), and all agreements for use and occupancy of the Property, which leases and agreements whether written or oral are hereafter referred to as the "Leases." (This Subsection 1(e) is subject to the assignments and the right, power and authority given to the Beneficiary to collect and apply the Rents in Sections 12 and 13 below); and

2. Security Agreement. This Deed of Trust shall constitute a security agreement under the Uniform Commercial Code between Grantor as debtor and Beneficiary as secured party. Grantor grants a security interest to Beneficiary in any of the above-described or referenced Property in which such an interest may be created under the Uniform Commercial Code, and in the following property now owned or hereafter acquired by Grantor, to the extent of Grantor's interest therein (all of which is hereafter collectively referred to as the "Collateral"):

(a) All furniture, furnishings, fixtures, appliances, machinery, vehicles, equipment, and all other tangible personal property of any kind now or hereafter located on the Property, used or intended to be used on the Property wherever actually located, or purchased with the proceeds of the Note (as defined herein), including without limitation construction materials and supplies, and all rights of Grantor as lessee of any property described in this Section 2 and Subsection 1(d) above;

(b) All compensation, condemnation awards, damages, rights of action and proceeds (including insurance proceeds and any interest on any of the foregoing) pertaining to the Property or Collateral;

(c) All returned premiums or other payments on any insurance policies pertaining to the Property and any refunds or rebates of taxes or assessments on the Property;

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(d) All plans, specifications, drawings, surveys, engineering reports, land planning maps, tests, studies, licenses, permits, forms, leases, books and records (including computer files or other electronic format), construction contracts, purchase orders, inventory, goods, contracts, contract rights, options, subscriptions, accounts, accounts receivable, general intangibles, chattel paper, instruments, documents, things in action, judgments, settlement proceeds, royalties, patents, copyrights, trademarks, rents, issues, profits, arising from or in any manner pertaining to the Property or Collateral, and Grantor's rights under any payment, performance, or other bond in connection with construction or renovation of improvements on the Property;

(e) All contracts and agreements pertaining to or affecting the Property including management, operating and franchise agreements and licenses, and any choses in action arising out of any such agreements;

(f) All commitments or agreements, now or hereafter in existence, which will provide Grantor with proceeds to satisfy the Note and the right to receive the proceeds due under such commitments or agreements including refundable deposits and fees; and

(g) All additions, accessions, replacements, substitutions, proceeds and products of the property described in this Section 2 and of any of the Property that is personal property.

This Deed of Trust shall be deemed a Security Agreement as defined in said Uniform Commercial Code ("UCC") and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein or in other portions of the Loan Documents as defined in Section 3, or (ii) by general law, or (iii) as to such part of the security that is subject to the UCC, by the terms of the UCC, all at Beneficiary's sole election. Grantor and Beneficiary agree that the filing of any Financing Statement under the UCC in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing the declaration and hereby stated intention of the parties hereto, that everything used in connection with the Property that is the subject of this Deed of Trust and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment and items capable of being thus identified in any list filed with the Beneficiary, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time.

3. Obligations Secured. This Deed of Trust is given for the purpose of securing the following:

(a) payment of the indebtedness evidenced by the promissory note of even date herewith, with interest thereon (including Contingent Interest, if applicable), and premium (if any), in the original principal sum of FIVE HUNDRED NINETY ONE THOUSAND AND NO/100 DOLLARS (\$591,000.00), payable to Beneficiary and made by Grantor (the "Note"), which term shall include all notes evidencing the indebtedness secured by this Deed of Trust including any increases in the original principal sum, and all renewals, modifications, substitutions, consolidations or extensions thereof;

(b) payment of any costs or expenses incurred and advances made by Beneficiary pursuant to this Deed of Trust or any other documents (including without limitation the "Loan Documents", as defined at the end of this Section 3 below) executed by Grantor evidencing, securing, or relating to the Note, the Property and/or the Collateral, whether executed prior to, contemporaneously with, or subsequent to this Deed of Trust, to protect the Property or Collateral or fulfill any obligation of Grantor, plus interest

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thereon at the rate of twelve percent (12%) per annum (unless another rate is expressly agreed in writing) from the time such costs or expenses are incurred or advances made;

(c) payment and performance of all other agreements and obligations of Grantor set forth or incorporated by reference in the Regulatory Agreement described below; and this Deed of Trust;

(d) payment of any further sums advanced or loaned by Beneficiary to Grantor, or any of Grantor's successors or assigns, together with interest thereon, if the note or other writing evidencing the future advance or loan specifically states that it is secured by this Deed of Trust; and

(e) payment and performance of any and all other obligations of Grantor to Beneficiary, its successors and assigns, now existing and hereafter arising, that are at any time specifically agreed in writing by Grantor and Beneficiary to be secured hereby.

The documents described in Subsection 3(c) above, including all exhibits thereto, together with the Note and the Regulatory Agreement between Grantor and Beneficiary dated on or about the date hereof ("Regulatory Agreement"), as any of the same may be amended, are referred to herein as the "Loan Documents." However, notwithstanding any other provision of this Deed of Trust, all obligations of Grantor or "Borrower" under the Regulatory Agreement are not secured hereby, and shall survive any satisfaction of the obligations secured hereby. Grantor understands and agrees that although the obligations of Grantor or "Borrower" under such documents are not secured hereby, nonetheless the failure to comply with the terms thereof may be treated as a default that, if not cured in a timely manner, may result in acceleration of the obligations secured hereby and foreclosure or other remedies hereunder.

GRANTOR REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

4. Performance of Obligations. Grantor shall promptly and timely pay all sums due pursuant to the Loan Documents and strictly comply with all the terms and conditions of the Loan Documents.

5. Warranty of Title. Grantor represents and warrants that (a) Grantor is the sole holder of an indefeasible fee simple absolute title to the Property and the personal property Collateral, and subject to no liens, encumbrances, easements, assessments, security interests, claims or defects of any kind other than those existing at the time Grantor took title from Beneficiary, such other encumbrances as Beneficiary may hereafter agree to, and non-delinquent real estate taxes and assessments; and (b) Grantor has the right to convey the Property to Trustee for the benefit of Beneficiary, and the right to grant a security interest in the personal property Collateral. Grantor shall warrant and shall defend the validity and priority of the lien of this Deed of Trust and the security interests granted herein against any and all claims or demands other than Exceptions expressly permitted to have priority over this Deed of Trust by this Deed of Trust or by another written agreement of Beneficiary made after the date hereof. Beneficiary shall not unreasonably withhold consent to, and shall subordinate this Deed of Trust to, easements reasonably required in connection with the development of the project.

6. Subordination. This Deed of Trust shall be subordinate to any bona fide mortgage, deed of trust, assignment of rents, and/or security agreement ("Prior Security Interests") that Grantor or its successors in interest may elect to grant from time to time with respect to any of the Collateral; provided only that the total principal amount of the debt secured by such Prior Security Interests shall not exceed (a) ninety five (95%) percent of the fair market value of the Property at the time such Prior Security Interest is granted, or (b) in the case of a construction loan, ninety five (95%) percent of the fair market value of the Property and its proposed improvements, each as determined by the lender's appraisal and in the case of a construction loan, on an as-completed basis. The foregoing subordination shall be self operative, but Beneficiary shall

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execute a recordable subordination agreement in the lender's standard form, evidencing such subordination within ten (10) days after Beneficiary's receipt of a written request therefor by Grantor.

