

Ordinance No. 121546

Council Bill No. 114937

AN ORDINANCE authorizing Seattle Public Utilities to enter into a Memorandum of Understanding with Lorig Associates, LLC regarding agreements to reconfigure their respective parcels on the Northgate South Lot and jointly plan and execute their respective projects.

CF No. _____

Date Introduced:	JUN 21 2004		
Date 1st Referred:	JUN 21 2004	COMMITTEE OF WHOLE To: (committee) Urban Development & Planning	
Date Re - Referred:		To: (committee)	
Date Re - Referred:		To: (committee)	
Date of Final Passage:	8-2-04	Full Council Vote: 7-0	
Date Presented to Mayor:	8-2-04	Date Approved: 8/11/04	
Date Returned to City Clerk:	8/12/04	Date Published: 3 pgs	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoes by Mayor:		Date Veto Published:	
Date Passed Over Veto:		Veto Sustained:	

The City of Seattle - Legislative Department
Council Bill/Ordinance sponsored by: Butt

Committee Action:

7-29-04 Pass As Amended P.S.
8-2-04 Passed 7-0
(Excused: Della, Steinb)

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

Law Dept. Review

OMP
Review

City Clerk
Review

me

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Peter Steinbrueck

Councilmember

Committee Action:

7-29-04 Pass As Amended PS, DD, JC, JG, RC
8-2-04 Passed 7-0
(Excused: Della, Steinbrueck)

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

Committee:

(initial/date)

For and with Clerk/Dpt
Formally
Full Council
attached to
the Bill is motion
to pass Bill
10/10/04
gdp
Exhibit A loaded

Law Dept. Review

OMP
Review

City Clerk
Review

Electronic
Copy Loaded

Indexed

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ORDINANCE 121546

1
2 AN ORDINANCE authorizing Seattle Public Utilities to enter into a Memorandum of
3 Understanding with Lorig Associates, LLC regarding agreements to reconfigure their
4 respective parcels on the Northgate South Lot and jointly plan and execute their
5 respective projects.

6 WHEREAS, the City and Simon Property Group, L.P. ("Simon") have entered into a Northgate
7 Mall Development Agreement ("Development Agreement") pursuant to RCW
8 36.70B.170 *et seq.* and Ordinance 121358, related, in general, to the development of the
9 Northgate Mall area, and specifically, to the development of certain real property known
10 as the Northgate South Lot; and

11 WHEREAS, The Northgate South Lot is currently owned by Simon and is defined by two land
12 parcels – Parcel A of approximately 5.9 acres on the West and Parcel B of approximately
13 2.7 acres on the East; and

14 WHEREAS, the City has an option to purchase Parcel B per Ordinance 121358 for the purposes
15 of future development of storm water drainage and open space improvements, and SPU
16 has requested authority to purchase Parcel B in CB 114939 to implement the Thornton
17 Creek Water Quality Channel Project which will provide water quality improvement,
18 open space and year-round flow; and

19 WHEREAS, Lorig Associates, LLC ("Lorig") and Stellar Lone Star, LLC (Lorig/Stellar) have
20 entered into a Purchase and Sale Agreement with Northgate Mall Partnership pursuant to
21 which Lorig/Stellar have the option to acquire Parcel A for commercial and residential
22 development; and

23 WHEREAS, Resolution 30642 requests that the City engage in planning with Lorig to coordinate
24 site design for the Northgate South Lot to enhance Thornton Creek, open space and
25 pedestrian connections; and

26 WHEREAS, the reconfiguration of Parcel A and Parcel B is necessary to develop the Hybrid
27 option which requires accessing flows from a public storm drain pipe under NE 100th
28 Street that conveys flows from a 670-acre drainage area; and

29 WHEREAS, the City and Lorig have coordinated their efforts to facilitate and incorporate
30 community involvement in analysis of alternatives for development, public space and
31 water quality issues; and

32 WHEREAS, the City of Seattle and Lorig/Stellar have agreed in the attached Memorandum of
33 Understanding to consider reconfiguration of property boundaries to further these City
34 goals, and to coordinate resolution of site issues associated with the combined South Lot
35 parcels per direction in Resolution 30642; NOW, THEREFORE,



1
2 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

3 Section 1. Seattle Public Utilities (SPU) is authorized to enter a Memorandum of
4 Understanding (MOU) with Lorig Associates consistent with the MOU attached hereto as
5 Attachment A regarding agreements to reconfigure their respective parcels and jointly plan and
6 execute their respective projects.

7 Section 2. SPU shall provide progress reports to the Chair of the Council's Utilities and
8 Technology Committee, and other Councilmembers as appropriate, in regard to site design, lot
9 reconfiguration, and project design, construction and other issues that affect the coordination of
10 the Lorig development project and the City's Thornton Creek Water Quality Channel Project.
11 SPU shall provide a written report detailing agreements between Lorig and SPU on the above
12 issues no less than two weeks in advance of Lorig submitting a Master Use Permit application
13 and/or Short Plat application to the City for processing. SPU shall also provide a written report
14 and a copy of a draft written agreement relating to satisfaction of conditions precedent to
15 recording of the Short Plat, as described in Section 4 of the attached Memorandum of
16 Understanding, no less than two weeks in advance of signing such an agreement.

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19 Section 2. Any act done consistent with and prior to the effective date of this ordinance is
20 hereby ratified and confirmed.

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Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 2nd day of August, 2004, and signed by me in open session in authentication of its passage this 2nd day of August, 2004.

Ken Briggs
President of the City Council

Approved by me this 11th day of August, 2004.

Gregory J. Nickels
Gregory J. Nickels, Mayor

Filed by me this 12th day of Aug., 2004.

Judith E. Lippin
City Clerk

(Seal)

ATTACHMENTS

Attachment A: Memorandum of Understanding between City of Seattle and Lorig Associates, LLC

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this _____ day of _____, 2004, by and between The City of Seattle (the "City"), and Lorig Associates, LLC ("Lorig").

Recitals

- A. This Agreement involves property known as the Northgate South Lot. The Northgate South Lot is subject to requirements set forth in the Northgate Mall Development Agreement ("Development Agreement") (attached hereto as Exhibit A and entered into pursuant to the authority of RCW 36.70B.170 *et seq.* and Seattle Ordinance 121358) between the City and Simon Property Group, L.P. ("Simon"). The Development Agreement addresses two particular parcels of the Northgate South Lot, Parcels A and B. Legal descriptions for Parcel A and B are attached as Exhibit B.
- B. Lorig is a developer who desires to develop a portion of the Northgate South Lot ("Parcel A") which is approximately 5.9 acres in size. Lorig and Stellar Lone Star, LLC ("Stellar") have entered into a Purchase and Sale Agreement (the "Purchase Agreement") with Northgate Mall Partnership pursuant to which Lorig and Stellar have the option to acquire Parcel A provided certain conditions are satisfied including, without limitation, the issuance by the City of Seattle in its regulatory capacity of a Master Use Permit for a mixed use development with conditions and configurations satisfactory to Lorig ("MUP"). The Development Agreement limits the types of development and uses that may occur on Parcels A and B. The Development Agreement requires that any development on Parcel A include a minimum of 150 dwelling units and that any nonresidential uses be supportive of transit oriented development. (See Section 6.3 of Development Agreement). Lorig's development is proposed to be a mixture of commercial, office and residential uses that complies with the requirements of the Development Agreement.
- C. In a December 5, 2003 letter from Bruce Lorig to the Seattle City Council, Lorig committed to constructing a minimum of 300 housing units available to a range of income levels in its development of the Northgate South Lot. Lorig also agreed to consider cost-effective solutions for sustainable design and construction techniques and to seek input and advice from the Northgate Stakeholders Group. These commitments are in addition to the Northgate Mall Development Agreement requirements that apply to Parcels A and B.
- D. Pursuant to a separate agreement between Lorig and Stellar, Lorig will serve as the development manager for their project and Stellar shall serve as its financial partner. Lorig executes this Agreement in its capacity as development manager for the project.
- E. Pursuant to the Development Agreement, the City has an option to purchase a portion of the Northgate South Lot immediately to the east of Parcel A ("Parcel B"). Parcel B is approximately 2.7 acres in size.

ATTACHMENT A



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- F. If the City exercises its option to purchase Parcel B, the Development Agreement requires the City to use Parcel B (or an equivalent amount of square footage within the Northgate Overlay District (SMC 23.71.004)) as open space and/ stormwater improvements, which may be natural systems drainage projects or other stormwater improvements to benefit Thornton Creek. (See Section 7.1 of the Development Agreement).
- G. The City has decided to exercise its option to purchase Parcel B. The City intends to develop a stormwater drainage improvement (the "Hybrid Option") that meets the requirements of the Development Agreement and has the support of Lorig and the Northgate Stakeholders Group.
- H. Lorig is in the preliminary stages of site planning and design for the mixed use development to be described in the MUP application. Provided Lorig elects to proceed with its acquisition of Parcel A and all other conditions and obligations of this Agreement are satisfied, the City and Lorig are willing to agree to a short plat of Parcel A and Parcel B and to transfer ownership of the portion of Parcel A necessary to construct the Hybrid Option to the City in exchange for an equivalent amount of Parcel B being transferred to Lorig. Except as otherwise reconfigured in the development approval process, after the short plat, the reconfigured parcels will be substantially as set forth in Exhibit C, with Lorig owning Parcels 1 and 3, and the City owning Parcel 2.
- I. Lorig has agreed to assume responsibility for the operation and maintenance of a portion of the landscape planned for a portion of the reconfigured land (Parcel 2) located adjacent to the boundary between Parcel 2 and Parcels 1 and 3. The details of such responsibility including area of responsibility and type of maintenance, frequency and methods will be subject to a future contractual agreement of the parties as contemplated in Section 4(a)(ix) below.

Agreement

1. Short Plat Application. The parties agree to apply for approval of the short plat generally described on Exhibit C (the "Short Plat"). The parties understand and agree that variations to the Short Plat including without limitation the parcel lot lines depicted in Exhibit C may be made to accommodate the designs for Lorig's development and the City's stormwater improvements as they are developed further, provided that in no event will the overall size of Parcel 2 be less than the size of Parcel B. The parties understand that this size restriction is necessary so that the City can meet its obligations under Section 7.1 of the Development Agreement.
2. Submission of Short Plat Application. The parties intend that the Short Plat application be processed contemporaneously with the City's Department of Planning and Development ("DPD") processing of the Master Use Permit application submitted by Lorig for Parcels 1 and 3 of the Short Plat. The parties intend that the

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Short Plat not be recorded or otherwise effective until the conditions precedent set forth in Section 4 are met. Notwithstanding the delayed effective date, the parties agree that, to facilitate Lorig's securing financing of its proposed development and to minimize delay, it is in the parties' best interests to apply for the Short Plat at an early stage.

3. Timing. The parties agree to request DPD to process the parties' Short Plat application, but not to record the approved Short Plat until mutually requested in writing by the parties. If necessary, the parties agree to waive any requirements that DPD process the Short Plat application within statutory-required timeframes and to consider any other requirements that DPD imposes on the parties' request to not record the approved Short Plat. If DPD agrees to the parties' request, the parties shall apply for the Short Plat in conjunction with Lorig's application for MUP approval. In the event that DPD denies the parties' request, or DPD places conditions on the request that are unacceptable to either party, the parties agree to apply for the Short Plat at such later date as may be acceptable to Lorig and the City but in any event no later than is necessary to obtain approval of such Short Plat (with all appeal periods run and any appeals resolved satisfactorily) on or before the date that the parties reasonably agree that the conditions precedent set forth in Section 4 will be satisfied. In any event, the parties shall not deliver the final mylar to DPD until both agree that the Section 4 conditions have been satisfied.
4. Conditions precedent to the obligation to record approved Short Plat. Prior to recording the Short Plat, the City and Lorig shall have reached agreement on the matters described in this Section 4 and all other conditions listed in this Section 4 below shall have been satisfied. As used in this Section 4, the term "Parcels" shall mean Parcels 1, 2 and 3 of the Short Plat. Neither party shall be obligated to allow the final Short Plat to be recorded before each of the issues and conditions listed below are resolved or met to its satisfaction.
 - a. The parties have a written agreement (which may be in the form of a letter):
 - i. Upon the grade elevations at the boundary lines of the Parcels;
 - ii. Upon the set back requirements for the Parcels;
 - iii. Upon the location, purpose and number of easements for the Parcels;
 - iv. Upon a schedule for the timely development of the Parcels and the remedies if such development schedule is not satisfied;
 - v. Upon the provision, location and number of pedestrian connections between the Parcels;
 - vi. Upon the location of vehicle access to the Parcels;
 - vii. Upon those design issues which overlap the parties' developments on the Parcels;
 - viii. Upon any enhancements that Lorig is interested in pursuing on Parcel 2;
 - ix. Upon the respective responsibilities for landscaping operation and maintenance on Parcel 2 including any agreement by Lorig to

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- maintain and operate the landscaping on Parcel 2 which is located adjacent to the boundaries between Parcel 2 and Parcels 1 and 3;
- x. Regarding the coordination of construction activities on Parcels 1, 2 and 3 of the Short Plat. Such agreement shall include construction sequencing and staging and the granting of such temporary construction easements over such parcels as may be needed for development of the respective parcels.
- b. The City shall have obtained title to Parcel B;
- c. The City shall have approved and appropriated the necessary funds to construct the Hybrid Option;
- d. Lorig shall have obtained a valid MUP that is no longer subject to any appeals (or any appeals that have been filed have been resolved to the satisfaction of parties);
- e. Lorig shall have provided a copy of a Level One environmental review of Parcel A to the City, and the City shall have determined that nothing in such review will cause construction of the Hybrid Option to exceed the funds appropriated for the project or otherwise make the project infeasible;
- f. The City shall have provided a copy of a Level One environmental review of Parcel B to Lorig, and Lorig shall have determined that nothing in such review will cause construction of its proposed development to exceed the funds budgeted for its development or otherwise make its development infeasible; and
- g. Lorig (or a Permitted Assignee as that term is defined in the Purchase Agreement) shall have obtained title to Parcel A.
5. Notwithstanding any other provision of this Agreement to the contrary, either party shall have the right to terminate this Agreement at any time if Lorig elects not to proceed with its acquisition of Parcel A or if either party reasonably believes that the Short Plat will not be recorded by December 31, 2006 or such later date as mutually agreed to by the parties; such termination shall be without liability of any kind to the other party.
6. Continuation of Development Agreement obligations. The parties agree to comply with the use restrictions of the Development Agreement on the reconfigured parcels created by the approved Short Plat subject to such amendments to such agreement as may be approved by Simon, Lorig and the City. Without limiting the generality of the foregoing, Lorig agrees to construct a minimum of 150 dwelling units on Parcel 1 and to restrict use of Parcel 3 to uses that support transit oriented development as defined in Section 6.3 of the Development Agreement. Similarly, the City agrees to construct stormwater and/or open space improvements on Parcel 2.
7. Public participation. The parties agree to keep the citizens of Northgate informed and involved in planning and design, permit review, and decisions as they progress in regard to the South Lot development. This shall be done through the Northgate Stakeholders process or other appropriate method if the Northgate Stakeholders Group disbands.

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8. No building restriction. The City agrees to not build any buildings other than drainage facilities on Parcel 2.

9. Assignment of Agreement. Neither Lorig nor the City shall have the right to assign their rights under this Agreement prior to the recording of the final Short Plat and the date the parties have reached agreement on the matters listed in Section 4 above.

10. Representations of the City. The City makes the following representations to Lorig:

- a. The City will construct the Hybrid Option in accordance with the public works laws of the state of Washington.
- b. The City is acting strictly in its proprietary capacity and not in any regulatory capacity.

11. Covenants of Lorig. Lorig covenants and agrees as follows:

- a. Lorig recognizes that in entering into this Agreement, the City is acting in its proprietary capacity and not in its regulatory capacity, and that the City is not making any representation as to how any City regulatory agency will respond to any aspect of this Agreement.
- b. Lorig will meet with the Seattle-King County Building and Construction Trades Council to explore approaches which further the goal of providing livable wage employment in association with the construction of its development.

12. Addresses for Notices. All notices under this Agreement shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to the City: Seattle Public Utilities
Seattle Municipal Tower, Suite 4900
700 Fifth Avenue
P.O. Box 34018
Seattle, WA 98124-4018

Attn: Chuck Clarke, Director

Telephone: (206) 684-5851
Fax: (206) 684-4631

If to Lorig:

Lorig Associates
420 Market Place Tower
2025 First Avenue
Seattle, WA 98121

Attn: Bruce Lorig

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Telephone (206) 728-7660
Fax (206) 728-5847

13. Amendments: No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.
14. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors, and assigns.
15. Applicable Law/Venue: This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
16. Captions: The titles of sections are for convenience only and do not define or limit the contents.
17. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.
18. Entire Agreement: This Memorandum of Understanding, along with any exhibits and attachments, constitutes the entire agreement between the parties concerning the matters expressly set forth herein. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, agency, employee or associate of Lorig prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.
19. Negotiated Agreement: The parties acknowledge that this agreement is the result of negotiations between the parties, 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, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having their representatives affix their signatures below.

THE CITY OF SEATTLE

LORIG ASSOCIATES, LLC

By _____

By _____

ATTACHMENT A

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Chuck Clarke, Director
Seattle Public Utilities

(Name, title)

Date: _____

Date _____

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Exhibit A

NORTHGATE MALL
DEVELOPMENT AGREEMENT

1. LEGAL AUTHORITY

This development agreement ("Agreement") is made pursuant to the authority of RCW 36.70B.170 et seq. and in order to be binding on the parties requires approval by the Seattle City Council.

2. PARTIES

The parties to this Agreement are Simon Property Group, L.P. ("Simon") and the City of Seattle ("City").

3. PURPOSE OF THE AGREEMENT

The Seattle Comprehensive Plan and the Northgate Area Comprehensive Plan designate the core area of the Northgate neighborhood as an Urban Center. Urban Centers are intended to accommodate the highest densities and growth rates for jobs and housing within the City of Seattle. The existing Northgate Mall is the core of the Urban Center.

Despite the Urban Center designation, the Northgate Urban Center has failed to realize the City's planning goals for that area. New development and redevelopment have been significantly less than required to meet Northgate Urban Center employment and housing targets. In particular, proposals to revitalize the area through expansion and redevelopment of the Northgate Mall have been thwarted or significantly delayed by appeals and litigation.

To help prevent continuing economic stagnation of the area, the City finds it must encourage and facilitate development and redevelopment within the Northgate core. One way to do this is to provide enhanced predictability to developers regarding the application of City development regulations. This interest coincides with authority granted to municipalities by the Washington Legislature to enter into development agreements.



Development agreements authorized by RCW 36.70B provide authority to the City to enter into voluntary contractual agreements between the private property owners and the City, grant vested rights to proposed development, and to otherwise regulate proposed development to achieve City objectives.

The purpose of this Agreement is to encourage the redevelopment of the Northgate Mall in order to serve as a catalyst for the rejuvenation of the Northgate neighborhood, thereby helping to achieve the goals of the Seattle Comprehensive Plan, and to establish agreements with Simon regarding specific projects.

4. RELATIONSHIP TO SIMON'S APPROVED GENERAL DEVELOPMENT PLAN

On December 2, 1999 the City approved a General Development Plan (GDPII) submitted by Simon. The City's approval was affirmed on appeal to the Washington State Court of Appeals on August 12, 2002. Pursuant to that approval and court decision, Simon has a vested right to develop under the terms of the approved GDP.

In the event that Simon elects to undertake any of the proposed development described in Section 6 of this Agreement, then the vested rights conferred by this Agreement shall supercede all vested rights obtained pursuant to approval of the GDP.

5. RELATIONSHIP TO DEVELOPMENT OTHERWISE PERMITTED

Exhibit 1 illustrates the parcels and development areas covered in this Agreement. Simon is the owner of property known as the Northgate Mall, which is located on the North Lot. The North Lot is comprised of the West Sector, the Southeast Sector and the Northeast Sector.

Simon is also the owner of the South Lot Parcels A and B. The South Lot Parcel A consists of approximately 5.9 acres, and the South Lot Parcel B consists of approximately 2.7 acres. The North Lot and South Lot are separated by Northeast 103rd Street.



This Agreement governs proposed development within the West, Northeast, and Southeast Sectors of the North Lot and Parcels A and B of the South Lot as shown in Exhibit 1: Development Agreement Site Plan. Within those areas, proposed development must comply with this Agreement.

6. PROPOSED DEVELOPMENT

The proposed development that is the subject of this Agreement is the development described in Subsections 6.1, 6.2, and 6.3 of this Agreement.

6.1 Northgate Mall Expansions and New Buildings

Amount (square footage): The total amount of new development allowed on the North Lot is 230,000 square feet which shall be allocated as follows: 155,250 square feet is allowed in the West Sector, 63,250 square feet is allowed in the Northeast Sector, and 11,500 square feet is allowed in the Southeast Sector. This amount does not include the square footage associated with the development in Subsections 6.2 and 6.3 nor does it include remodels/reconfigurations within existing building footprints, sidewalks, outdoor public open spaces, or other ancillary site amenities. In the event Simon elects to construct less than the allowable maximum square footage within one or more sectors, Simon shall have the right to allocate and use for development such unused square footage for other development subject to the limitations as follows:

Unused square footage from the West Sector may be transferred to the Northeast or Southeast Sectors. Unused square footage from the Northeast Sector may not be transferred. Unused square footage from the Southeast Sector may be transferred to the Northeast Sector.

Use: The proposed development is restricted to uses that are allowed by the provisions of the Northgate Overlay District, SMC 23.71.



6.2 Northgate Mall Parking Garage

A parking garage may be constructed on the North Lot; however, if it is built in the Northeast Sector, there shall be no parking or structured parking (at ground level or on an upper floor) that fronts on NE Northgate Way or 5th Avenue NE.

6.3 South Lot Parcel A

6.3.1 Permitted uses

The South Lot Parcel A may be developed for any use allowed in a Neighborhood Commercial 3 zone as prescribed by SMC 23.47.004, provided that:

1. Residential uses are included as prescribed in paragraph 4 of this Subsection.
2. The following uses are prohibited:
 - A. Drive-in business;
 - B. Dry storage of boats;
 - C. General manufacturing;
 - D. Heavy commercial services;
 - E. Sales and rental of large boats;
 - F. Vessel repair (major or minor);
 - G. Mini-warehouse or warehouse;
 - H. Principal use, nonresidential long term parking;
 - I. Outdoor Storage;



- J. Sale of heating fuel;
- K. Sale and rental of motorized vehicles, except within an enclosed structure;
- L. Sales, service, and rental of commercial equipment and construction materials;
- M. Salvage and recycling;
- N. Towing services;
- O. Vehicle repair (major or minor); and
- P. Wholesale showroom.

3. The proposed nonresidential uses must be of types and densities that are supportive of transit oriented development. Examples of such uses include but are not limited to: childcare centers, schools, cultural facilities, hotels, offices, theatres, grocery stores, structured parking, other neighborhood and/or commuter-serving retail or service uses.

4. If Parcel A is proposed to be developed in one phase, then the proposed development shall include no fewer than 150 dwelling units. Parcel A may be developed in two or three phases. If developed in two phases, then each phase must include a minimum of 75 dwelling units. If developed in three phases, then each phase must include no fewer than 50 dwelling units. The land owner must describe proposed phasing at the time of the first Master Use Permit application. More than 150 dwelling units may be developed on Parcel A, but are not required.

6.3.2 Coordinated planning

As shown on Exhibit 1, King County intends to develop approximately 8.5 acres of transit oriented development west of Parcel A. There are opportunities for Simon, King County and the City to cooperate and coordinate transportation planning and mitigation, pedestrian circulation, open space, and site planning and design for development on the



South Lot. Simon will work with the County and City to coordinate planning and site design regarding those issues.

6.4 Subsequent City permits

Approval of the development described in Subsections 6.1, 6.2, and 6.3 is subject to the compliance with all applicable City requirements including, but not limited to, Master Use Permits (MUP), SMC 23.76 and the Washington State Environmental Policy Act Requirements (SEPA), SMC 25.05. Therefore, compliance with these regulatory processes may result in the imposition of development requirements in addition to the requirements contained in this Agreement. As provided by RCW 36.70B.180, permits for the proposed development must be consistent with this Agreement.

7. SIMON'S DUTIES

Simon agrees as follows:

7.1 Conveyance of the South Lot Parcel B

Commencing upon the effective date of this Agreement, Simon hereby grants the City a one (1) year option to purchase Parcel B at a cost of \$375,000. The City intends to develop the land as public open space or for natural drainage/water quality improvements, or a combination of the two. If the City chooses not to exercise the option, it shall expire exactly one year from the effective date of this Agreement.

In order to exercise the option, the City shall notify Simon of its decision by certified mail. Within 30 days from receipt of the City's notice to exercise the option, Simon and the City will execute a purchase and sale agreement, substantially in the form of Exhibit 2, for conveyance of the South Lot Parcel B to the City. The purchase and sale agreement shall be submitted to Pacific Northwest Title Company of Washington, Inc. at the time of execution. Closing and title transfer will occur on the later of 30 days after full execution of the purchase and sale agreement or 15 days after recording of any plat or short plat that may be necessary.



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The City hereby commits to Simon that if it takes title to Parcel B that it will use Parcel B (or a comparable amount of square footage within the Northgate Overlay District in SMC 23.71.004) as open space, and/or for stormwater improvements, which may be natural systems drainage projects or other stormwater improvements to benefit Thornton Creek. If the City elects to sell or transfer a portion of Parcel B (or its comparable square footage) and does not choose to maintain Parcel B or its equivalent as stated above, the City agrees to pay Simon the greater of \$35 per square foot or the proceeds realized from the sale or transfer of any acreage not maintained in the required usage 30 days after the closing date of any such sale or transfer.

In addition, the City agrees to prohibit the following uses from being developed on Parcel B:

- A. Drive-in business;
- B. Dry storage of boats;
- C. General manufacturing;
- D. Heavy commercial services;
- E. Sales and rental of large boats;
- F. Vessel repair (major or minor);
- G. Mini-warehouse or warehouse;
- H. Principal use, nonresidential long term parking;
- I. Outdoor Storage;
- J. Sale of heating fuel;
- K. Sale and rental of motorized vehicles, except within an enclosed structure;
- L. Sales, service, and rental of commercial equipment and construction materials;



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- M. Salvage and recycling;
- N. Towing services;
- O. Vehicle repair (major or minor); and
- P. Wholesale showroom.

Furthermore, the City agrees that it will reconvey Parcel B to Simon within 120 days if, after five years from the effective date of this Agreement, no open space, natural drainage, stormwater improvements or other allowable development has occurred on Parcel B.

7.2 Fifth Avenue Entrance

Simon shall design and construct, on Simon's property, a visually attractive entry to the Mall from 5th Avenue that extends the pedestrian connections between the new library and community center and the Mall's 5th Avenue entrance.

Simon's Fifth Avenue Entrance will be designed and constructed substantially as shown in the drawing included as Exhibit 4, Fifth Avenue Entrance Conceptual Illustration, which the parties acknowledge, may be refined through joint planning with the City as described in Section 7.3, below. Design features of these improvements shall include a more defined entrance to Northgate Mall, landscaping improvements, street tree installation, well-lit, safe, raised edge pedestrian walkways demarcated from adjoining pavement that connect the street entry to the store entrances, pedestrian-scale lighting, and amenities, such as benches and artwork.

Simon will complete construction of the approved work by the date of the public opening of the library and/or community center, whichever occurs later. These facilities are projected to open in October 2005, but if completion is delayed, Simon remains obligated to complete construction by the dates of the public opening. Subject to approval by the Bon-Macy's or its successors or assigns the Simon's mall driveway entry shall be relocated approximately twenty-five feet (25') to the north of the present location and be directly aligned with the primary access to the library and community



center. The two entrances will be configured by the Seattle Department of Transportation to improve safety and operation of the intersection.

7.3 Joint Planning by Simon and the City to Coordinate Site Planning of Fifth Avenue Streetscape Improvements and Fifth Avenue Entrance

Simon and the City each agree to work jointly to coordinate site design work of the City's 5th Avenue Streetscape Improvements Project and Simon's 5th Avenue Entrance (Section 7.2) Completion of construction of these two projects is estimated to be October 2005. Simon's design consultants will also participate in the library and community center's planning and will provide comment regarding planning for the Fifth Avenue Streetscape Improvements Project. The City will ensure that timely opportunities for public comment are provided throughout.