7. Prior Liens. Except as provided in Section 6, Grantor shall keep the Property free from liens and lien claims of all kinds superior to the Deed of Trust, except for the Exceptions, and subject to Grantor's rights under this Section. Grantor may contest in good faith by appropriate legal or administrative proceedings the validity of any lien, encumbrance or charge so long as (i) no default exists under the Loan Documents; (ii) Grantor timely commences its contest of such lien, encumbrance or charge, and continuously pursues the contest in good faith and with due diligence; (iii) foreclosure of the lien, encumbrance or charge is stayed; and (iv) Grantor pays any judgment rendered on the claim within ten (10) days after entry of the judgment. Grantor shall discharge or elect to contest and shall post appropriate security for any contest within twenty (20) days of written demand by Beneficiary.

8. Payment of Taxes and Other Encumbrances. Grantor shall pay in full on or before the delinquency date the real estate taxes, surface water management charges, assessments, ground rents, and all other encumbrances, charges and liens affecting the Property, including all payments due on obligations secured by mortgages and deeds of trust, whether prior to or subordinate to the lien of this Deed of Trust, that may now or hereafter be levied, assessed or claimed upon the Property or any part thereof that is the subject of this Deed of Trust. On request Grantor shall furnish evidence of payment of these items.

9. Grantor's Defense of Collateral. Grantor shall appear in and defend any action or proceeding which may affect the value, priority or enforceability of this security instrument or the Property or Collateral itself or the rights or powers of Beneficiary or Trustee, including any suits relating to damage to property or death or personal injuries.

10. Beneficiary's Right to Protect Collateral. Beneficiary may commence, appear in, and defend any action or proceeding which may affect the Property or Collateral or the rights or powers of Beneficiary or Trustee in the Property or Collateral. Beneficiary may pay, purchase, contest or compromise any encumbrance, charge or lien that is in default or is not listed as an Exception and that in its judgment appears to be prior or superior to the lien of this Deed of Trust. If Grantor fails to make any payment or do any act required under the Loan Documents, Beneficiary, without any obligation to do so, upon three days written notice (except in case of emergency) to Grantor and without releasing Grantor from any obligations under the Loan Documents, may make the payment or cause the act to be performed in such manner and to such extent as Beneficiary may deem necessary to protect the Property or Collateral or Beneficiary's interest therein. Beneficiary is authorized to enter upon the Property for such purposes. In exercising any of these powers Beneficiary may incur such expenses, in its absolute good faith discretion, as it deems necessary.

11. Repayment of Beneficiary's Expenditures. Except as otherwise provided in the Loan Documents, Grantor shall pay within ten (10) days after written notice from Beneficiary all sums expended or advanced by Beneficiary pursuant to any provision of the Loan Documents, and all costs and expenses incurred by Beneficiary in taking any actions pursuant to the Loan Documents outside of the ordinary course of loan administration, including attorneys' fees, accountants' fees, appraisal and inspection fees, and the costs for title reports and guaranties. All such expenditures and advances made by Beneficiary, and costs and expenses incurred by Beneficiary, and interest thereon, shall constitute advances made under this Deed of Trust and shall be secured by and have the same priority as the lien of this Deed of Trust. If not reimbursed within such 10-day period, all such expenditures shall bear interest from the date of such advance or expenditure at the rate of twelve percent (12%) per annum until paid. If Grantor fails to repay any such expenditures, advances, costs and expenses and interest thereon, Beneficiary may, at its option, advance any undisbursed loan proceeds to pay the same.

12. Assignment of Rents and Leases - Grantor's Right to Collect.

(a) Assignment of Rents. Subject to the terms of any recorded assignment of rents having priority over this Deed of Trust, Grantor hereby absolutely and irrevocably assigns to Beneficiary all Grantor's present and future interest in all the rents, income, receipts, revenues, issues, profits and other income of any nature now or hereafter due (including any income of any nature coming due during any redemption period) under the Leases or from or arising out of the Property including minimum rents, additional rents, percentage rents, parking or common area maintenance contributions, tax and insurance contributions, deficiency rents, liquidated damages following default in any Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, all proceeds payable as a result of a lessee's exercise of any option to purchase the Property, all proceeds derived from the termination or rejection of any Lease in a bankruptcy or other insolvency proceeding, and all proceeds from any rights and claims of any kind which Grantor may have against any lessee under the Leases or any occupants of the Property (all of the above are hereafter collectively referred to as the "Rents"). This assignment grants to Beneficiary the immediate and continuing right to collect and receive all Rents which may be received or contracted for under any existing or future Leases of the Property or any portion thereof, or otherwise, including the immediate, exclusive and continuing right to collect and receive all of the Rents and including those Rents coming due during any redemption period. Grantor warrants that it has made no previous assignment of the Rents or Leases except pursuant to a mortgage or deed of trust that the Beneficiary has agreed in writing is prior to this Deed of Trust, and will make no subsequent assignment without the prior written consent of Beneficiary.

(b) Assignment of Leases. Grantor hereby irrevocably and absolutely assigns to Beneficiary any and all of Grantor's present and future interests in all existing and future Leases of the Property, including subleases thereof and any and all extensions, renewals and replacements thereof, and all guaranties of lessees' performance under the Leases. After declaration of an Event of Default hereunder or under the Note or Loan Agreement, Grantor shall deliver possession of the original Leases and any guaranties thereof to the Beneficiary forthwith upon demand. This assignment shall be subject to the terms and conditions of any separate assignment of leases and/or rents, whenever executed, in favor of Beneficiary and covering the Property.

(c) License to Collect Rents. Notwithstanding anything to the contrary contained herein or in the Loan Documents, unless otherwise provided in any separate assignment of leases and/or rents, and so long as Grantor is not in default under the Loan Documents, the assignments set forth in subsections 12(a) and 12(b), above, are subject to a license Beneficiary hereby grants to Grantor to collect the Rents as they become due. Grantor shall use the Rents to pay, in order of priority, (1) normal operating expenses for the Property; (2) sums due and payments and deposits required under the Loan Documents and obligations secured by the Exceptions; and (3) other permissible expenditures under the Loan Documents. Grantor warrants that it has made no prior assignment of the Rents or Leases, and will make no subsequent assignment without the prior written consent of Beneficiary. Grantor's right to collect the Rents shall not constitute Beneficiary's consent to the use of cash collateral in any bankruptcy proceeding.

13. Beneficiary's Right to Collect Rents. If Grantor is in default under the Loan Documents beyond any applicable cure period, Beneficiary or its agents, or a court-appointed receiver, may, upon reasonable notice to Grantor, collect the Rents. After giving such notice, Beneficiary or its agent, or such receiver, may (a) evict lessees for nonpayment of rent, (b) terminate in any lawful manner any tenancy or occupancy, (c) lease the Property in the name of the then owner on such terms as it may deem best, and (d) institute proceedings against any lessee for past due rent. The Rents received shall be applied to payment of the costs and expenses of collecting the Rents, including a reasonable fee to Beneficiary, a receiver or an agent; operating expenses for the Property; and any sums due or payments required under the Loan Documents

and obligations secured by the Exceptions; in such order as Beneficiary, or its agent, or such receiver, may reasonably determine. Any excess shall be paid to Grantor; except that Beneficiary may withhold from any excess a reasonable amount to pay sums anticipated to become due which exceed the anticipated future Rents. Beneficiary's failure to collect or its discontinuing collection at any time shall not in any manner affect the subsequent enforcement by Beneficiary of its rights to collect the Rents. The collection of the Rents shall not cure or waive any default under the Loan Documents. In exercising its rights under this section Beneficiary shall be liable only for the proper application of and accounting for the Rents collected by Beneficiary or its agents and for management of the Property after the assumption of such management duties by the Beneficiary. Any Rents paid to Beneficiary, its agent, or a receiver shall be credited against the amount due from the lessee under the Lease. In the event any lessee under a Lease becomes the subject of any proceeding under the Bankruptcy Code or any other federal, state or local statute that provides for the possible termination or rejection of the Leases assigned hereby, and, if any amounts are then payable to the Beneficiary under the Loan Documents, then in the event any of the Leases are so rejected, no damages settlement shall be made without the prior written consent of Beneficiary; any check or instrument in payment of damages for rejection or termination of any such Lease shall be made payable both to the Grantor and Beneficiary; and Grantor hereby assigns any such payment to Beneficiary and further covenants and agrees that upon request of Beneficiary, Grantor shall duly endorse to the order of Beneficiary any such check or instrument, the proceeds of which shall be applied to any portion of the indebtedness secured hereunder in such manner as Beneficiary may elect. Nothing herein shall be construed to make Beneficiary a "mortgagee in possession" prior to its actual entry upon and taking possession of the Property. Entry and possession by a receiver shall not be attributed to Beneficiary.