In addition, as Simon proceeds with planning for development along 5th Avenue NE, Simon will seek input and advice from the Northgate stakeholders group.

7.4 Other Pedestrian Improvements

The MUP processes (which include zoning review, design review, and SEPA review) will address pedestrian circulation for the development proposed under this Agreement. The City intends to develop a pedestrian/open space conceptual plan and Simon will consider this plan in designing the pedestrian improvements related to the development contemplated under this Agreement.

7.5 Traffic Mitigation and Analysis

Subject to available resources, the City intends to prepare a Coordinated Transportation Investment Plan (CTIP), for the Northgate area to update prior traffic analyses and determine appropriate potential mitigation measures and methods to apportion potential mitigation to particular development projects. Once the CTIP is completed Simon may use that updated analysis in connection with any proposal for development, to the extent such analysis is otherwise applicable for compliance with City development regulations and SEPA. Under this Agreement, Simon's contribution to the development of the CTIP shall be to provide the City



with the traffic model and related transportation information and analysis, prepared by The Transpo Group for approval of Simon's GDP.

7.6 Sustainable Design

Simon will consider using environmentally sustainable design and green building techniques as it develops new buildings at the Mall. The City's Office of Sustainability and Environment will provide Simon and/or its architects with information and resources that may assist them.

7.7 Natural Drainage Systems Techniques

Simon will consider incorporating natural drainage techniques into its approach to required landscaping and stormwater management. The City will provide Simon information and resources that may assist them.

7.8 Participation in the Northgate Stakeholders Group

It is the City's intention to facilitate the formation of a community group to act as a steward of the Northgate Area Comprehensive Plan and to act as a sounding board for various issues impacting the future of the Northgate area. Business and residential property owner perspectives will be represented. Simon will participate in such group as an active member and will seek the group's input and advice on mall development over time.

8. VESTING OF DEVELOPMENT STANDARDS

The City agrees as follows:

The proposed development described in Section 6 of this Agreement shall vest to the development standards in effect on the effective date of the ordinance approving this Agreement. The proposed development shall not be vested against the application of development standards that are imposed by virtue of state or federal pre-emption of the City's regulatory authority. As provided by RCW 36.70B.170 (4), the proposed development shall not vest against new development regulations to the extent the new regulations are required by a serious threat to public health and safety.



9. DURATION OF VESTED RIGHTS

The vested rights established by this Agreement as applied to any particular project merge into the permit approval for that project and shall terminate as provided for such permit by the Land Use Code, SMC 23.76.032.

In the event that an application for MUP approval for a particular project of the proposed development is not submitted to the Department of Planning and Development (DPD) within ten (10) years of the date of this Agreement, then the vested rights established by this Agreement with respect to the particular project shall automatically terminate. However, if by the end of the tenth year, certificates of occupancy have been granted for 96,500 square feet or more of the proposed development described in Subsection 6.1 and two thirds of the required housing units as described in Subsection 6.3, the term of vested rights granted under this Agreement shall be extended an additional five years.

If Simon experiences significant delays in obtaining development permit approvals due to appeals or litigation, Simon may propose and the City Council will consider approval of amendments to this Agreement to extend the duration of vested rights.

10. RECORDING AND ASSIGNMENT

This Agreement shall be recorded with King County and is binding upon the parties and their successors, as provided by RCW 36.70B.190. Simon may sell or transfer all or a portion of the property subject to this Agreement, and the sale or transfer shall not affect the validity of this Agreement.

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11. DEFINITIONS

"Development standards" means the substantive requirements of the City of Seattle's Land Use Code, SMC 23, including any design review guidelines, Regulations for Environmentally Critical Areas, SMC 25.09, including the City's critical areas map folio, substantive policies of the City's SEPA ordinance, SMC 25.05, and the Landmark Preservation ordinance, SMC 25.12, and the Stormwater, Drainage and Erosion Control ordinance, SMC 22.802. It also includes the Seattle Comprehensive Plan and the Northgate Area Comprehensive Plan. Development standards does not mean or include procedural provisions of the aforementioned ordinances, but does include procedural provisions, if any, of the aforementioned plans.

12. CONDITION PRECEDENT

A condition precedent to Simon's duty to perform under the terms of this Agreement is the adoption of various Land Use Code amendments by the City. In the event that the City Council does not adopt or the Mayor vetoes the amendments to the Land Use Code contained in Exhibit 3 to this Agreement, and the veto is sustained, Simon will not be required to perform the duties prescribed in this Agreement.

If the Council adopts and the Mayor approves amendments that are different from those contained in Exhibit 3, then Simon may agree at Simon's sole discretion to the amendments in writing, in which case this Agreement shall have full force and effect, or Simon may terminate this Agreement.

13. MUTUAL OBLIGATIONS TO PERFORM

The parties agree that Simon's obligations to perform its duties as outlined in Section 7 are conditioned on the City's satisfaction of the Condition Precedent as outlined in Section 12.



14. NOTICES

Official Notices to the City of Seattle shall be sent by certified mail to: Jackie Kim, Senior Policy Advisor, 600 4th Avenue 6th Floor, PO Box 94745, Seattle, WA 98124-4745. Telephone: 206-684-0269. A copy of all Notices shall also be sent to the Seattle City Attorney, 600 4th Avenue, Suite 1000, Seattle, WA 98104.

Official Notices to Simon shall be sent by certified mail to: Simon Property Group, 115 West Washington Street, Indianapolis, IN 46204 (Attention: Arthur W. Spellmeyer, III, Executive Vice President, Development). A copy of all Notices shall also be sent to Simon's General Counsel at the same address.

15. AMENDMENTS TO DEVELOPMENT AGREEMENT

Unless otherwise specified elsewhere in this Agreement this Agreement may be amended by written agreement between Simon and the City. Approval of amendments by the City shall be by ordinance.

16. INTEGRATION

This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.

17. COUNTERPARTS

This Agreement may be executed in counterparts with each counterpart so executed deemed an original hereof.

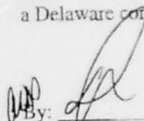


Dated:

GREG NICKELS
Mayor of Seattle

SIMON:

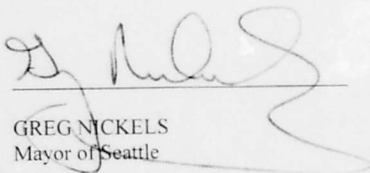
SIMON PROPERTY GROUP, L.P.,
a Delaware limited partnership
By: SIMON PROPERTY GROUP, INC.,
a Delaware corporation

By: 
Its: CEO
Date: 12-8-03

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
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Dated: 12-8-03



GREG NICKELS
Mayor of Seattle

SIMON:

SIMON PROPERTY GROUP, L.P.,
a Delaware limited partnership
By: SIMON PROPERTY GROUP, INC.,
a Delaware corporation

By: _____
Its: _____
Date: _____



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LIST OF EXHIBITS

- Exhibit 1: Development Agreement Site Plan
- Exhibit 2: South Lot Parcel B Purchase and Sale Agreement
- Exhibit 3: Land Use Code Amendments
- Exhibit 4: 5th Avenue Entrance Conceptual Illustration

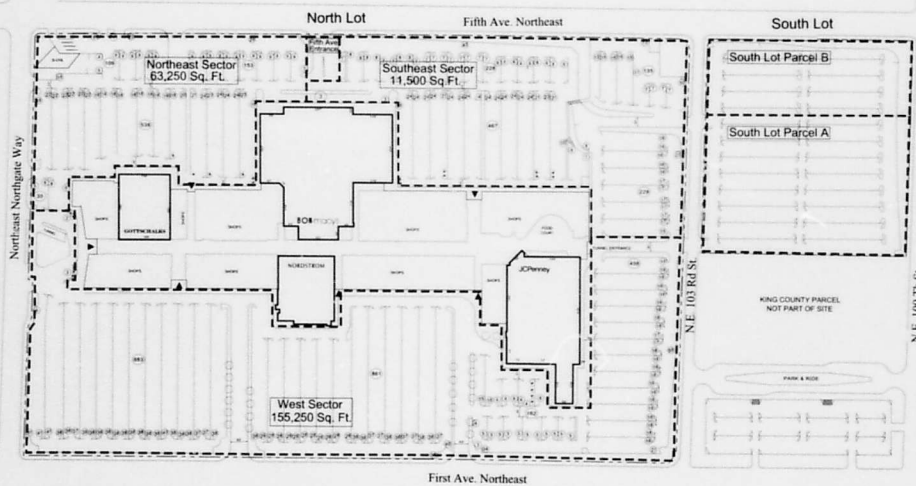
NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
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Exhibit 1: Development Agreement Site Plan

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EXISTING PROJECT DATA

ACREAGE	122.187
ADJACENT	171.251
ADJACENT'S	248.759
ADJACENT'S	41.259
ADJACENT'S	41.259
TOTAL DEPARTMENT	721.726
TOTAL DEPT.	248.759
TOTAL DEPT.	248.759
TOTAL EXISTING GLA	963.793

NOTE: PROJECT DATA IS PROVIDED FOR INFORMATION ONLY

SIMON
NATIONAL CITY CENTER
175 W. WASHINGTON STREET
INDIANAPOLIS, IN 46204
(317) 536-1500

NORTHGATE SHOPPING CENTER

SEATTLE, WASHINGTON

**EXHIBIT 1
DEVELOPMENT AGREEMENT
SITE PLAN (REVISED)**

DATE	10/1/2011	BY	10/1/2011
DATE	10/1/2011	BY	10/1/2011
DATE	10/1/2011	BY	10/1/2011
DATE	10/1/2011	BY	10/1/2011
DATE	10/1/2011	BY	10/1/2011
DATE	10/1/2011	BY	10/1/2011
DATE	10/1/2011	BY	10/1/2011
DATE	10/1/2011	BY	10/1/2011
DATE	10/1/2011	BY	10/1/2011
DATE	10/1/2011	BY	10/1/2011

DP25-1



Exhibit 2: South Lot Parcel B Purchase and Sale Agreement

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PURCHASE AND SALE AGREEMENT

between
Seller: Northgate Mall Partnership
and
Buyer: The City of Seattle

Buyer, **THE CITY OF SEATTLE**, a first class city of the State of Washington, and Seller, **NORTHGATE MALL PARTNERSHIP**, a Delaware general partnership, hereby enter into this Purchase and Sale Agreement ("Agreement") as of the Effective Date.

IN CONSIDERATION of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, Seller agrees to sell the Real Property to Buyer, and Buyer agrees to buy the Real Property from Seller, on the terms and conditions set forth in this Agreement. Accordingly, the parties agree as follows:

1. DEFINED TERMS

The terms listed below shall have the following meanings throughout this Agreement:

Seller: Northgate Mall Partnership

Seller's Address: c/o Simon Property Group
115 W. Washington Street
Indianapolis, Indiana 46204
Fax No. (317) 263-7038

Buyer: The City of Seattle, a first class City of the State of Washington

Buyer's Address: Attn: Ron Perkerewicz
Seattle Public Utilities
Key Tower, Suite 4900
700 Fifth Ave
Seattle, WA 98104-5004

If by carrier for delivery:
Suite 300 Central Building
810 3rd Ave. Seattle, WA

Phone: 206-615-0741
Fax: 206-615-1215

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Title Company: Pacific Northwest Title Company of Washington, Inc.
Attn: L. Diane Maxwell, Escrow Officer
215 Columbia St.
Seattle, WA 98104-1040
Phone: 206-343-1321
FAX: 206-343-4720

Real Property: That certain land described in Exhibit A, believed to contain approximately 2.7 acres, together with all rights and interests appurtenant thereto, including, without limitation, any water and mineral rights, development rights, air rights, easements and rights-of-way.

Closing: Is as defined in Section 5 of this Agreement.

Closing Date: Shall be the date the Closing takes place. Pursuant to the Northgate Mall Development Agreement, Section 8.1 Conveyance of the South Lot Parcel B, which document is incorporated herein by reference, closing and title transfer shall occur 30 days after the condition precedent in Section 13 has been satisfied, and after recording of any plat or short plat that may be necessary.

Day: A calendar day; provided, that if the last day for taking any action hereunder is a Saturday, Sunday or Washington State-designated holiday, the next succeeding day that is not a Saturday, Sunday or Washington State-designated holiday shall be the deadline for taking such action.

Effective Date: The date upon which this Agreement has been fully executed by Buyer and Seller, as evidenced by the last date appearing under their respective signatures.

Environmental Law: Any federal, state or local law, ordinance or regulation pertaining or relating to health, industrial hygiene, waste disposal, or the environment, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9601 *et seq.*; the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 and 99-563; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 *et seq.*; the Hazardous Materials Transportation Act, 49 App. U.S.C. § 1802; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 *et seq.*; the Occupational Safety and Health Act of 1970 ("OSHA"), as amended, 29 U.S.C. § 651 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.*; the Safe Drinking Water Act of 1974, 42 U.S.C. § 201 *et seq.*; the Hazardous Waste

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Management Act, RCW Ch. 70.105; the Model Toxics Control Act of the State of Washington ("MTCA"), RCW Ch. 70.105D; and any amendment to any such law or regulation adopted and publications promulgated pursuant to all such laws.

Hazardous Material: Any hazardous, or toxic substance, material or waste, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. §172.101) or by the United States Environmental Protection Agency as hazardous substances (40 C.F.R. pt. 302 and amendments thereto) or in the Washington Hazardous Waste Management Act (Ch. 70.105D RCW) or the Model Toxics Control Act (Chs. 70.105D RCW 82.21 RCW), petroleum products and their derivatives, and such other substances, materials and wastes as become regulated or subject to clean-up authority under any Environmental Law.

2. EXHIBITS

The following exhibits are attached to and form a part of this Agreement:

Exhibit A - Land Description
Exhibit B - Form of Limited Warranty Deed

3. CONDITION OF REAL PROPERTY

Buyer acknowledges that it has reviewed the Commitment for Title Insurance issued by the Title Company under No. 524404 (the "Title Report"). Title to the Real Property shall be conveyed to Buyer subject only to Special Exception No. 1, and nondelinquent installments of special assessments levied against the Real Property as shown in the Title Report (the "Permitted Encumbrances"). All Exceptions or Filings consisting of a financial encumbrance such as a mortgage, deed of trust, or other debt security, or any attachment, delinquent real estate tax, assessment for an improvement or mechanic's or materialmen's lien outstanding against the Real Property (a "Financial Encumbrance"), are hereby deemed a disapproved Exception or Filing. Seller hereby covenants to remove or cause to be satisfied any Financial Encumbrance on or before the Closing Date.

4. CONVEYANCE OF TITLE

Seller shall convey the Real Property to Buyer by a limited warranty deed, the form of which is attached hereto as Exhibit B (the "Deed") conveying to Buyer title to the Real Property in fee simple, subject only to the Permitted Encumbrances, and any other exceptions that Buyer approves in writing (collectively hereinafter referred to as the "Exceptions"). A condition precedent to Buyer's completing the purchase of the Real Property shall be the willingness of the Title Company to issue, upon payment of the Title Company's regularly scheduled premium, an ALTA owner's extended coverage title insurance policy in the amount of the Purchase Price, showing title to the Real Property vested in Buyer in fee simple, subject only to the Exceptions and the preprinted exceptions commonly contained in an owner's extended policy.

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5. CLOSING

A. Closing Requirements

On the Closing Date, all matters to be performed under this Agreement incident to the conveyance of the Real Property and the payment of the Purchase Price (collectively, the "Closing") shall be performed concurrently at the offices of the Title Company. All documents to be delivered at the Closing and all payments to be made shall be delivered in a timely manner, in escrow, so as to allow the recording of the Deed and other instruments as are required to be recorded to effect the transfer and conveyance of the Real Property and the delivery of all instruments and funds on or before the Closing Date. Each party shall deliver appropriate escrow instructions to the Title Company consistent with the provisions of this Agreement.

B. Buyer's Conditions to Closing

It is a condition to Buyer's obligation to proceed to Closing that, as of the Closing Date, (i) all of Seller's representations and warranties hereunder are true and correct; (ii) Seller has performed all of its covenants hereunder; (iii) the Real Property is delivered to Buyer at Closing free and clear of any occupants or rights to possession; (iv) the Title Company is prepared to issue the Title Policy to the Buyer; (v) Seller has delivered all other documents and other deliveries required by this Agreement; (vi) Buyer has obtained an environmental assessment of the Real Property and has notified the Seller in writing that Buyer is satisfied that the subject property does not contain any Hazardous Materials or environmental conditions that would adversely affect or damage Buyer's intended use and/or enjoyment of said property. Buyer agrees to undertake such environmental assessment and determine its satisfaction with the condition of the Real Property with all reasonable diligence; (vii) a plat or short plat creating the parcel of Real Property has been recorded with the King County Recorder's office, if necessary; (viii) this Agreement has been authorized by the Seattle City Council pursuant to ordinance, which has been signed by the Mayor; and (ix) all other conditions to Buyer's obligations to proceed to Closing that are set forth in this Agreement have been satisfied.

C. Seller's Conditions to Closing

It is a condition to Seller's obligation to proceed to Closing that, as of the Closing Date, (i) all of Buyer's representations and warranties hereunder are true and correct; (ii) Buyer has performed all of its covenants hereunder; (iii) Buyer has delivered all documents and other deliveries required by this Agreement, and (iv) all other conditions to Seller's obligations to proceed to Closing that are set forth in this Agreement have been satisfied.

6. DELIVERIES

A. Seller's Deliveries at Closing

On or by the Closing Date, Seller shall deliver to the Title Company the following documents and materials, all of which shall be in form and substance reasonably acceptable to Buyer:

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- (i) The duly executed and acknowledged Deed.
- (ii) Any instruments reasonably necessary to convey title in the condition required by this Agreement, each of which instrument shall be duly executed and, if necessary, acknowledged.
- (iii) A certificate duly executed by Seller acknowledging that as of the Closing Date, all representations and warranties by Seller set forth in this Agreement remain true and correct.
- (iv) A non-foreign certification, duly executed by Seller under penalty of perjury, certifying that Seller is not a "foreign person" as defined in or pursuant to Section 1445 (as may be amended) of the Internal Revenue Code of 1986, as amended ("Section 1445"). If Seller shall fail or be unable to deliver the same, then Buyer shall have the right to have such portion of the Purchase Price withheld by Title Company in escrow as may be necessary, in the reasonable opinion of the Title Company, to comply with Section 1445.
- (v) Such other documents as the Title Company may reasonably require to complete the Closing.

B. Buyer's Deliveries at Closing

- (i) On or by the Closing Date Buyer shall deliver to the Title Company any funds necessary to pay Buyer's share of closing costs and prorations, as hereinafter set forth with immediately available funds.
- (ii) A certificate duly executed by Buyer acknowledging that as of the Closing Date, all representations and warranties by Buyer set forth in this Agreement remain true and correct.
- (iii) Such other documents as the Title Company may reasonably require to complete the Closing.

7. CLOSING COSTS AND PRORATIONS

At the Closing, closing costs shall be paid and prorations made as follows:

A. Closing Costs

Buyer and Seller shall each pay their own attorneys' fees incurred in connection with negotiating and consummating the transactions contemplated herein. Buyer shall pay for and provide a survey, and shall pay all costs relating to any necessary platting of the Real Property. Buyer shall obtain and pay all premiums, costs and fees of any nature whatsoever for an owner's policy of title insurance. Buyer shall pay the escrow fees charged by the closing agent, all transfer or assumption fees, recording fees and the excise tax.

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B. Prorations

All prorations shall be made as of 12:01 a.m. on the Closing Date so that for purposes of prorations, Buyer shall be deemed in ownership of the Real Property throughout such day. Unless otherwise specified herein, all Taxes shall be prorated on an accrual basis. As used herein, "Taxes" include all real property taxes and similar charges of any kind. All delinquent Taxes (including penalties thereon) shall be paid at Closing out of Seller's funds. Any non-delinquent Taxes shall be prorated based on the current tax bill and Buyer shall pay the fraction thereof that represents the number of days remaining in the applicable fiscal year (including the Closing Date) divided by the number of days in such fiscal year; if such tax bill has not yet been received by Seller, the proration shall be based on one hundred percent (100%) of the previous year's tax bill, and such adjustment shall be final. All assessments levied against the Real Property for improvements that are payable in installments shall be prorated as to the current installment, and Buyer shall acquire the Real Property subject to the lien of future installments as they become due. Seller shall pay any delinquent assessment together with any penalties and interest thereon on or before the Closing Date.

8. **SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller hereby makes the following representations and warranties to Buyer as of the Effective Date:

A. Due Authorization

Seller has full power to execute, deliver and carry out the terms and provisions of this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. The individual executing this Agreement on behalf of Seller has the authority to bind Seller to the terms and conditions of this Agreement.

B. Enforceability

This Agreement and all documents required hereby to be executed by Seller, when so executed, shall be legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting rights of creditors generally and, as to enforceability, the general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

9. **BUYER'S REPRESENTATIONS AND WARRANTIES**

Buyer hereby makes the following representations and warranties to Seller as of the Effective Date and as of the Closing Date:

A. Due Authorization

Buyer has full power to execute, deliver and carry out the terms and provisions of this Agreement and has taken all necessary action to authorize the execution, delivery and

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performance of this Agreement. The individual executing this Agreement on behalf of Buyer has the authority to bind Buyer to the terms and conditions of this Agreement.

B. Enforceability

This Agreement and all documents required hereby to be executed by Buyer, when so executed, shall be legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting the rights of creditors generally and, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

C. Environmental Matters

Buyer acknowledges that it is purchasing the Real Property based on its own investigation and inquiry and has not received and is not relying on any representation or warranty of Seller as to the physical condition of the Real Property and is agreeing to accept and purchase the Real Property in such condition "as is, with all faults." Notwithstanding the foregoing, it shall be a condition precedent to Buyer's obligation to purchase the Real Property that said property does not contain any Hazardous Materials that would adversely affect Buyer's use and enjoyment of the Real Property. This Section shall not be construed as releasing Seller from any liability it would otherwise have under any applicable environmental laws and Buyer does not assume such liability.

10. ACTIONS AFTER THE EFFECTIVE DATE

The parties covenant to do the following from the Effective Date through the Closing Date.

A. Title

Seller shall not make or permit any change to the Property or to the condition of title to the Real Property without Buyer's prior written consent, which consent shall not be unreasonably withheld.

B. Maintenance and Operation of Property

Seller shall maintain and operate the Property in substantially its current condition. Seller shall not make any material alterations to or upon the Real Property without Buyer's prior written consent, which consent shall not be unreasonably withheld.

C. Representations and Warranties

Each party shall use its best efforts to prevent any act or omission that would render any of its representations and warranties herein untrue or misleading on or prior to the Closing Date, and shall immediately notify the other party in writing if any such act or omission occurs.

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D. Removal of Personal Property

Seller shall retain ownership of and have the obligation to remove all readily moveable personal property, if any, from the Real Property by the Closing Date. Any personal property not removed by the Closing Date shall be deemed abandoned and Buyer may, at its option and at Seller's expense, dispose of all items that are required to be removed by Seller without liability to Seller. Seller shall ensure that any such removal does not create a hazard to members of the public exercising ordinary care for their own safety.

E. Insurance

Seller shall secure and maintain in full force and effect at no expense to Buyer and until Closing has occurred, fire and extended coverage, vandalism and malicious mischief, and special extended coverage insurance by one or more responsible insurance companies, providing coverage in amounts acceptable to Seller in its sole discretion.

11. DAMAGE TO PROPERTY/TAKINGS

If the Real Property or any substantial, material part thereof (i) is materially damaged by casualty, or (ii) is taken or is the subject of a notice of taking by eminent domain prior to the Closing Date, Seller shall promptly notify Buyer, whereupon Buyer may give Seller written notice that it elects to (a) terminate this Agreement, in which event the parties shall have no further obligations hereunder (except for Buyer's indemnification obligations); or (b) proceed to Closing, in which event Seller shall assign to Buyer all insurance proceeds attributable to the Real Property arising from the casualty together with a credit against the Purchase Price equal to the deductible amount and/or coinsurance amount under the applicable insurance policy, or pay over and assign to Buyer all awards recovered or recoverable on account of such taking, as the case may be. If Buyer elects to proceed under this Section 11, Seller shall not compromise, settle, or adjust any claims to such proceeds, or awards without Buyer's prior written consent, which consent shall not be unreasonably withheld.

12. SURVIVAL OF TERMS

All representations, warranties and indemnification commitments by the respective parties contained herein are intended to and shall remain true and correct as of the Closing, shall be deemed to be material, and shall not be merged into the Deed, and shall survive the delivery of the Deed and transfer of title.

13. SUCCESSORS AND ASSIGNS

The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Buyer may not assign Buyer's rights and obligations hereunder.

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14. DEFAULTS & REMEDIES

If Seller wrongfully fails to convey the Real Property to Buyer, Buyer shall have all remedies available to it at law or in equity, including, without limitation, the right to seek specific performance.

15. ATTORNEYS' FEES

If there is any dispute between the parties regarding their rights and obligations under this Agreement (whether or not litigation is involved), each party shall be responsible for its own attorneys' fees and court costs.

16. NOTICES

All notices required or permitted to be given pursuant to the terms hereof shall be in writing and shall be delivered either by hand delivery; by nationally recognized private overnight delivery service; by deposit in the United States mail, registered or certified mail, postage prepaid; or by electronic facsimile transfer, but if delivered by electronic facsimile transfer, a hard copy of such notice shall also be delivered on or before the next Day by hand delivery or by such overnight delivery service. All notices shall be addressed to Seller at Seller's Address (or in the case of an electronic facsimile transfer, to Seller's facsimile copier number), and to Buyer at Buyer's Address (or in the case of an electronic facsimile transfer, to Buyer's facsimile copier number). The addresses (and electronic facsimile transfer numbers) set forth in Section 1 may be changed by written notice to the other party as provided herein. Notices 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 overnight delivery service's receipt; and in the event of attempted delivery during normal business hours at the proper address by an agent of a party or by the overnight delivery service or the U.S. Postal Service but refused acceptance, shall be deemed to have been given upon attempted delivery, as evidenced by an 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.

17. CONSTRUCTION OF DOCUMENT

In construing this document, all headings and titles are for the convenience of the parties only and shall not be considered a part of this Agreement. Whenever required by the context, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had prepared it. All exhibits attached hereto are incorporated in this Agreement by reference thereto.

18. TIME

Time is of the essence of every provision herein contained.

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19. FORCE MAJEURE

If either party is unable to perform one or more of its obligations under this Agreement, except for an obligation to pay any funds due hereunder, or to enjoy any of its benefits because of natural disaster or actions or decrees of governmental bodies (hereinafter referred to as a "Force Majeure Event" or "Event"), the party who has been so affected immediately shall give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, the affected party shall be excused from such performance as is affected by the Force Majeure Event for the period of such Event. If the period of non-performance exceeds fifteen (15) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may terminate this Agreement by giving written notice. If such Event shall affect the Closing Date, the Closing Date shall automatically be extended for a period equal to the duration of such Event.

20. APPLICABLE LAW

The laws of the State of Washington shall govern this Agreement.

21. NO ORAL MODIFICATION OR WAIVER

This Agreement may not be changed or amended orally, but only by an agreement in writing. No waiver shall be effective hereunder unless given in writing, and waiver shall not be inferred from any conduct of either party.

22. BROKERAGE COMMISSION

Buyer and Seller warrant to each other that no broker or finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and the warranting party with respect to the other party or the Real Property. Seller and Buyer shall indemnify, defend and hold the other party harmless from and against any loss, cost or expense, including, but not limited to, attorneys fees and court costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Real Property and this Agreement resulting from the indemnifying party's actions.

23. ENVIRONMENTAL MATTERS

Seller and Buyer make no agreement herein with respect to, and retain all of their respective rights and responsibilities under all applicable statutes and other law with respect to, the allocation of liability arising from or relating to Hazardous Materials on, in, under, or migrating, or having migrated, onto or off of the Real Property. Either party hereto that seeks an allocation of any such liability against the other party shall make a reasonable attempt to join in any lawsuit any past or present tenant(s) of Buyer and Seller known to the party bringing the lawsuit to be a potentially responsible party under applicable law in addition to bringing a lawsuit against the other party.