14. Financing Statement. This Deed of Trust is given to secure an obligation incurred wholly or in part for the construction, which may include renovation, of improvements on the Property. This Deed of Trust shall also serve as a financing statement filed for record in the real estate records as a fixture filing pursuant to the Uniform Commercial Code.

15. Default - Remedies. Any default under the Regulatory Agreement, including without limitation failure to make the full amount of any payments when due on the Note, which remains uncured after the applicable cure periods, shall constitute a "Default" hereunder. Upon any Default, Beneficiary may, without notice or demand, declare all amounts owed under the Loan Documents immediately due and payable and/or exercise its rights and remedies under the Loan Documents and applicable law including foreclosure of this Deed of Trust judicially or non-judicially by the Trustee pursuant to the power of sale and/or any remedies authorized under the Uniform Commercial Code. Beneficiary's exercise or failure to exercise any of its rights and remedies shall not constitute a waiver or cure of a default, nor shall any waiver of or failure to enforce any remedy upon any default constitute a waiver of any subsequent default. In the event the Loan Documents are referred to an attorney for enforcement of Beneficiary's rights or remedies, whether or not a suit is filed or any proceedings are commenced, Grantor shall pay all Beneficiary's reasonable costs and expenses including Trustee's and attorneys' fees (including attorneys' fees for any appeal, bankruptcy proceeding or any other proceeding, and including a reasonable amount for services of counsel who are employees of Beneficiary), accountants' fees, appraisal and inspection fees and cost of a title guaranty.

16. Cumulative Remedies. All Beneficiary's and Trustee's rights and remedies specified in the Loan Documents are cumulative, not mutually exclusive and not in substitution for any rights or remedies available in law or equity. In order to obtain performance of Grantor's obligations under the Loan Documents, without waiving its rights in the Property or Collateral, Beneficiary may proceed against Grantor or may proceed against any other security or guaranty for the Note, in such order and manner as Beneficiary may elect. The commencement of proceedings to enforce a particular remedy shall not preclude

the discontinuance of the proceedings and/or the commencement of proceedings to enforce a different remedy.

17. Sale of Property After Default; Multiple Deeds of Trust. In the event of a Trustee's sale under this Deed of Trust, the Property and Collateral may be sold, at the option of Beneficiary, as a whole or separately in one or more parcels in such order as Beneficiary shall elect. Any person may purchase at any sale unless prohibited by applicable law. The Trustee may postpone any sale by public announcement at the time and place noticed for the sale or as otherwise allowed by law. Neither Trustee nor Beneficiary shall be required to marshal Grantor's assets. In the event of a Trustee's sale of all the Property and Collateral, Beneficiary hereby assigns its security interest in the personal property Collateral, to the extent that Beneficiary shall not have realized upon such security interest, to the Trustee, acting as Beneficiary's agent in disposition of such Collateral. Beneficiary may also realize on the personal property Collateral in accordance with the remedies available under the Uniform Commercial Code or at law. . If Beneficiary is also the beneficiary of one or more other deeds of trust on the Property, then Grantor and the holders of any subordinate liens or security interests agree (a) that Beneficiary, at its sole option, may cause the Property to be sold subject to the lien(s) of such other deed(s) of trust (regardless of the order of recording thereof and regardless of any other recourse or collateral that Beneficiary may have under for any indebtedness secured hereby or by such other deed(s) of trust), and (b) that Beneficiary may, at its sole option, cause the Property, and/or any personal property Collateral, to be sold at a single sale held under both this Deed of Trust and such other deed(s) of trust.

18. Appointment of Receiver. In the event of a default, Beneficiary shall be entitled after notice to Grantor as provided under appropriate court rules, and without bond, to the appointment of a receiver for the Property and Collateral. The receiver shall have, in addition to all the rights and powers customarily given to and exercised by a receiver, all the rights and powers granted to Beneficiary by the Loan Documents.

19. Foreclosure of Lessee's Rights - Subordination and Non-Disturbance. Beneficiary shall have the right, at its option, to foreclose this Deed of Trust subject to the rights of any lessees of the Property. Beneficiary's failure to foreclose against any lessee shall not be asserted as a claim against Beneficiary or as a defense against any claim by Beneficiary in any action or proceeding. Beneficiary at any time may subordinate this Deed of Trust to any or all of the leases. Upon request by Grantor, Beneficiary shall execute an agreement for the benefit of any non-residential Tenant pursuant to which Beneficiary shall agree to recognize and be bound by the lease of any such tenant in the event of foreclosure by Beneficiary, such agreement to be in form and content satisfactory to major chain retailers.

20. Reconveyance After Payment. Upon written request of Beneficiary stating that all obligations secured by this Deed of Trust have been paid, Trustee shall reconvey, without warranty, the Property then subject to the lien of this Deed of Trust. The grantee in the reconveyance may be described as "the person or persons legally entitled thereto." Grantor shall pay any Trustee's fees, recording fees and any other tax, charge or fee on reconveyance.

21. Release of Parties or Collateral. Without affecting the obligations of any party under the Loan Documents and without affecting the lien of this Deed of Trust and Beneficiary's security interest in the Property and Collateral, Beneficiary and/or Trustee may, without notice (a) release Grantor and/or any other party now or hereafter liable for any sums due under the Loan Documents (including guarantors), (b) release all or any part of the Property or Collateral, (c) subordinate the lien of this Deed of Trust or Beneficiary's security interest in the Property or Collateral, (d) take and/or release any other security or guarantees for sums due under the Loan Documents, (e) grant an extension of time, (f) modify, waive, forbear, delay or fail to enforce any obligations owed under the Loan Documents, (g) sell or otherwise realize on any other security or guaranty prior to, contemporaneously with or subsequent to a sale of all or any part of the

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Property or Collateral, (h) make advances pursuant to the Loan Documents including advances in excess of the Note amount, (i) consent to the making of any map or plat of the Property, and (j) consent or cause the Trustee to consent to the grant of any easement or the creation of any restriction on the Property. Any subordinate lienholder agrees, by taking its interest subject to this Deed of Trust, that any such action may be taken without notice to or consent from the subordinate lienholder, without impairing the priority of this Deed of Trust. Grantor shall pay reasonable Trustee's, attorneys', title insurance or recording fees in connection with any such action requested by Grantor.