24. COUNTERPARTS

This Agreement may be executed in counterparts with each counterpart so executed deemed an original hereof.

25. ENTIRE AGREEMENT

This Agreement contains all of the covenants, conditions and agreements between the parties and shall supersede all prior correspondence, agreements and understandings, both verbal and written, between the parties or their respective representatives. The parties intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence may be introduced in any proceeding involving this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has executed one or more copies of this Agreement by having its authorized representative affix his or her signature in the appropriate space below as of the date set forth under said signature.

SELLER:

NORTHGATE MALL PARTNERSHIP
By: SIMON PROPERTY GROUP, L.P.,
a Delaware limited partnership
By: SIMON PROPERTY GROUP, INC.,
a Delaware corporation, General Partner

Printed Name: _____

Date: _____

BUYER:

THE CITY OF SEATTLE

Printed Name: _____

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EXHIBIT A
LEGAL DESCRIPTION

That portion of the southeast quarter of the northeast quarter of the northwest quarter of Section 32, Township 26 North, Range 4 East, W.M., in King County, Washington described as follows:

Commencing at the intersection of the west line of said subdivision and the south line of the north 30.00 feet thereof, said south line being the south margin of northeast 103rd Street, thence south 88°15'44" east 446.63 feet along said south margin to the true point of beginning; thence south 01°44'16" west 461.07 feet; thence south 28°12'43" west 154.29 feet to the north line of the south 33.00 feet of said subdivision, said north line being the north margin of Northeast 100th Street; thence south 88°16'22" east 265.35 feet along said north margin to the west line of the east 30.00 feet of said subdivision, said west line being the west margin of 5th Avenue Northeast; thence north 00°40'03" east 278.09 feet along said west margin to an angle point therein; thence along said west margin the following three courses: thence north 89°19'57" west 4.50 feet; thence north 00°40'03" east 298.66 feet to the beginning of a curve concave southwesterly having a radius of 23.00 feet; thence northerly, northwesterly and westerly 35.70 feet along said curve through a central angle of 88°55'47" to a point of tangency on said south margin of Northeast 103rd Street; thence north 88°15'44" west 158.30 feet along said south margin to the true point of beginning.

The parcel described above contains 117,617 square feet (2.700 acres), more or less.

Situated in the City of Seattle, King County, Washington.

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EXHIBIT B
FORM OF LIMITED WARRANTY DEED

After Recording
Return Document to:
Attn: Ron Perkerewicz
Seattle Public Utilities
Key Tower, Suite 4900
700 Fifth Ave
Seattle, WA 98104-5004

This cover page is attached for recording purposes and is not a part of the instrument.

Document Title: **LIMITED WARRANTY DEED**

Reference number of related documents: **NOT APPLICABLE**

Grantor: **NORTHGATE MALL PARTNERSHIP**

Grantee: **THE CITY OF SEATTLE**

Legal Description:

1. Abbreviated form: NE NW 32-26-04, in King County, Washington
2. Complete legal description is on Exhibit A of document

Tax Parcel No. _____

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LIMITED WARRANTY DEED

NORTHGATE MALL PARTNERSHIP, a Delaware general partnership ("Grantor"), for and in consideration of Ten and 00/100 Dollars (\$10.00) to it paid by THE CITY OF SEATTLE, a municipal corporation ("Grantee"), the receipt of which is hereby acknowledged, does hereby grant and convey, with limited warranty covenants, to the Grantee, the premises described in Exhibit A attached hereto and made a part hereof ("Property").

Together with all of the privileges and appurtenances to the same belonging, to have and to hold the same to Grantee, its successors and assigns forever. Grantor, for itself and for its successors, hereby warrants with limited warranty covenants, with the Grantee, its successors and assigns forever, that it is lawfully seized of the Property in fee simple and that it will defend the same from and against the claims and demands of only Grantor and all persons claiming by, through, or under Grantor, but not against the claims of any others whomsoever, and that this conveyance of the Property is made subject to (a) all liens and encumbrances created or assumed by Grantee; (b) zoning ordinances; (c) legal highways; (d) covenants, restrictions, conditions and other matters currently of record; (e) real estate taxes and assessments not yet due and payable; and (f) all matters which may be disclosed by an accurate survey of the Property.

In Witness Whereof, Grantor has caused its name to be hereunto subscribed this ____ day of _____, 2003, by its duly authorized official.

Signed and acknowledged
in the presence of:

NORTHGATE MALL PARTNERSHIP
By: SIMON PROPERTY GROUP, L.P.,
a Delaware limited partnership
By: SIMON PROPERTY GROUP, INC.,
a Delaware corporation, General Partner

(Witness Signature)

By: _____
Printed Name: _____

(Print Name)

Its: _____

STATE OF INDIANA)
)ss.
COUNTY OF _____)

On this ____ day of _____, 200_, before me personally appeared _____, to me known to be the _____ of NORTHGATE MALL PARTNERSHIP, the Delaware general

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partnership that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said association, for the uses and purposes therein mentioned, and on oath stated that (s)he was authorized to execute said instrument on behalf of said association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature: _____
Name: (print) _____
NOTARY PUBLIC in and for the State
of _____, residing at _____
My appointment expires: _____

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EXHIBIT A
LEGAL DESCRIPTION

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The parcel described above contains 117,617 square feet (2.700 acres), more or less.

Situated in the City of Seattle, King County, Washington.

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Exhibit 3: Land Use Code Amendments

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ORDINANCE

AN ORDINANCE relating to land use and zoning, amending Sections 23.71.004, 23.71.008, 23.71.014, 23.71.020, 23.71.038, 23.71.044, 23.76.004 (Exhibit A), 23.76.006 and 23.76.026; and repealing Sections 23.71.024, 23.71.026, 23.71.028, and 23.71.029; all relating to the Northgate Overlay District.

WHEREAS, GDP elements are intended to help promote pedestrian circulation by establishing a functional and attractive pedestrian network, efficient vehicle circulation that minimizes disruption to pedestrian circulation, adequate amenities such as landscaping and open space to encourage use of the pedestrian network, development compatible with adjacent areas, and conditions that support increased use of transit or other alternatives to single-occupant vehicles; and

WHEREAS, existing regulatory requirements, including the development standards in the Northgate Overlay District and the Northgate Area Design Guidelines, can be combined with optional mechanisms such as development agreements or planned actions to replace and better accomplish the goals of the GDP requirements; **NOW THEREFORE,**

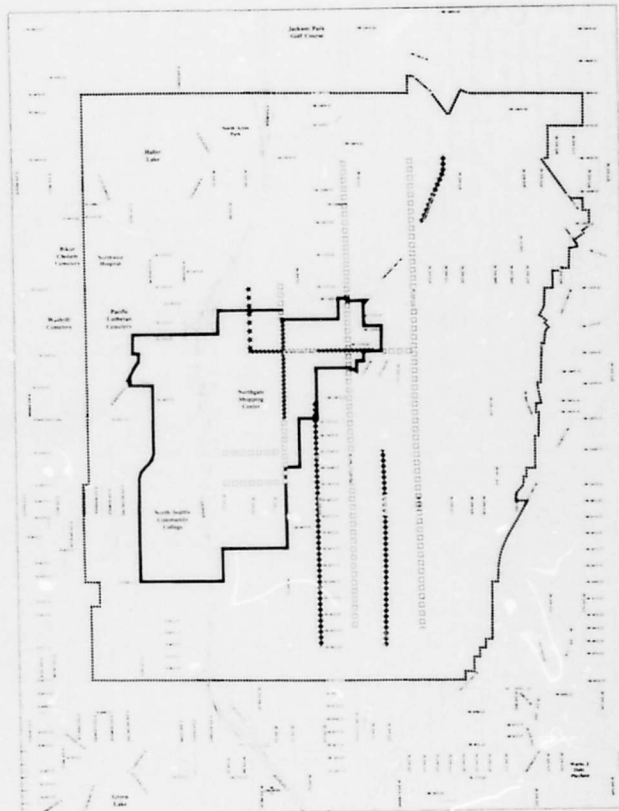
BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.71.004 of the Seattle Municipal Code, which was last amended by Ordinance 120117, is amended by replacing Map A with a new Map A adding Northeast 103rd Street (from 1st Avenue NE to 5th Avenue NE), 100th Street (from 1st Avenue NE to 5th Avenue NE) and 5th Avenue NE (from NE 105th Street to NE 100th Street) as Special Landscaped Arterials as follows:

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MAP A. NORTHGATE OVERLAY DISTRICT

- | | |
|---------------------------------|-----------------------------------|
| ----- Overlay District Boundary | Green Street Type III |
| ----- Northgate Core Area | ----- Special Landscaped Arterial |
| ----- Green Street Type II | ----- Major Pedestrian Street |

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Section 2. Section 23.71.008 of the Seattle Municipal Code, which was last amended by Ordinance 118114, is amended as follows:

SMC 23.71.008 Development along major pedestrian streets.

F. Street Facade Standards

1. Transparency Requirements.

((a)) Sixty (60) percent of the width of the facade of a structure along the major pedestrian street shall be transparent. Clear or lightly tinted glass, with comparable visibility into the structure as clear glass, in windows, doors and display windows, which must be a minimum of four (4) feet deep, shall be considered transparent. Transparent areas shall allow unobstructed views into the structure or into display windows, which must be a minimum of four (4) feet deep, from the outside.

~~((b: A facade shall be considered transparent if it has clear or slightly tinted glass in windows, doors or display windows.~~

~~e. Transparent areas shall allow views into the structure or into display windows from the outside.))~~

2. Blank Facades.

a. Any portion of a facade which is not transparent shall be considered to be a blank facade.

b. Blank facade segments shall not exceed thirty (30) feet along the major pedestrian street front.

c. Blank facade segments which are separated by transparent areas of at least two (2) feet in width shall be considered separate facade segments for the purposes of this section.

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3. Transparent and blank facade standards apply to the area of a facade between two (2) feet and eight (8) feet above the sidewalk.

Section 3. Section 23.71.014 of the Seattle Municipal Code (SMC), which Section was last amended by Ordinance 116795, is amended as follows:

23.71.014 Open Space

A. Quantity of Open Space.

1. In all Commercial zones with a permitted height limit of forty (40) feet or less, a minimum of ten (10) percent of lot area or, at the applicant's option, proposed gross floor area, shall be provided as landscaped or usable open space for all commercial and mixed use substantial development. A minimum of one-half (1/2) of the required open space shall be landscaped open space and a minimum of one-third (1/3) of the required open space shall be usable open space. The remainder shall be either landscaped or usable open space or may be provided in accordance with subsection A8 of this section.

2. In all Commercial zones with a permitted height limit greater than forty (40) feet, a minimum of fifteen (15) percent of lot area or, at the applicant's option, proposed gross floor area, shall be provided as landscaped or usable open space for all commercial and mixed use substantial development. A minimum of one-third (1/3) of the required open space shall be landscaped open space and a minimum of one-fifth (1/5) of the required open space shall be usable open space. The remainder shall be either landscaped or usable open space or may be provided in accordance with subsection A8 of this section.

3. Open space may be provided as interior or exterior open space according to the standards provided in subsections 23.71.014 B and C. Interior open space may be used to satisfy up to twenty (20) percent of the open space requirement.



1 4. Reductions to Required Open Space. Required open space may be reduced if any
2 of the following open space alternatives are provided:

3 a. Interior public meeting space or space accommodating a public library, either of
4 which shall be free to the public and credited at two (2) times their actual area;

5 b. An on-site town square, urban plaza, active park, or passive park which meets the
6 minimum size requirements prescribed in Table 23.71.014 A and which is consistent with
7 the standards for such features contained in subsection 23.71.014 C. Such space shall be
8 credited towards the open space requirement at 1.5 times the actual lot area occupied by
9 such space.

10 5. Above-ground open space in the form of a publicly accessible terrace may satisfy
11 up to thirty (30) percent of total required open space. Due to the more limited public access
12 to such areas, such above-ground open space shall be credited at seventy-five (75) percent of
13 actual area provided. Above-ground open space in combination with interior open space
14 shall not exceed fifty (50) percent of the total area required for open space.

15 6. In no case shall required landscaped open space be reduced to less than the
16 minimum percentages for landscaped open space required in (A)(1) and (A)(2) of this
17 section. ((five (5) percent of lot area.)) Required landscaping of surface parking areas,
18 which may include perimeter screening, may count towards the landscaped open space
19 requirement up to the minimum percentages required in (A)(1) and (A)(2) of this section.
20 ((to a maximum of five (5) percent of total lot area. Perimeter screening of a surface
21 parking area may count towards the landscaped open space requirement in excess of five (5)
22 percent.))

23 7. When an owner proposes substantial development on lots forty thousand (40,000)
24 square feet or less and adjacent to a major pedestrian street as designated in Section

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1 23.71.008, the Director may reduce the total amount of required open space if the owner
2 provides open space on the portion of the site abutting the major pedestrian street. The
3 reduction does not apply to open space consisting of landscaping required for surface
4 parking areas, screening, or to improvements provided within the street right-of-way.

5 8. Northgate Open Space Fund.

6 a. In lieu of providing the remainder of open space, as defined in subsections A1 and
7 A2 of this section, an owner may make a payment to the Northgate Area Open Space fund,
8 if such a fund is established by the City Council. ~~((The payment and use thereof shall be
9 consistent with RCW 82.02.020.))~~

10 b. An in-lieu of payment shall equal the assessed value of the land and
11 improvements which would otherwise have been provided as open space.

12 c. Funds received from properties within the Northgate Core sub-area as shown on
13 Map A, shall be applied to open space acquisition or improvements in the Northgate Core
14 sub-area. Funds received from properties outside of the Northgate Core sub-area shall be
15 applied to open space acquisition or improvements within one-half (1/2) mile of contributing
16 sites.