22. Nonwaiver of Terms and Conditions. Time is of the essence with respect to performance of the obligations due under the Loan Documents. Beneficiary's failure to require prompt enforcement of any required obligation shall not constitute a waiver of the obligation due or any subsequent required performance of the obligation. No term or condition of the Loan Documents may be waived, modified or amended except by a written agreement signed by Grantor and Beneficiary. Any waiver of any term or condition of the Loan Documents shall apply only to the time and occasion specified in the waiver and shall not constitute a waiver of the term or condition at any subsequent time or occasion.

23. Waivers by Grantor and Subordinate Parties. Without affecting any of Grantor's obligations under the Loan Documents, Grantor and any party who acquires a lien or interest subordinate to this Deed of Trust waives the following:

- (a) diligence, presentment, protest and notice of dishonor except as provided in the Regulatory Agreement;
- (b) any defense arising out of Beneficiary entering into additional financing or other arrangements with any Grantor or any party liable for sums due under the Loan Documents and any action taken by Beneficiary in connection with any such financing or other arrangements or any pending financing or other arrangements;
- (c) any defense arising out of the absence, impairment, or loss of any reimbursement, contribution or subrogation or any other rights or remedies of Beneficiary against any Grantor or any other party liable for sums due under the Loan Documents or any Property or Collateral; and
- (d) any obligation of Beneficiary to see to the proper use and application of any proceeds advanced pursuant to the Loan Documents.

24. Use of Property; Purpose of Loan. The Property is not used principally, or at all, for agricultural purposes. The loan secured hereby is not made primarily, or at all, for personal, family, consumer or household purposes.

25. Statement of Amount Owed. Grantor upon request by Beneficiary will furnish a written statement duly acknowledged of the amount owing under the Loan Documents.

26. Maximum Interest Rate; Rate After Acceleration. If any payment made or to be made under the Loan Documents shall constitute a violation of the applicable usury laws, then the payment made or to be made shall be reduced so that in no event shall any obligor pay or Beneficiary receive an amount in excess of the maximum amount permitted by the applicable usury laws. If all amounts secured hereby shall be declared immediately due and payable after an Event of Default then all such amounts, including principal, interest, and premium (if any) shall thereafter bear interest at 12% per annum or the highest rate then permitted by applicable law, whichever shall be less.

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27. Evasion of Prepayment Premium. If Grantor is in default, any tender of payment sufficient to satisfy all sums due under the Loan Documents made at any time prior to foreclosure sale shall be deemed a voluntary prepayment which constitutes an evasion of the prepayment terms of the Note. Any such payment, to the extent permitted by law, shall include the additional payment required under the prepayment provision in the Note.

28. Payment of New Taxes. If any federal, state or local law is passed subsequent to the date of this Deed of Trust which requires Beneficiary to pay any tax because of this Deed of Trust or the sums due under the Loan Documents, then Grantor shall pay to Beneficiary on demand any such taxes if it is lawful for Grantor to pay them.

29. Repairs During Redemption. In the event of a judicial foreclosure, the purchaser during any redemption period may make such repairs and alterations to the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring of the Property. Any sums so paid, together with interest from the date of the expenditure at the rate provided in the judgment, shall be added to the amount required to be paid for redemption of the Property.

30. Substitution of Trustee. Beneficiary may at any time discharge the Trustee and appoint a successor Trustee who shall have all of the powers of the original Trustee.

31. Rules of Construction. This Deed of Trust shall be construed so that, whenever applicable, the use of the singular shall include the plural, the use of the plural shall include the singular, and the use of any gender shall be applicable to all genders and shall include corporations, companies, partnerships and limited partnerships. Any capitalized terms not defined herein shall have the meanings set forth in the Loan Agreement unless the context otherwise clearly requires.

32. Notices. Any notice given by Grantor, Trustee or Beneficiary shall be in writing and shall be effective (1) on personal delivery to the party receiving the notice or (2) on the second business day after deposit in the United States mail, postage prepaid, addressed to the party at the address set forth in the preamble to this Deed of Trust (or such other address as a party may specify by written notice in accordance with this Section), or with respect to the Grantor, to the address at which Beneficiary customarily or last communicated with Grantor. Any notice to Grantor shall be effective if given in any other manner authorized by the Loan Agreement or by applicable law.

33. Successors and Assigns. This Deed of Trust shall be binding on Grantor and Grantor's heirs, executors, personal representatives, successors and assigns and shall inure to the benefit of Trustee and Beneficiary and their respective successor and assigns. The terms "Grantor," "Trustee" and "Beneficiary" include their successors and assigns.

34. Hazardous Substances.

(a) For purposes of this Deed of Trust, the term "hazardous or toxic waste or substances" means petroleum products, polychlorinated biphenyls, asbestos, lead, and any other chemical, substance or material classified or designated as hazardous, toxic or radioactive, or similar term, and now or hereafter regulated under any applicable federal, state or local statute, regulation, ordinance or requirement, now or hereafter in effect, pertaining to environmental protection, contamination or cleanup.

(b) Grantor shall comply, at Grantor's expense, with all statutes, regulations and ordinances which apply to Grantor or the Property, and with all orders, decrees or judgments of

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governmental authorities or courts having jurisdiction which Grantor is bound by, relating to the use, collection, storage, treatment, control, removal or cleanup of hazardous or toxic waste or substances in, on, under, over or about the Property or in, on under, over or about any adjacent property that becomes contaminated with hazardous or toxic waste or substances as a result of demolition, excavation, construction, rehabilitation, operations or other activities on or under, or the contamination of, the Property. Whether or not any court or agency shall have found any violation or ordered any remedial action, Beneficiary may, but is not obligated to, enter upon the Property to inspect it for compliance and to take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest as Beneficiary or to protect the public. Grantor shall reimburse Beneficiary on demand for the full amount of all costs and expenses incurred by Beneficiary (including without limitation consultants' and attorneys' fees and a reasonable allowance for the services of Beneficiary's employees and related overhead) prior to any transfer of the Property through foreclosure of this Deed of Trust or deed in lieu of foreclosure hereof, in connection with such compliance activities or in connection with any litigation or administrative proceeding regarding hazardous waste or materials on, under, or from the Property, to the extent such costs arise out of the Property becoming contaminated as a result of the actions of Grantor. Such reimbursement obligation shall not be limited by the non-recourse provisions of this Deed of Trust.

35. Invalidity of Terms and Conditions. If any term or condition of this Deed of Trust is found to be invalid, the invalidity shall not affect any other term or condition of the Deed of Trust and the Deed of Trust shall be construed as if not containing the invalid term or condition.

36. Section Headings. The headings to the various sections have been inserted for convenience of reference only and shall not be used to construe this Deed of Trust.

37. Applicable Law. The rights, duties, liabilities and obligations of the parties under the Note and this Deed of Trust shall be construed and governed by and under the laws of the State of Washington. It is the intent of the parties that, to the fullest extent allowable by law, the laws of the State of Washington shall apply to the transaction of which this Deed of Trust is a part.

39. Reliance by Trustee. The Grantor hereby irrevocably authorizes the Trustee, upon presentation to it of an affidavit or declaration by Beneficiary or an officer of Beneficiary setting forth facts showing a default on this Deed of Trust, to accept as true and conclusive all facts and statements therein and to act thereon hereunder.

40. Time. Time is of the essence of the terms of this Deed of Trust.

41. Non-Recourse Obligation. Any other provision herein notwithstanding, Grantor shall not have any personal liability for repayment of the Loan other than to have the Property and Collateral, and the rents, income and proceeds therefrom, applied to satisfy the amounts due under the Loan Documents; provided that Grantor shall be liable for damages or deficiencies (including costs and attorneys fees) resulting from fraud; waste; material misrepresentation; misappropriation of rents, reserves, insurance payments or condemnation proceeds; failure to maintain required insurance without advance notice to Beneficiary; breaches of covenants or warranties regarding hazardous or toxic waste or substances; and provided further that nothing in this section shall relieve Grantor of any obligation set forth in the Regulatory Agreement.

Grantor executes this Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing as of

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the day and year first above written.

500 MERCER PARTNERS, LLC
a Washington limited liability company

By: Alan J. Winningham, Managing Member

Grantor Acknowledgment

STATE OF WASHINGTON)) ss.
COUNTY OF KING)

On this _____ day of _____, 20_____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Alan J. Winningham, to me personally known (or proved on the basis of satisfactory evidence) to be the Managing Member of 500 Mercer Partners, LLC, the Washington limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
Print Name: _____
My Commission expires _____

SEAL:

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REQUEST FOR FULL RECONVEYANCE

To be used only when all obligations have been paid under the Note and this Deed of Trust.

TO: TRUSTEE

The undersigned is the legal owner and holder of the Note and all other indebtedness secured by the within Deed of Trust. Said Note, together with all other indebtedness secured by said Deed of Trust, has been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said Note above mentioned and all other evidence of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you thereunder.

DATED: _____

Print name: _____

Mail reconveyance to

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MEMORANDUM

Date: September 24, 2001

To: Honorable Margaret Pageler, President
Seattle City Council

Via: Joan Walters, City Budget Director

From: John Franklin, Director
Fleets and Facilities Department

Subject: AN ORDINANCE relating to the Fleets and Facilities Department; authorizing the sale of Lots 1-9, Block 48, Replat of Mercer's 2nd, according to the plat thereof recorded in Volume 10 of Plats, page 34, Records of King County, Washington, at fair market value and execution of a Purchase and Sale Agreement and Deed in connection therewith; and designating the disposition of sales proceeds.

The City of Seattle has concluded negotiations with 500 Mercer Partners, LLC for its acquisition of a City-owned property commonly known as the Tower Records parking lot site. The site consists of three-quarters of a City block, which is currently used as a parking lot, divided by an alley. The attached ordinance authorizes the Fleets and Facilities Director to execute the sale of the Tower Records parking lot site and convey the property to 500 Mercer Partners, LLC.

In addition to the City's site, 500 Mercer Partners, LLC is also acquiring the adjacent Tower Records site (owned by MTS, Inc.) with the intention of developing a new mixed use project. The project will incorporate approximately 60,000 square feet of retail (including a greatly enlarged Tower Records store), 110 market rate and affordable housing units, and underground parking.

Net sale proceeds of approximately \$4,513,600 will be deposited in the Unrestricted Account of the Cumulative Reserve Fund, and approximately \$36,400 will be deposited in the Fleets and Facilities Fund. In addition, the Purchaser has agreed to pay the City \$591,000 for an Affordable Housing Subsidy that can either be used on-site or somewhere else within the City. Finally, the Purchaser has also agreed to grant a 10 foot wide and 12 foot high surface easement or other legal rights to the City along the Roy St. and 5th Ave. N. edges of the property to allow for development of the City's Potlatch Trail.

In 1998, the former Executive Services Department determined that the subject property was excess to the City's needs and circulated notice to see if any City departments were interested in the site. SeaTran, Seattle Center, the Department of Parks & Recreation, and the Department of



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Franklin/Pageler
Tower Records Site Ordinance
September 20, 2001
Page 2

Neighborhoods all support the sale and redevelopment proposal. Please see the "Property Review Process Determination Form" (Attachment 1), and the "Evaluation of Reuse and Disposal Options of Tower Records Parking Lot" (Attachment 2). In addition to departmental support, the Queen Anne Community Council, Uptown Alliance, and Friends of Queen Anne have written letters of support for the sale of the Tower Records parking lot and the redevelopment proposal by 500 Mercer Partners, LLC.

We appreciate your consideration of this legislation. If you have any questions, or would like an individual briefing on this matter, please call either Mary Pearson at 4-0407 or Joan Rosenstock at 4-8541.

Thank you.

Attachments:

1. Property Review Process Determination Form
2. Evaluation of Reuse and Disposal Options of Tower Records Parking Lot

cc: Honorable Jan Drago, Chair, Finance Committee
Lee Belland, City Budget Office
Bill Rumpf, Office of Housing
Mary Pearson, Fleets & Facilities Department
Joan Rosenstock, Fleets & Facilities Department

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ATTACHMENT 1

PROPERTY REVIEW PROCESS DETERMINATION FORM			
Property Name:	PMA 154 Lots 1-9, Block 48, Replat of Mercer's 2 nd , according to the plat thereof recorded in Volume 10 of Plats, King County Washington, commonly known as the Tower Records parking lot site,		
Address:	525 Mercer Street		
PMA ID:	154	Subject Parcel #:	1405
Dept./Dept ID:	FFD	Current Use:	Parking lot
Area (Sq. Ft.):	43,505 sq. ft.	Zoning:	NC3-40'
Est. Value:	\$4,550,000	Assessed Value:	Tax account numbr : \$2,798,800. 545780-0345
PROPOSED USES AND RECOMMENDED USE			
Department/Governmental Agencies:		Proposed Use:	
FFD: Dispose of property		Mixed Use	
Other Parties wishing to acquire:		Proposed Use:	
None		Not applicable	
RES' S RECOMMENDED USE Sell property for mixed-use project, with 10 affordable housing units.			
PROPERTY REVIEW PROCESS DETERMINATION (circle appropriate response)			
1.) Is more than one City dept/Public Agency wishing to acquire?	No / Yes		15
2.) Are there any pending community proposals for Reuse/ Disposal?	No / Yes		10
3.) Have citizens, community groups and/or other interested parties contacted the City regarding any of the proposed options?	No / Yes		10
4.) Will consideration be other than cash?	No / Yes		10
5.) Is Sale or Trade to a private party being recommended?	No / Yes		25
6.) Will the proposed use require changes in zoning/other reg's?	No / Yes		20
7.) Is the estimated Fair Market Value between \$250,000-\$1,000,000?	No / Yes		10
8.) Is the estimated Fair Market Value over \$1,000,000?	No / Yes		45
Total Number of Points Awarded for "Yes" Responses:			70
Property Classification for purposes of Disposal review: Simple <input checked="" type="radio"/> Complex (circle one) (a score of 45+ points results in "Complex" classification)			
Signature: Joan Rosenstock Department: FFD Date: 08/28/2001			

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PRELIMINARY REPORTEVALUATION OF REUSE AND DISPOSAL OPTIONS OF TOWER RECORDS
PARKING LOT

Resolution 29799 directs the Executive to make its recommendations on the reuse or disposal of excess property on a case by case basis, using the *Procedures for Evaluation of the Reuse and Disposal of the City's Real Property* adopted by that resolution. Additionally, the Resolution identifies guidelines that are to be considered in making a recommendation. This report addresses each of the guidelines outlined in Resolution 29799 in support of the recommendation.

Property Management Area: a 43,505 square foot parcel of land divided by an alley (PMA#154).

BACKGROUND INFORMATION

Legal Description: Lots 1-9, Block 48, Replat of Mercer's 2nd, according to the plat thereof recorded in Volume 10 of Plats, page 34, Records of King County, Washington

Physical Description and Related Factors: The parcel contains 43,505 square feet divided by an alley. The site is bounded by Mercer Street, Roy Street, 5th Avenue North, and Taylor Avenue North.

GUIDELINE A: CONSISTENCY

The analysis should consider the purpose for which the property was originally acquired, funding sources used to acquire the property, terms and conditions of original acquisition, the title or deed conveying the property, or any other contract or instrument by which the City is bound or to which the property is subject, and City, state or federal ordinances, statutes and regulations.