17 * * *

18 ~~((D. Reduction of Open Space Deficit. When substantial development is proposed
19 for a site, the open space deficit for the entire site must be eliminated, provided that for sites
20 subject to the General Development Plan provisions of Section 23.71.020, the deficit need
21 not be eliminated but shall be reduced by an amount equal to fifty percent (50%) of the
22 footprint of the substantial development together with fifty percent (50%) of the total
23 footprint of any new parking area provided to meet the demand of the substantial
24 development, together with fifty percent (50%) of any replacement parking provided.))~~

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Section 4. Section 23.71.020 of the Seattle Municipal Code, which was last amended by Ordinance 116795, is amended as follows:

SMC 23.71.020 ((General Development Plan requirement))Development Agreements.

((A. On sites of six (6) acres or more the owner shall submit and obtain approval of a General Development Plan when one (1) or more of the conditions identified in subsection C of this section is met.))

Development Agreements may be proposed for development within the Northgate Overlay District pursuant to RCW 36.70B. In determining whether to approve a Development Agreement, the City Council shall consider the extent to which the proposed development or redevelopment:

- a. Contributes toward meeting the Northgate Urban Center housing targets;
- b. Coordinates approaches to transportation planning and traffic analysis with surrounding properties and the City, with the goal of reducing use of single-occupant vehicles and reducing or minimizing pedestrian and vehicular conflicts and other potential negative traffic impacts on neighborhoods;
- c. Proposes improvements to the street level environment and circulation for pedestrians, including coordination with area-wide pedestrian circulation and open space plans such as the 5th Avenue Streetscape Design Plan;
- d. Includes natural drainage strategies such as those described in the Thornton Creek Five-Year Action Agenda and "Refining Our Choices" for Northgate; and
- e. Incorporates sustainable design and green building practices in the proposed development.

((B. For the purposes of this section a "site" is all contiguous parcels of property, including parcels separated only by rights-of-way, which are under common ownership, or

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1 under the ownership of several individuals or entities who have agreed to common
2 management of all or a portion of the parcels.

3 C. A General Development Plan shall be prepared when one (1) or more of the
4 following occurs:

5 1. Development of more than four thousand (4,000) square feet of commercial floor
6 area, or redevelopment of more than four thousand (4,000) square feet of commercial floor
7 area, if the redevelopment includes a change of use; and/or

8 2. Creation of parking facilities for over forty (40) vehicle spaces; and/or

9 3. Rezone applications; and/or

10 4. Conditional use applications; and/or

11 5. Requests for variance(s) from the requirements of this chapter.

12 D. The General Development Plan shall be reviewed by the Director as a Type II master
13 use permit decision, as provided in Chapter 23.76, Procedures For Master Use Permits and
14 Council Land Use Decisions.

15 E. A General Development Plan is not required for that portion of a site for which a
16 Major Institution Master Plan is required pursuant to Chapter 23.69.)

17 Section 5. Section 23.71.024 of the Seattle Municipal Code, which was last
18 amended by Ordinance 116795, is repealed.

19 Section 6. Section 23.71.026 of the Seattle Municipal Code, which was last
20 amended by Ordinance 116795, is repealed.

21 Section 7. Section 23.71.028 of the Seattle Municipal Code, which was last
22 amended by Ordinance 119239, is repealed.

23 Section 8. SMC 23.71.029 of the Seattle Municipal Code, which was last amended
24 by Ordinance 116795, is repealed.

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1 Section 9. SMC 23.71.038 of the Seattle Municipal Code, which was last amended
2 by Ordinance 118414, is amended as follows:

3 **23.71.038 Standards for mixed use development in commercial zones within the**
4 **Northgate Overlay District.**

5 Residential and nonresidential uses in a mixed use development in a commercial
6 zone shall meet the requirements of Section 23.47.008 to qualify as a mixed use
7 development. ~~((The minimum standards of Section 23.47.008 may vary on sites subject to~~
8 ~~the requirements for General Development Plans as provided in Section 23.71.026.))~~

9 Section 10. SMC 23.71.044 of the Seattle Municipal Code, which was last amended
10 by Ordinance 116795, is amended as follows:

11 **23.71.044 Standards for single-purpose residential development in Commercial zones**
12 **within the Northgate Overlay District.**

13 * * *

14 B. Single-purpose residential structures are prohibited in all commercial zones with
15 a height limit of eighty-five (85) feet or greater, ~~((except as provided in Section 23.71.026~~
16 ~~B for phased mixed use development under a General Development Plan.))~~

17 Section 11. Exhibit 23.76.004A of Section 23.76.004 of the Seattle Municipal Code,
18 which was last amended by Ordinance 119974, is amended as follows:

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EXHIBIT 23.76.004 A

LAND USE DECISION FRAMEWORK

DIRECTOR'S AND HEARING EXAMINER'S DECISIONS REQUIRING MASTER USE PERMITS		
TYPE I Director's Decision (No Administrative Appeal)	Type II Director's Decision (Appealable to Hearing Examiner*)	Type III Hearing Examiner's Decision (No Administrative Appeal)
<ul style="list-style-type: none">• Compliance with development standards• Uses permitted outright• Temporary uses, four weeks or less• Certain street uses• Lot boundary adjustments• Modifications of features bonused under Title 24• Determinations of significance (EIS required) except for determinations of significance based solely on historic and cultural preservation• Temporary uses, twelve months or less, for relocation of police and fire protection• Exemptions from right-of-way improvement requirements• Special accommodation• Reasonable accommodation• Minor amendment to a Major Phased Development Permit	<ul style="list-style-type: none">• Temporary uses, more than four weeks• Variances• Administrative conditional uses• Shoreline decisions (*appealable to Shorelines Hearings Board along with all related environmental appeals)• Short subdivisions• Special exceptions• Design review• ((Northgate General Development Plans))• Light rail transit facilities• The following environmental determinations:<ol style="list-style-type: none">1. Determination of nonsignificance (EIS not required)2. Determination of final EIS adequacy3. Determinations of significance based solely on historic and cultural preservation4. A decision by the Director to approve, condition or deny a project based on SEPA Policies5. A decision by the Director that a project is consistent with a Planned Action Ordinance and EIS (no threshold determination or EIS required)• Major Phased Development	<ul style="list-style-type: none">• Subdivisions (preliminary plats)

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COUNCIL LAND USE DECISIONS

TYPE IV (Quasi-Judicial)	TYPE V (Legislative)
<ul style="list-style-type: none">• Land use map amendments (rezones)• Public project approvals• Major Institution master plans• Council conditional uses• Downtown planned community developments	<ul style="list-style-type: none">• Land Use Code text amendments• Rezones to implement new City Policies• Concept approval for City facilities• Major Institution designations• Waive or modify development standards for City facilities• Planned Action Ordinance

Section 12. Section 23.76.006 of the Seattle Municipal Code (SMC), which was last amended by Ordinance 120611, is amended as follows:

SMC 23.76.006 Master Use Permits required.

C. The following are Type II decisions:

1. The following procedural environmental decisions for Master Use Permits and for building, demolition, grading and other construction permits are subject to appeal to the Hearing Examiner and are not subject to further appeal to the City Council (supplemental procedures for environmental review are established in SMC Chapter 25.05, Environmental Policies and Procedures):
 - a. Determination of Nonsignificance (DNSs), including mitigated DNSs;
 - b. Determination that a final environmental impact statement (EIS) is adequate; and
 - c. Determination of significance based solely on historic and cultural preservation.

2. The following decisions, including any integrated decisions to approve, condition or deny based on SEPA policies, are subject to appeal to the Hearing Examiner

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1 (except shoreline decisions and related environmental determinations which are appealable
2 to the Shorelines Hearings Board);

3 a. Establishment or change of use for temporary uses more than four
4 (4) weeks not otherwise permitted in the zone or not meeting development standards,
5 including the establishment of temporary uses and facilities to construct a light rail transit
6 system for so long as is necessary to construct the system as provided in Section
7 23.42.040E, and excepting temporary relocation of police and fire stations for twelve (12)
8 months or less;

9 b. Short subdivisions;

10 c. Variances; provided that, variances sought as part of a Type IV
11 decision may be granted by the Council pursuant to Section 23.76.036;

12 d. Special exceptions; provided that, special exceptions sought as part
13 of a Type IV decision may be granted by the Council pursuant to Section 23.76.036;

14 e. Design review;

15 f. Administrative conditional uses; provided that, administrative
16 conditional uses sought as part of a Type IV decision may be approved by the Council
17 pursuant to Section 23.76.036;

18 g. The following shoreline decisions (supplemental procedures for
19 shoreline decisions are established in Chapter 23.60):

20 (1) Shoreline substantial development permits,

21 (2) Shoreline variances,

22 (3) Shoreline conditional uses;

23 ((h. ~~Northgate General Development Plan;~~))

24 h.((i)) Major Phased Development;

25 i.((j)) Determination of project consistency with a planned action

26 ordinance and EIS; and

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BM/GB
Ord-Overlay v15clean
12/8/03
V #15

1 ~~1.~~((k-)) Establishment of light rail transit facilities necessary to
2 operate and maintain a light rail transit system, in accordance with the provisions of Section
3 23.80.004.
4 * * *

5 Section 13. The provisions of this ordinance are declared to be separate and
6 severable. The invalidity of any particular provisions shall not affect the validity of any
7 other provision.

8 Section 14. This ordinance shall take effect and be in force thirty (30) days from and
9 after its approval by the Mayor, but if not approved and returned by the Mayor within ten
10 (10) days after presentation, it shall take effect as provided by Municipal Code Section
11 1.04.020.

12 Passed by the City Council the ____ day of ____, 20__, and signed by
13 me in open session in authentication of its passage this ____ day of ____,
14 20__.

15
16 _____
17 President _____ of the City Council

18 Approved by me this ____ day of ____, 20__.

19 _____
20 Gregory J. Nickels, Mayor

21 Filed by me this ____ day of ____, 20__

22 _____
23 City Clerk

24
25
26
27
28
29
30 (SEAL)

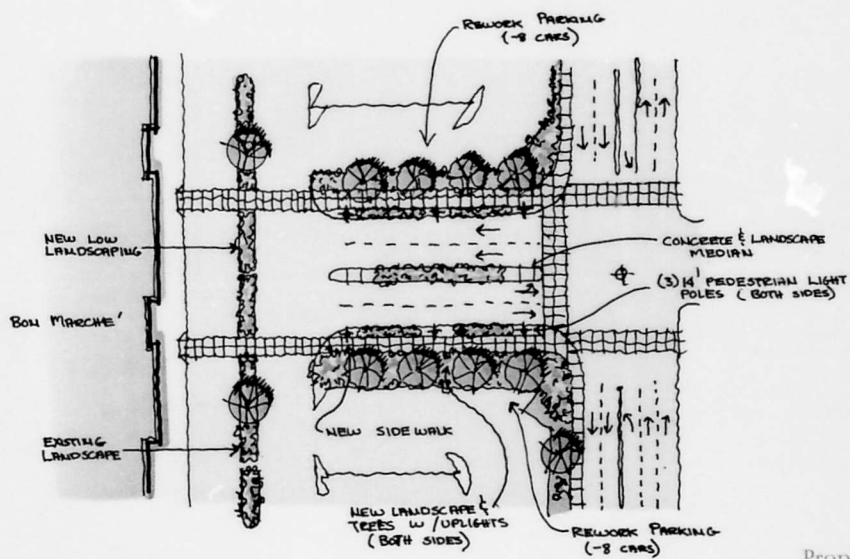
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Exhibit 4: 5th Avenue Entrance Conceptual Illustration

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Proposed Plan

NORTHGATE
MALL

Simon Property Group

March 12, 2003
Project #203039.00

5th Ave NE Vehicular Entry



PARCEL A LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SAID SUBDIVISION AND THE SOUTH LINE OF THE NORTH 30.00 FEET THEREOF, SAID SOUTH LINE BEING THE SOUTH MARGIN OF NORTHEAST 103RD STREET; THENCE SOUTH 88° 15' 44" EAST 446.63 FEET ALONG SAID SOUTH MARGIN; THENCE SOUTH 01° 44' 16" WEST 461.07 FEET; THENCE SOUTH 28° 12' 43" WEST 154.29 FEET TO THE NORTH LINE OF THE SOUTH 33.00 FEET OF SAID SUBDIVISION, SAID NORTH LINE BEING THE NORTH MARGIN OF NORTHEAST 100TH STREET; THENCE NORTH 88° 16' 22" WEST 366.35 FEET ALONG SAID NORTH MARGIN TO THE WEST LINE OF SAID SUBDIVISION; THENCE NORTH 00° 38' 18" EAST 599.36 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING;

SUBJECT TO SLOPE EASEMENT PER DEED, RECORDING NO. 4263049.

THE PARCEL DESCRIBED ABOVE CONTAINS 259,429 SQUARE FEET (5.956 ACRES), MORE OR LESS.

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

PARCEL B LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF SAID SUBDIVISION AND THE SOUTH LINE OF THE NORTH 30.00 FEET THEREOF, SAID SOUTH LINE BEING THE SOUTH MARGIN OF NORTHEAST 103RD STREET, THENCE SOUTH 88° 15' 44" EAST 446.63 FEET ALONG SAID SOUTH MARGIN TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 01° 44' 16" WEST 461.07 FEET;
THENCE SOUTH 28° 12' 43" WEST 154.29 FEET TO THE NORTH LINE OF THE SOUTH 33.00 FEET OF SAID SUBDIVISION, SAID NORTH LINE BEING THE NORTH MARGIN OF NORTHEAST 100TH STREET;
THENCE SOUTH 88° 16' 22" EAST 265.35 FEET ALONG SAID NORTH MARGIN

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TO THE WEST LINE OF THE EAST 30.00 FEET OF SAID SUBDIVISION, SAID
WEST LINE BEING THE WEST MARGIN OF 5TH AVENUE NORTHEAST;
THENCE NORTH 00°40'03" EAST 278.09 FEET ALONG SAID WEST MARGIN TO
AN ANGLE POINT THEREIN;
THENCE ALONG SAID WEST MARGIN THE FOLLOWING THREE COURSES:
THENCE NORTH 89°19'57" WEST 4.50 FEET;
THENCE NORTH 00°40'03" EAST 298.66 FEET TO THE BEGINNING OF A CURVE
CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 23.00 FEET;
THENCE NORTHERLY, NORTHWESTERLY AND WESTERLY 35.70 FEET
ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 88°55'47" TO A POINT
OF TANGENCY ON SAID SOUTH MARGIN OF NORTHEAST 103RD STREET;
THENCE NORTH 88°15'44" WEST 158.30 FEET ALONG SAID SOUTH MARGIN
TO THE TRUE POINT OF BEGINNING.