The subject parcels were acquired by negotiation from Cecil C. Bagley and others in 1969, and accepted by Ordinance 98685. The acquisition was authorized by Ordinance 98313, in conjunction with the Bay Freeway Project and a parking garage for a domed Stadium. However, the properties were accepted for General Municipal Purposes and, therefore, jurisdiction is currently with FFD.

Guideline B: Compatibility and Suitability

The recommendation should reflect an assessment of the potential for use of the property in support of adopted Neighborhood Plans, as in support of low-income housing, in support of economic development, in support of affordable housing, for park or open space; in support of Sound Transit Link Light Rail station area development; or in support of child care facilities, and in support of other priorities reflected in adopted City policies.

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PRELIMINARY REPORT**EVALUATION OF REUSE AND DISPOSAL OPTIONS OF TOWER RECORDS
PARKING LOT**

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ATTACHMENT 2

Support of Neighborhood Plan. The recommendation directly supports the Queen Anne Neighborhood Plan's priorities and recommendations in the following ways:

- **Housing.** The 110 units of market rate housing and 10 units of affordable housing support the 20 year housing target for the Uptown Urban Center, and contribute to the affordability of housing in the area.
- **Jobs.** The project proposed is expected to create approximately 100 new jobs in the 60,000 square feet of retail in the Purchaser's proposed mixed use project.
- **Potlatch Trail.** The Purchaser of the site will provide a 10 foot wide and 12 foot high easement for the Potlatch Trail (or other legal property rights to provide for that improvement), and will be helping to develop the trail on two sides of the proposed project.
- **Vibrant Pedestrian Environment.** The redevelopment of the City's surface parking lot with a mixed use project will create a more vibrant streetscape and pedestrian environment, by providing safe, well-lit sidewalks on all sides of the block, and facilitating the installation of a stretch of urban trail. In addition, significant pedestrian traffic is expected to be generated through the project's retail components.
- **Reduce Reliance on Automobiles.** The commercial garage in the recommended disposition project would provide at least one parking space for a Flexcar that would allow residents of the project and the surrounding area with access to a rental vehicle as an alternative to automobile ownership.
- **Expanded Commercial Parking Capacity.** The Purchaser's proposed garage will provide additional off-street parking for the neighborhood, and after hours parking for the Experience Music project, Key Arena and other Seattle Center venues.

The Queen Anne Community Council, Uptown Alliance and Friends of Queen Anne have all written letters indicating their support for the proposed project.

The Design Commission has reviewed the project and is very supportive of it.

Seatran, Seattle Center, Parks, and OH and FFD have all coordinated the conditions and see this project as an excellent way to carry forward City goals.

Range of Options. After circulation, no other City Departments or public agencies expressed any interest in the subject property, except for the 10-foot wide, surface easement area along the 5th Avenue North and Roy Street edges of the property for the Potlatch Trail.

Guideline C: Other Factors

The recommendation should consider the highest and best use of the property, compatibility of the proposed use with the physical characteristics of the property and with surrounding uses, timing and term of the proposed use, appropriateness of the consideration to be received, unique attributes that make the property hard to replace, potential for consolidation with adjacent public property to accomplish future goals and objectives, conditions in the real estate market, and known environmental factors that may affect the value of the property.

Highest and Best Use: An appraisal was conducted for the property in January 2001. The appraiser concluded that the highest and best use of the property would be for mixed-use development.



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Compatibility with the physical characteristics: The property's physical characteristics would not hinder mixed use, hotel, office, or retail uses of the site. In fact, the topography of the site makes underground parking more accessible.

Compatibility with surrounding uses: The uses immediately surrounding the site include: mixed use residential/retail buildings, a hotel, 2 office buildings, an automobile body shop, and a public parking lot. The proposed project is compatible with these uses.

Potential for Consolidation with adjacent public property:

The disposition of the site will consolidate the parcel with the adjacent Tower Records site. There is a Principal Arterial separating this site and the adjacent City owned parking lot at the Seattle Center. The Seattle Center is not interested in acquiring the Tower Records parking lot site. The City also owns the autobody shop's storage lot diagonally across Taylor Avenue North, but there is no potential for consolidation of these two properties due to the proposed development of the Potlatch Trail and Roy Street underpass at the intersection of Roy Street and Taylor Avenue North.

Timing and Term of Proposed Use: FFD expects to close the transaction of this disposition by the summer of 2002. The Purchaser expects to begin construction soon after closing.

Appropriateness of the consideration: The Purchaser will pay FFD the appraised value of the property in the amount of Four Million Five Hundred and Fifty Thousand Dollars (\$4,550,000.) with an additional \$591,000 payment toward an Affordable Housing Subsidy.

Known environmental factors:
None known.

Guideline D: Sale

The recommendation should evaluate the potential for selling the property to non-City public entities and to members of the general public.

The recommended property disposition is to 500 Mercer Partners, LLC. The Purchaser is also acquiring the adjacent Tower Records site, and will be developing 60,000 square feet of retail (including approximately 26,000 square feet for Tower Records), 120 residential units, underground parking, and two blocks of the Potlatch Trail.

RECOMMENDATION

The Real Estate Oversight Committee recommends that the Council approve the sale of the Tower Records parking lot site to 500 Mercer Partners, LLC for the appraised value of \$4,550,000.00 plus a \$591,000 Affordable Housing Subsidy.

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Fiscal Note

Department: Fleets & Facilities	Contact Person/Phone: Joan Rosenstock/4-8541	CBO Analyst/Phone: Lee Belland/3-3778
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Legislation Title:

AN ORDINANCE relating to the Fleets and Facilities Department; authorizing the sale of Lots 1-9, Block 48, Replat of Mercer's 2nd, according to the plat thereof recorded in Volume 10 of Plats, page 34, Records of King County, Washington, at fair market value and execution of a Purchase and Sale Agreement and Deed in connection therewith; and designating the disposition of sales proceeds.

Summary of the Legislation:

The ordinance enables the Fleets and Facilities Department (FFD) to sell the "Tower Records parking lot site" and deposit the bulk of the net proceeds into the Cumulative Reserve Subfund.

Background (Include justification for the legislation and funding history, if applicable):

MTS, Inc. (Tower Records) is the owner of an 11,880 square foot site located at Fifth Ave. N. and Mercer St in Queen Anne. The remaining $\frac{3}{4}$ of the block (41,337 sq. ft.) is a parking lot and an alley (2,928 sq. ft.) owned by, or under the control of, the City of Seattle (PMA #154). In early 1998, the City entered negotiations with MTS, Inc. to renew its long-term lease of the parking lot, which was recently renewed on a month-to-month basis until we close on the proposed sale of the subject property. In the course of property negotiations, the City suggested to MTS, Inc. that it present a development proposal to the City that combined the site of the Tower Records store with the City's property into a single project that had underground parking, ground floor retail, and some affordable housing.

MTS, Inc. selected 500 Mercer Partners, LLC and David Hewitt Architects to come up with a proposal that responded to the City's interests and provided the developer with adequate space to construct a flagship store. 500 Mercer Partners, LLC has entered into a purchase agreement with MTS, Inc. to acquire the $\frac{1}{4}$ block site of the Tower Records store and to lease back to MTS, Inc. a ground floor retail space in a full block mixed use project. Now, 500 Mercer Partners, LLC and the City are ready to conclude their transaction for 500 Mercer Partners, LLC to acquire the City's remaining $\frac{3}{4}$ of the block for this project. 500 Mercer Partners, LLC is also applying for an alley vacation.