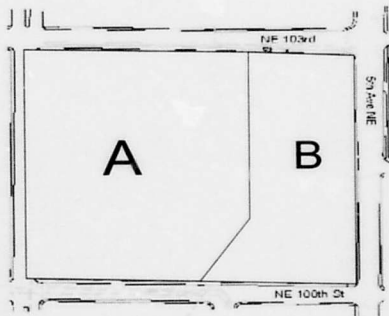
THE PARCEL DESCRIBED ABOVE CONTAINS 117,617 SQUARE FEET (2.700
ACRES), MORE OR LESS.

SITUATED IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON.

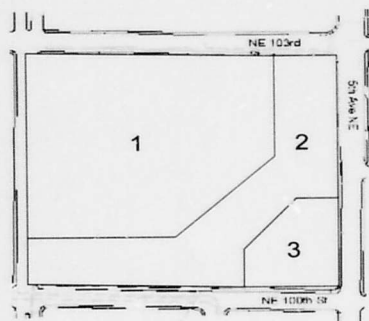
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Exhibit C



EXISTING
PARCEL



PROPOSED

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Author's Name: Ray Hoffman/nmm
Date (Hard-Coded): June 12, 2004
Name of Companion Legislation: SPU and Lorig MOA Ordinance
Version #: 2

Form revised March 16, 2004

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Public Utilities	Ray Hoffman/684-5852	Cameron Keyes/684-8048

Legislation Title: AN ORDINANCE authorizing Seattle Public Utilities to enter into a Memorandum of Understanding with Lorig Associates, LLC regarding agreements to reconfigure their respective parcels on the Northgate South Lot and jointly plan and execute their respective projects.

• **Summary of the Legislation:**

This fiscal note supports an ordinance that authorizes Seattle Public Utilities to enter into a Memorandum of Understanding with Lorig Associates, LLC, regarding agreements to reconfigure their respective parcels on the Northgate South Lot and jointly plan and execute their respective projects. The reconfiguration of the Northgate South Lot parcels is necessary to develop the Hybrid option for the Thornton Creek Water Quality Channel Project which requires accessing the flows in the public storm pipe at NE 100th Street and 3rd Avenue NE which drain a 670-acre sub-basin. Therefore, if the legislation (authorizing SPU and Lorig to enter into an MOU that calls for the reconfiguration of their respective properties through a Short Plat Process) is not implemented, then SPU cannot proceed with the Hybrid option recommended in the Thornton Creek Water Quality Channel Project. The agreement outlines design and maintenance issues to jointly resolve prior to allowing recording of the final short plat reconfiguration.

• **Background:** (Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):

This legislation responds to legislation City Council approved in December 2003 which included the Northgate Mall Development Agreement that provides the City a 12-month option to purchase 2.7 acres of the Northgate South Lot and City Council Resolution 30642 requesting that Seattle Public Utilities (SPU) evaluate and recommend one of three specified options for natural drainage and open space for the Northgate South Lot. The three options include: 1) daylighting storm flows in the conveyance pipe under the Northgate South Lot, 2) constructing a series of natural system swales to treat drainage from the adjacent neighborhood, and 3) constructing a hybrid (Hybrid), which involves diverting dry weather flows and flows from frequent small storm events from the conveyance pipe at NE 100th Street and 3rd Avenue NE to a surface channel for water quality treatment.

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Author's Name: Ray Hoffman/mm
Date (Hard-Coded): June 12, 2004
Name of Companion Legislation: SPU and Lorig MOA Ordinance
Version #: 2

Three related ordinances are proposed to implement this proposal. The first is an ordinance to exercise the City's option to purchase the 2.7 acres of land, pursuant to the Northgate Mall Development Agreement, and create the Thornton Creek Water Quality Channel Project. The second ordinance requests funding for the project. This third ordinance authorizes a memorandum of understanding between Lorig and the City regarding agreements to reconfigure their respective parcels and jointly plan and execute their respective projects.

- Please check one of the following:

☒ **This legislation does not have any financial implications.** (Stop here and delete the remainder of this document prior to saving and printing.)

☐ **This legislation has financial implications.** (Please complete all relevant sections that follow.)

Appropriations: This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2004 Appropriation	2005 Anticipated Appropriation
NA				
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

Notes: N/A

Anticipated Revenue/Reimbursement: Resulting From This Legislation: This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Fund Name and Number	Department	Revenue Source	2004 Revenue	2005 Revenue
TOTAL				

Notes: N/A

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE Impact: This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.

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Author's Name: Ray Hoffman/mm
Date (Hard-Coded): June 12, 2004
Name of Companion Legislation: SPU and Lorig MOA Ordinance
Version #: 2

Position Title and Department*	Fund Name	Fund Number	Part-Time/Full Time	2004 Positions	2004 FTE	2005 Positions**	2005 FTE**
NA							
TOTAL							

* List each position separately

** 2005 positions and FTE are total 2005 position changes resulting from this legislation, not incremental changes. Therefore, under 2005, please be sure to include any continuing positions from 2004

Notes: N/A

- **Do positions sunset in the future?** (If yes, identify sunset date):

Spending/Cash Flow: This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.

Fund Name and Number	Department	Budget Control Level*	2004 Expenditures	2005 Anticipated Expenditures
NA				
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Notes: N/A

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

If the legislation (authorizing SPU and Lorig to enter into an MOU that calls for the reconfiguration of their respective properties through a Short Plat Process) is not implemented, then SPU cannot proceed with the Hybrid option recommended in the Thornton Creek Water Quality Channel Project. The reconfiguration will provide Seattle Public Utilities with land at the Southwest corner at 3rd Avenue NE and NE 100th Street necessary to access the flows in the public storm pipe conveying flows from a 670-acre drainage area. If the City can not proceed with this project, and if no stormwater or open space improvements have occurred by December 2008, then the City must convey the land back to Simon, forfeiting the \$375,000 purchase price.



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Author's Name: Ray Hoffman/mm
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- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** (Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)

The Hybrid option can not be implemented without reconfiguring the Northgate South Lot parcels to provide the City access to the Southwest corner at NE 100th Street and 3rd Avenue NE. If this proposed project is not implemented, SPU's economic analysis indicates that to achieve similar water quality treatment benefits for this sub-basin through an alternative proposal would cost at least \$8.6 million.

- **Is the legislation subject to public hearing requirements:** (If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)

No, although five Northgate Stakeholder Group Meetings with public comment for the larger project were held on March 18, April 20, May 11, May 20, and June 3, 2004. In addition, a Northgate Stakeholder Group Public Forum with public comment was held on May 13, 2004. An outline of the terms of the MOU was presented at the June 3, 2004 Northgate Stakeholder Group Meeting and the Stakeholder Group is expected to submit advice to the Mayor and City Council directly regarding the MOU.

- **Other Issues** (including long-term implications of the legislation):

Please list attachments to the fiscal note below:

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City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

June 15, 2004

Honorable Jan Drago
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Drago:

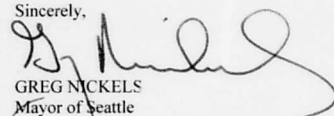
I am pleased to transmit the attached ordinance authorizing Seattle Public Utilities to enter into a Memorandum of Understanding with Lorig Associates, LLC, regarding agreements to reconfigure their respective parcels on the Northgate South Lot and jointly plan and execute their respective projects. The reconfiguration of the Northgate South Lot parcels is necessary to develop the Hybrid option for the Thornton Creek Water Quality Channel Project recommended in companion legislation and to increase the feasibility of private mixed-use housing development on the Northgate South Lot furthering the Northgate Comprehensive Plan goals.

This transmittal responds to legislation City Council approved in December 2003 which included the Northgate Mall Development Agreement that provides the City a 12-month option to purchase 2.7 acres of the Northgate South lot and City Council Resolution 30642 requesting that Seattle Public Utilities (SPU) evaluate and recommend one of three specified options for natural drainage and open space for the Northgate South Lot. The three options include: 1) daylighting storm flows in the conveyance pipe under the Northgate South Lot, 2) constructing a series of natural system swales to treat drainage from the adjacent neighborhood, and 3) constructing a hybrid (Hybrid), which involves diverting dry weather flows and flows from frequent storm events from the conveyance pipe at NE 100th Street and 3rd Avenue NE to a surface channel for water quality treatment.

Three related ordinances are proposed to implement this proposal. The first is an ordinance to exercise the City's option to purchase the 2.7 acres of land, pursuant to the Northgate Mall Development Agreement. The second ordinance requests authorization and funding for the Thornton Creek Water Quality Channel Project recommending the hybrid option mentioned above, and this third ordinance authorizes a memorandum of understanding between Lorig and the City regarding agreements to reconfigure their respective parcels and jointly plan their respective projects.

Thank you for your consideration of this legislation. Should you have questions, please contact Ray Hoffman at 684-5852.

Sincerely,


GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, E-mail: mayors.office@seattle.gov

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.

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ORDINANCE

AN ORDINANCE authorizing Seattle Public Utilities to enter into a Memorandum of Understanding with Lorig Associates, LLC regarding agreements to reconfigure their respective parcels on the Northgate South Lot and jointly plan and execute their respective projects.

WHEREAS, the City and Simon Property Group, L.P. ("Simon") have entered into a Northgate Mall Development Agreement ("Development Agreement") pursuant to RCW 36 70B.170 *et seq.* and Ordinance 121358, related, in general, to the development of the Northgate Mall area, and specifically, to the development of certain real property known as the Northgate South Lot; and

WHEREAS, The Northgate South Lot is currently owned by Simon and is defined by two land parcels – Parcel A of approximately 5.9 acres on the West and Parcel B of approximately 2.7 acres on the East; and

WHEREAS, the City has an option to purchase Parcel B per Ordinance 121358 for the purposes of future development of storm water drainage and open space improvements, and SPU has requested authority to purchase Parcel B in CB 114933 to implement the Thornton Creek Water Quality Channel Project which will provide water quality improvement, open space and year-round flow; and

WHEREAS, Lorig Associates, LLC ("Lorig") and Stellar Lone Star, LLC (Lorig/Stellar) have entered into a Purchase and Sale Agreement with Northgate Mall Partnership pursuant to which Lorig/Stellar have the option to acquire Parcel A for commercial and residential development; and

WHEREAS, Resolution 30642 requests that the City engage in planning with Lorig to coordinate site design for the Northgate South Lot to enhance Thornton Creek, open space and pedestrian connections; and

WHEREAS, the reconfiguration of Parcel A and Parcel B is necessary to develop the Hybrid option which requires accessing flows from a public storm drain pipe under NE 100th Street that conveys flows from a 670-acre drainage area; and

WHEREAS, the City and Lorig have coordinated their efforts to facilitate and incorporate community involvement in analysis of alternatives for development, public space and water quality issues; and

WHEREAS, the City of Seattle and Lorig/Stellar have agreed in the attached Memorandum of Understanding to consider reconfiguration of property boundaries to further these City goals, and to coordinate resolution of site issues associated with the combined South Lot parcels per direction in Resolution 30642; NOW, THEREFORE,

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BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Seattle Public Utilities is authorized to enter a Memorandum of Understanding (MOU) with Lorig Associates consistent with the MOU attached hereto as Attachment A regarding agreements to reconfigure their respective parcels and jointly plan and execute their respective projects.

Section 2. Any act done consistent with and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of ____, 2004, and signed by me in open session in authentication of its passage this ____ day of ____, 2004.

President ____ of the City Council

Approved by me this ____ day of ____, 2004.

Gregory J. Nickels, Mayor

Filed by me this ____ day of ____, 2004.

City Clerk

(Seal)

ATTACHMENTS

Attachment A: Memorandum of Understanding between City of Seattle and Lorig Associates, LLC

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MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this _____ day of _____, 2004, by and between The City of Seattle (the "City"), and Lorig Associates, LLC ("Lorig").

Recitals

- A. This Agreement involves property known as the Northgate South Lot. The Northgate South Lot is subject to requirements set forth in the Northgate Mall Development Agreement ("Development Agreement") (attached hereto as Exhibit A and entered into pursuant to the authority of RCW 36.70B.170 *et seq.* and Seattle Ordinance 121358) between the City and Simon Property Group, L.P. ("Simon"). The Development Agreement addresses two particular parcels of the Northgate South Lot, Parcels A and B. Legal descriptions for Parcel A and B are attached as Exhibit B.
- B. Lorig is a developer who desires to develop a portion of the Northgate South Lot ("Parcel A") which is approximately 5.9 acres in size. Lorig and Stellar Lone Star, LLC ("Stellar") have entered into a Purchase and Sale Agreement (the "Purchase Agreement") with Northgate Mall Partnership pursuant to which Lorig and Stellar have the option to acquire Parcel A provided certain conditions are satisfied including, without limitation, the issuance by the City of Seattle in its regulatory capacity of a Master Use Permit for a mixed use development with conditions and configurations satisfactory to Lorig ("MUP"). The Development Agreement limits the types of development and uses that may occur on Parcels A and B. The Development Agreement requires that any development on Parcel A include a minimum of 150 dwelling units and that any nonresidential uses be supportive of transit oriented development. (See Section 6.3 of Development Agreement). Lorig's development is proposed to be a mixture of commercial, office and residential uses that complies with the requirements of the Development Agreement.
- C. In a December 5, 2003 letter from Bruce Lorig to the Seattle City Council, Lorig committed to constructing a minimum of 300 housing units available to a range of income levels in its development of the Northgate South Lot. Lorig also agreed to consider cost-effective solutions for sustainable design and construction techniques and to seek input and advice from the Northgate Stakeholders Group. These commitments are in addition to the Northgate Mall Development Agreement requirements that apply to Parcels A and B.
- D. Pursuant to a separate agreement between Lorig and Stellar, Lorig will serve as the development manager for their project and Stellar shall serve as its financial partner. Lorig executes this Agreement in its capacity as development manager for the project.
- E. Pursuant to the Development Agreement, the City has an option to purchase a portion of the Northgate South Lot immediately to the east of Parcel A ("Parcel B"). Parcel B is approximately 2.7 acres in size.