In 1999, the REOC was presented with a comparative analysis of the benefits of direct negotiations with the adjacent property owner vs. an RFP process to sell the site. They directed FFD (formerly the Executive Services Department) to brief City Council members; provide Armada, Inc. (the predecessor in interest to 500 Mercer Partners, LLC) permission to apply for permits, to apply for a alley vacation, and to begin negotiations regarding the sale. City

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Councilmembers were briefed on the proposed sale and development project during 2000, and early 2001.

Current Proposal

Representatives of 500 Mercer Partners, LLC, have met with representatives of the Uptown and Queen Anne Community Councils, Friends of Queen Anne, staff from FFD, OH, Parks, Seattle Center and SEATRAN, and the Design Commission. Their proposal has been very favorably received by each of these groups. Some details of the proposal are still to be worked out. The principal elements of the proposal are as follows:

- Purchase the $\frac{3}{4}$ block owned by the City at fair market value, based on an appraisal
- Develop 60,000 SF of retail anchored by a flagship Tower Records store
- Construct 110 residential units
- Contribute a premium of 13% of the property value toward subsidizing affordable housing units on the site. This would be in addition to paying the full market value for the land.
- Provide a 10 foot surface easement or other means of granting legal rights to the City along the three lots on the Fifth Avenue N. side of the block controlled by the developer, and acceptance of a deed reserving a similar easement or other legal rights for the City along the remainder of the Fifth Avenue N. and Roy Street sides of the block to provide adequate ROW for the proposed Potlach Trail
- Develop public plazas on both the 5th/Roy and 5th/Mercer corners of the property to enhance the relationship between the site and the City's proposed Potlach Trail.

Relationship to Neighborhood Plan

Assemblage of the Tower Records and City properties results in a cohesive development that will support the Queen Anne and Uptown communities' goals. The proposal would help implement the Seattle Comprehensive Plan and Neighborhood Plan by:

- Adding additional market rate and affordable housing units to help meet the Urban Center's 20 year growth targets,
- Creating approximately 100 new jobs in an Urban Center that has actually lost 468 as of the 1999 Five Year Preliminary Growth Report.
- Redeveloping a surface parking lot with a mixed use project, and taking major steps toward improving the pedestrian environment around the site and facilitating the installation of the first section of the Potlach Trail on two sides of the site.

Public Private Partnership Review Status:

Is the project referenced in the legislation subject to P4 review? If yes, identify P4 review to date. Not applicable.

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Is the legislation subject to public hearing requirements? If yes, what public hearings have been held to date?
Not applicable.

Fiscal Sustainability Issues (related to grant awards):
Not applicable.

Estimated Expenditure Impacts:

FUND (List # and/or Account)	2000	2001	2002
FFD Fund.(50330)	\$17,400	\$11,000*	\$8,000*
TOTAL			

One-time* \$36,400. On-going \$

These amounts are estimates because it is not definite how many hours of time it will take to complete the transaction after we sign the Purchase and Sale Agreement. The Purchaser is not required to close until 1 year after signing the Agreement.

Estimated Revenue Impacts:

FUND (List # and/or Account)	2000	2001	2002
CRF*			Approx.\$5,104,600
FFD Fund			Approx. \$ 36,400
TOTAL			Approx. \$5,141,000

One-time \$ \$5,141,000* On-going \$

* Net property proceeds are deposited into the CRF per SMC and City financial policies to be used for capital purposes not currently identified or proposed.

Estimated FTE Impacts: Not applicable.

FUND (List # and/or Account)	2000	2001	2002
TOTAL			

Full Time N.A. # Part Time N.A. # TES N.A.

Do positions sunset in the future? If yes, identify sunset date?
Not applicable.

Other Issues (including long-term implications of the legislation):
None.



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STATE OF WASHINGTON - KING COUNTY

--SS.

139183
City of Seattle, Clerk's Office

No. 45,48,50-52,59 & 120660

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CTOT:120632,33,36,40,43

was published on

12/13/01

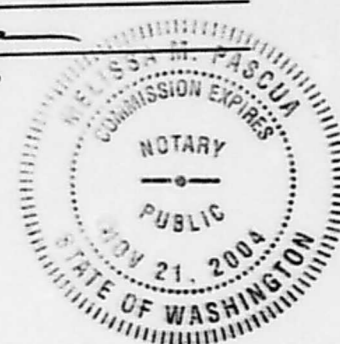
[Signature]

Subscribed and sworn to before me on

12/13/01

[Signature]
Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication



ACTING
CITY
CLERK

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on November 26, 2001, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 834-8344.

ORDINANCE NO. 120633

AN ORDINANCE adopting the 2001 Water System Plan Update, and authorizing the Director of Seattle Public Utilities to transmit it to the appropriate State and County agencies.

ORDINANCE NO. 120640

AN ORDINANCE adopting a budget, including a capital improvement program and listing of position changes, for The City of Seattle for fiscal year 2002.

ORDINANCE NO. 120636

AN ORDINANCE relating to and providing for disposition of certain monies seized and forfeited, and proceeds of the sale of goods and materials seized and forfeited, pursuant to the Uniform Controlled Substances Act; accepting such forfeitures; appropriating such monies to reimburse expenses incurred by the Police and Law Departments and to expand programs of the Police and Law Departments to enforce narcotic and other drug enforcement laws; and increasing certain expenditure allowances in the 2002 Budgets of the Police and Law Departments by reimbursable appropriation from the General Subfund, by a three-fourths vote of the City Council.

ORDINANCE NO. 120643

AN ORDINANCE relating to the City's accounting practices, creating a Fleets and Facilities Fund; moving the assets and liabilities of the Department of Finance, the Office of Sustainability and Environment, and the Personnel Department from the Executive Services Fund to the General Fund; abolishing the Executive Services Fund; authorizing the carry-over of unexpended balances and appropriation authority in the Debt Management Policy Advisory Committee (DMPAC) expenditure projects; and transferring expenditure authority and revenues into a new DMPAC Expenditure Project Account.

ORDINANCE NO. 120645

AN ORDINANCE revising the 2001 annual budget and accounts by decreasing certain expenditure allowances and increasing certain other expenditure allowances in the 2001 budgets of various City departments and agencies from various City funds to provide for costs and expenses not provided for in the 2001 Budget; authorizing the acceptance of certain monies; appropriating, re-appropriating, and transferring money from various City funds and subfunds; and authorizing the abrogation and creation of certain positions; all by a three-fourths vote of the City Council.

ORDINANCE NO. 120645

AN ORDINANCE relating to the Fleets and Facilities Department; authorizing the sale of Lots 1-9, Block 46, Replat of Mercer's 2nd, according to the plat thereof recorded in Volume 10 of Plats, page 34, Records of King County, Washington, at fair market value and execution of a Purchase and Sale Agreement and Deed in connection therewith; and designating the disposition of sales proceeds.

ORDINANCE NO. 120650

AN ORDINANCE relating to the Fire Department; authorizing execution of a contract with the State of Washington to accept pass-through funding from the Federal Emergency Management Agency's Terrorism Consequence Management Preparedness program to conduct a regional hazardous materials/terrorism exercise; increasing the expenditure allowance of the Fire Department's 2001 Adopted Budget; and making a reimbursable appropriation from the Emergency Subfund; all by a three-fourths vote of the City Council.

ORDINANCE NO. 120651

AN ORDINANCE relating to the Human Services Department; authorizing the transfer of funds from the H.H. Dearborn Trust to the General Subfund; and authorizing the execution of an agreement with the Lifelong AIDS Alliance for emergency and transitional housing for people with AIDS or AIDS-Related Conditions.