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- F. If the City exercises its option to purchase Parcel B, the Development Agreement requires the City to use Parcel B (or an equivalent amount of square footage within the Northgate Overlay District (SMC 23.71.004)) as open space and/ stormwater improvements, which may be natural systems drainage projects or other stormwater improvements to benefit Thornton Creek. (See Section 7.1 of the Development Agreement).
- G. The City has decided to exercise its option to purchase Parcel B. The City intends to develop a stormwater drainage improvement (the "Hybrid Alternative") that meets the requirements of the Development Agreement and has the support of Lorig and the Northgate stakeholders.
- H. Lorig is in the preliminary stages of site planning and design for the mixed use development to be described in the MUP application. Provided Lorig elects to proceed with its acquisition of Parcel A and all other conditions and obligations of this Agreement are satisfied, the City and Lorig are willing to agree to a short plat of Parcel A and Parcel B and to transfer ownership of the portion of Parcel A necessary to construct the Hybrid Alternative to the City in exchange for an equivalent amount of Parcel B being transferred to Lorig. Except as otherwise reconfigured in the development approval process, after the short plat, the reconfigured parcels will be substantially as set forth in Exhibit C, with Lorig owning Parcels 1 and 3, and the City owning Parcel 2.
- I. Lorig has agreed to assume responsibility for the operation and maintenance of a portion of the landscape planned for a portion of the reconfigured land (Parcel 2) located adjacent to the boundary between Parcel 2 and Parcels 1 and 3. The details of such responsibility including area of responsibility and type of maintenance, frequency and methods will be subject to a future contractual agreement of the parties as contemplated in Section 4(a)(ix) below.

Agreement

- 1. Short Plat Application. The parties agree to apply for approval of the short plat generally described on Exhibit C (the "Short Plat"). The parties understand and agree that variations to the Short Plat including without limitation the parcel lot lines depicted in Exhibit C may be made to accommodate the designs for Lorig's development and the City's stormwater improvements as they are developed further, provided that in no event will the overall size of Parcel 2 be less than the size of Parcel B. The parties understand that this size restriction is necessary so that the City can meet its obligations under Section 7.1 of the Development Agreement.
- 2. Submission of Short Plat Application. The parties intend that the Short Plat application be processed contemporaneously with the City's Department of Planning and Development ("DPD") processing of the Master Use Permit application submitted by Lorig for Parcels 1 and 3 of the Short Plat. The parties intend that the



Short Plat not be recorded or otherwise effective until the conditions precedent set forth in Section 4 are met. Notwithstanding the delayed effective date, the parties agree that, to facilitate Lorig's securing financing of its proposed development and to minimize delay, it is in the parties' best interests to apply for the Short Plat at an early stage.

3. Timing. The parties agree to request DPD to process the parties' Short Plat application, but not to record the approved Short Plat until mutually requested in writing by the parties. If necessary, the parties agree to waive any requirements that DPD process the Short Plat application within statutory-required timeframes and to consider any other requirements that DPD imposes on the parties' request to not record the approved Short Plat. If DPD agrees to the parties' request, the parties shall apply for the Short Plat in conjunction with Lorig's application for MUP approval. In the event that DPD denies the parties' request, or DPD places conditions on the request that are unacceptable to either party, the parties agree to apply for the Short Plat at such later date as may be acceptable to Lorig and the City but in any event no later than is necessary to obtain approval of such Short Plat (with all appeal periods run and any appeals resolved satisfactorily) on or before the date that the parties reasonably agree that the conditions precedent set forth in Section 4 will be satisfied. In any event, the parties shall not deliver the final mylar to DPD until both agree that the Section 4 conditions have been satisfied.
4. Conditions precedent to the obligation to record approved Short Plat. Prior to recording the Short Plat, the City and Lorig shall have reached agreement on the matters described in this Section 4 and all other conditions listed in this Section 4 below shall have been satisfied. As used in this Section 4, the term "Parcels" shall mean Parcels 1, 2 and 3 of the Short Plat. Neither party shall be obligated to allow the final Short Plat to be recorded before each of the issues and conditions listed below are resolved or met to its satisfaction.
 - a. The parties have a written agreement (which may be in the form of a letter):
 - i. Upon the grade elevations at the boundary lines of the Parcels;
 - ii. Upon the set back requirements for the Parcels;
 - iii. Upon the location, purpose and number of easements for the Parcels;
 - iv. Upon a schedule for the timely development of the Parcels and the remedies if such development schedule is not satisfied;
 - v. Upon the provision, location and number of pedestrian connections between the Parcels;
 - vi. Upon the location of vehicle access to the Parcels;
 - vii. Upon those design issues which overlap the parties' developments on the Parcels;
 - viii. Upon any enhancements that Lorig is interested in pursuing on Parcel 2;
 - ix. Upon the respective responsibilities for landscaping operation and maintenance on Parcel 2 including any agreement by Lorig to

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- maintain and operate the landscaping on Parcel 2 which is located adjacent to the boundaries between Parcel 2 and Parcels 1 and 3;
- x. Regarding the coordination of construction activities on Parcels 1, 2 and 3 of the Short Plat. Such agreement shall include construction sequencing and staging and the granting of such temporary construction easements over such parcels as may be needed for development of the respective parcels.
- b. The City shall have obtained title to Parcel B;
- c. The City shall have approved and appropriated the necessary funds to construct the Hybrid Alternative;
- d. Lorig shall have obtained a valid MUP that is no longer subject to any appeals (or any appeals that have been filed have been resolved to the satisfaction of parties);
- e. Lorig shall have provided a copy of a Level One environmental review of Parcel A to the City, and the City shall have determined that nothing in such review will cause construction of the Hybrid Alternative to exceed the funds appropriated for the project or otherwise make the project infeasible;
- f. The City shall have provided a copy of a Level One environmental review of Parcel B to Lorig, and Lorig shall have determined that nothing in such review will cause construction of its proposed development to exceed the funds budgeted for its development or otherwise make its development infeasible; and
- g. Lorig (or a Permitted Assignee as that term is defined in the Purchase Agreement) shall have obtained title to Parcel A.
5. Notwithstanding any other provision of this Agreement to the contrary, either party shall have the right to terminate this Agreement at any time if Lorig elects not to proceed with its acquisition of Parcel A or if either party reasonably believes that the Short Plat will not be recorded by December 31, 2006 or such later date as mutually agreed to by the parties; such termination shall be without liability of any kind to the other party.
6. Continuation of Development Agreement obligations. The parties agree to comply with the use restrictions of the Development Agreement on the reconfigured parcels created by the approved Short Plat subject to such amendments to such agreement as may be approved by Simon, Lorig and the City. Without limiting the generality of the foregoing, Lorig agrees to construct a minimum of 150 dwelling units on Parcel 1 and to restrict use of Parcel 3 to uses that support transit oriented development as defined in Section 6.3 of the Development Agreement. Similarly, the City agrees to construct stormwater and/or open space improvements on Parcel 2.
7. No building restriction. The City agrees to not build any buildings other than drainage facilities on Parcel 2.
8. Assignment of Agreement. Neither Lorig nor the City shall have the right to assign their rights under this Agreement prior to the recording of the final Short Plat and the date the parties have reached agreement on the matters listed in Section 4 above.

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9. Representations of the City. The City makes the following representations to Lorig:

- a. The City will construct the Hybrid Alternative in accordance with the public works laws of the state of Washington.
- b. The City is acting strictly in its proprietary capacity and not in any regulatory capacity.

10. Covenants of Lorig. Lorig covenants and agrees as follows:

- a. Lorig recognizes that in entering into this Agreement, the City is acting in its proprietary capacity and not in its regulatory capacity, and that the City is not making any representation as to how any City regulatory agency will respond to any aspect of this Agreement.
- b. Lorig will meet with the Seattle-King County Building Trades Council to explore approaches which further the goal of providing livable wage employment in association with the construction of its development.

11. Addresses for Notices. All notices under this Agreement shall be delivered to the following addresses (or such other address(es) as either party may designate in writing):

If to the City: Seattle Public Utilities
Seattle Municipal Tower, Suite 4900
700 Fifth Avenue
P.O. Box 34018
Seattle, WA 98124-4018

Attn: Chuck Clarke, Director

Telephone: (206) 684-851
Fax: (206) 684-4631

If to Lorig:

Lorig Associates
420 Market Place Tower
2025 First Avenue
Seattle, WA 98121

Attn: Bruce Lorig

Telephone (206) 728-7660
Fax (206) 728-5847

12. Amendments. No modification of this Agreement shall be effective unless in writing and signed by an authorized representative of each of the parties hereto.

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13. Binding Agreement: This Agreement shall not be binding until signed by both parties. The provisions, covenants and conditions in this Agreement shall bind the parties, their legal heirs, representatives, successors, and assigns.
14. Applicable Law/Venue: This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.
15. Captions: The titles of sections are for convenience only and do not define or limit the contents.
16. Waiver: No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.
17. Entire Agreement: This Memorandum of Understanding, along with any exhibits and attachments, constitutes the entire agreement between the parties concerning the matters expressly set forth herein. No verbal agreement or conversation between any officer, agent, associate or employee of the City and any officer, agency, employee or associate of Lorig prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.
18. Negotiated Agreement: The parties acknowledge that this agreement is the result of negotiations between the parties, 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, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having their representatives affix their signatures below.

THE CITY OF SEATTLE

LORIG ASSOCIATES, LLC

By _____
Chuck Clarke, Director
Seattle Public Utilities

By _____
(Name, title)

Date: _____

Date _____



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From: Margaret Carter
To: Norm Schwab
Date: 6/17/04 10:16AM
Subject: Re: Revised Titles for 2 pieces of Northgate Legislation

Ok, thank you. I will change the titles and make new labels.

>>> Norm Schwab 06/16/04 06:26PM >>>

From: Norm Schwab
Sent: Wednesday, June 16, 2004 6:26 PM
To: Margaret Carter
Subject: Revised Titles for 2 pieces of Northgate Legislation
Priority: High

Margaret,

Here are the corrected titles for 2 pieces of Northgate Legislation for Monday's referral calendar. I walked up hard copies of the replacement legislation to your office and left them on your chair after hours today. I am attaching electronic versions of the new versions here. Would you kindly make up new labels for the jackets? Thanks.

(SPU Northgate PSA ORD_v3.doc)

AN ORDINANCE relating to the purchase of approximately 2.7 acres of property of the Northgate Mall South Lot; authorizing execution of a Purchase and Sale Agreement and acceptance of a Limited Warranty Deed for such property; placing such property under the jurisdiction of Seattle Public Utilities; adding a project for the development of a Thornton Creek Water Quality Channel Project to the 2004-2009 Adopted Capital Improvement Program (CIP) for the Drainage and Wastewater Fund; and increasing the 2004 appropriation to Seattle Public Utilities with respect to the property purchase.

(SPU Northgate CIP ORD_v3.doc)

AN ORDINANCE relating to the Thornton Creek Water Quality Channel Project of Seattle Public Utilities; increasing the 2004 allocation for that project in the 2004-2009 Capital Improvement Program for the Drainage and Wastewater Fund; and increasing the 2004 appropriation to Seattle Public Utilities with respect to that project.

The other piece of legislation on the memorandum of understanding with Lorig is O.K. as submitted.

Call me on Thursday morning if you have any questions or need more information (x4-9292). Thanks. -- Norm

Norm Schwab, Legislative Analyst
Seattle City Council
(206) 684-9292
600 Fourth Avenue, Fl. 2
PO Box 34025
Seattle, WA 98124-4025
norm.schwab@seattle.gov

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STATE OF WASHINGTON - KING COUNTY

--SS.

175909
CITY OF SEATTLE, CLERKS OFFICE

No. ORDINANCE TITLE ONLY

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

CT:121546-48,52-55

was published on

8/18/2004



8/18/2004

Notary public for the State of Washington,
residing in Seattle

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State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinance, passed by the City Council on August 2, 2004, 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 684-5344.

ORDINANCE NO. 121555

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 121554

AN ORDINANCE relating to the 2004 Adopted Budget, modifying a restriction that limits the Seattle Department of Transportation's spending on the Northgate Coordinated Transportation Investment Plan (CTIP).

ORDINANCE NO. 121543

AN ORDINANCE authorizing acceptance of grants and loans from federal, state and regional sources for drainage projects of Seattle Public Utilities, increasing the appropriation to Seattle Public Utilities with respect to one such project, and amending the 2004-2009 Adopted Capital Improvement Program (CIP) to reflect the addition of the South Henderson Street Raincatchers project.

ORDINANCE NO. 121552

AN ORDINANCE relating to an Elliott Bay Feasibility Phase Study, authorizing the Director of Seattle Transportation to enter into an agreement for cost-sharing with the United States Army Corps of Engineers ("Corps") to conduct an Elliott Bay, Seattle, Feasibility Phase Study Project, including the possible rehabilitation of the Alaskan Way Seawall.

ORDINANCE NO. 121545

AN ORDINANCE relating to the purchase of approximately 2.7 acres of property of the Northgate Mall South Lot; authorizing execution of a Purchase and Sale Agreement and acceptance of a Limited Warranty Deed for such property; placing such property under the jurisdiction of Seattle Public Utilities; adding a project for the development of a Thornton Creek Water Quality Channel Project to the 2004-2009 Adopted Capital Improvement Program (CIP) for the Drainage and Wastewater Fund; and increasing the 2004 appropriation to Seattle Public Utilities with respect to the property purchase.

ORDINANCE NO. 121547

AN ORDINANCE relating to the Thornton Creek Water Quality Channel Project of Seattle Public Utilities, increasing the 2004 allocation for that project in the 2004-2009 Capital Improvement Program for the Drainage and Wastewater Fund; and increasing the 2004 appropriation to Seattle Public Utilities with respect to that project.

ORDINANCE NO. 121549

AN ORDINANCE authorizing Seattle Public Utilities to enter into a Memorandum of Understanding with Lorig Associates, LLC regarding agreements to reconfigure their respective parcels on the Northgate South Lot and jointly plan and execute their respective projects.

Publication ordered by JUDITH PIPPIN,
City Clerk.
Date of publication in the Seattle Daily
Journal of Commerce, August 18, 2004.
8/18/175909

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