ORDINANCE NO. 120653

AN ORDINANCE relating to compensation for certain City officers and employees not covered by collective bargaining agreements and providing salary increases effective January 2, 2002; January 1, 2003; and December 31, 2003; and providing payment therefor.

ORDINANCE NO. 120633

AN ORDINANCE relating to implementing portions of the Homeless Strategic Response Program; authorizing the Human Services Department to expend \$1,000,000 and the Office of Housing to expend \$1,750,000 to implement, beginning in 2002, the shelter portion and the transitional housing and support services portion of the Homeless Strategic Response Program, respectively; and directing that this ordinance be filed with the King County Superior Court in connection with litigation pertaining to the proposed Initiative Measure No. 71.

ORDINANCE NO. 120659

AN ORDINANCE relating to the Revenue Stabilization Account of the Cumulative Reserve Subfund; transferring money from the Revenue Stabilization Account to the General Subfund; by a two-thirds vote of the City Council.

ORDINANCE NO. 120660

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.
Publication ordered by JUDITH PIPPIN, City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, December 13, 2001. 12/13(139)183CE

ORDINANCE

AN ORDINANCE relating to the Fleets and Facilities Department; authorizing the sale of Lots 1-9, Block 48, Replat of Mercer's 2nd, according to the plat thereof recorded in Volume 10 of Plats, page 34, Records of King County, Washington, at fair market value and execution of a Purchase and Sale Agreement and Deed in connection therewith; and designating the disposition of sales proceeds.

WHEREAS, the Queen Anne Neighborhood Plan includes specific goals and policies to add market rate and affordable housing units to help meet the Urban Center's 20 year growth targets, create new jobs in the Urban Center, improve the pedestrian environment, and develop the first section of the Potlatch Trail between Seattle Center and Lake Union; and

WHEREAS, in 1969, the City acquired the property described in Section 1 of this ordinance pursuant to authority granted by Ordinance 80654; and

WHEREAS, the availability of the property has been circulated to other City and government agencies, and no responses of interest have been received; and

WHEREAS, 500 Mercer Partners, LLC has requested to purchase such property at its fair value; and

WHEREAS, the Fleets and Facilities Director believes that it is in the best interest of the City to sell the excess property to 500 Mercer Partners, LLC; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The real property legally described as Lots 1-9, Block 48, Replat of Mercer's 2nd, according to the plat thereof recorded in Volume 10 of Plats, page 34, Records of King County, Washington, is hereby declared to be surplus.

Section 2. The Fleets and Facilities Director ("Director") is hereby authorized to execute and deliver, for and on behalf of The City of Seattle, a Purchase and Sale Agreement ("Agreement") substantially in the form attached hereto as "Exhibit A" pursuant to which the property described in Section 1 shall be sold to 500 Mercer Partners, LLC for Four Million Five Hundred Fifty Thousand Dollars (\$4,550,000) plus a sum equal to Five Hundred Ninety-one

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September 20, 2001
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1 Thousand Dollars (\$591,000) to be used by the City as an Affordable Housing Subsidy, with said
2 funds to be appropriated and transferred at a later date.

3 Section 3. The Director is further authorized, for and on behalf of the City, to execute
4 a Deed and such other agreements and documents to effect the closing of such conveyance in
5 accordance with the terms and conditions of the Agreement.

6 Section 4. The Director is hereby designated as the authorized representative of The
7 City of Seattle in connection with the administration of the Agreement and is authorized to grant
8 such consents and approvals as he shall deem appropriate to carry out the intent of the ordinance.

9 Section 5. Net proceeds of the sale shall be used, first, to reimburse costs incurred and
10 paid by the Fleets and Facilities Department in connection with the sale, which reimbursement
11 shall be deposited into the Fleets and Facilities Fund (50330) (or if such fund has not been
12 created when such proceeds are received, then into the Executive Services Department Facilities
13 Services Subfund (50330)). The remainder of such proceeds shall be deposited in the
14 Unrestricted Subaccount (00164) of the Cumulative Reserve Subfund.

15 Section 6. Any act consistent with the authority and prior to the effective date of this
16 ordinance, including but not limited to execution of the Purchase and Sale Agreement, is hereby
17 ratified and confirmed.
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1 Section 7. This ordinance shall take effect and be in force thirty (30) days from and
2 after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)
3 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4
5 Passed by the City Council the ____ day of ____, 200__, and signed by me in
6 open session in authentication of its passage this ____ day of ____, 200__.

7
8
9 President of the City Council

10
11 Approved by me this ____ day of ____, 200__.

12
13 Paul Schell, Mayor

14
15 Filed by me this ____ day of ____, 200__.

16
17 City Clerk

18
19 (Seal)

20
21 Exhibit "A" - Purchase and Sale Agreement with its various attachments

22
23
24
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EXHIBIT 'A'

500 MERCER PARTNERS, LLC (TOWER RECORDS SITE) PURCHASE
AND SALE AGREEMENT TO BE ATTACHED BY COUNCIL STAFF
AT A LATER DATE

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ATTACHMENT 1

PROPERTY REVIEW PROCESS DETERMINATION FORM		
Property Name:	PMA 154 Lots 1-9, Block 48, Replat of Mercer's 2 nd , according to the plat thereof recorded in Volume 10 of Plats, King County Washington, commonly known as the Tower Records parking lot site,	
Address:	525 Mercer Street	
PMA ID:	154	
Subject Parcel #:	1405	
Dept./Dept ID:	FFD	
Current Use:	Parking lot	
Area (Sq. Ft.):	43,505 sq. ft.	
Zoning:	NC3-40'	
Est. Value:	\$4,550,000	
Assessed Value:	No tax account number: 545780-0345	
PROPOSED USES AND RECOMMENDED USE		
Department/Governmental Agencies:	Proposed Use:	
FFD: Dispose of property	Mixed Use	
Other Parties wishing to acquire:	Proposed Use:	
None	Not applicable	
RES' S RECOMMENDED USE Sell property for mixed-use project, with 10 affordable housing units.		
PROPERTY REVIEW PROCESS DETERMINATION (circle appropriate response)		
1.) Is more than one City dept/Public Agency wishing to acquire?	<input type="radio"/> No / <input checked="" type="radio"/> Yes	15
2.) Are there any pending community proposals for Reuse/ Disposal?	<input type="radio"/> No / <input checked="" type="radio"/> Yes	10
3.) Have citizens, community groups and/or other interested parties contacted the City regarding any of the proposed options?	<input type="radio"/> No / <input checked="" type="radio"/> Yes	10
4.) Will consideration be other than cash?	<input type="radio"/> No / <input checked="" type="radio"/> Yes	10
5.) Is Sale or Trade to a private party being recommended?	No / <input checked="" type="radio"/> Yes	25
6.) Will the proposed use require changes in zoning/other reg's?	<input type="radio"/> No / <input checked="" type="radio"/> Yes	20
7.) Is the estimated Fair Market Value between \$250,000-\$1,000,000?	<input type="radio"/> No / <input checked="" type="radio"/> Yes	10
8.) Is the estimated Fair Market Value over \$1,000,000?	No / <input checked="" type="radio"/> Yes	45
Total Number of Points Awarded for "Yes" Responses:		70
Property Classification for purposes of Disposal review: <input checked="" type="radio"/> Simple <input type="radio"/> Complex (circle one) (a score of 45+ points results in "Complex" classification)		
Signature: Joan Rosenstock Department: FFD Date: 08/28/2001		

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