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17 **BEFORE THE CITY COUNCIL FOR THE CITY OF SEATTLE**
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20 In re Proposed Final Assessment Roll for
21 Local Improvement District No. 6751
22 (“Waterfront LID”)
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Hearing Examiner File No. CWF-0410

NOTICE OF AMENDED APPEAL OF
HEARING EXAMINER’S FINDINGS AND
RECOMMENDATION ON NINTH AND
LENORA LLC’S OBJECTION TO
WATERFRONT LID NO. 6751 PROPOSED
FINAL ASSESSMENT FOR PARCEL NO.
0660000540

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34 NINTH AND LENORA LLC (“Taxpayer”) files this amended appeal pursuant to
35 RCW 35.44.070, Seattle Municipal Code 20.04.090, City of Seattle Resolution 31915, City
36 of Seattle Resolution 31979, the notice of the Seattle Office of the City Clerk dated
37
38 December 30, 2019, the notice of the Seattle Office of the City Clerk dated February 1,
39
40 2021, the Hearing Examiner’s Findings and Recommendation issued September 8, 2020
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42 (“Examiner’s Recommendation”) and the Hearing Examiner’s Findings and
43
44 Recommendation issued February 1, 2021.
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1 **I. NINTH AND LENORA LLC / Appellant**

2 The taxpayer filing this amended appeal is:

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5 NINTH AND LENORA LLC

6 ATTN: Tax Manager

7 125 High St.

8 Boston, MA 02110

9 425-635-1400

10 jlutz@perkinscoie.com

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12 **II. NINTH AND LENORA LLC's Representatives**

13 NINTH AND LENORA LLC'S representatives in this matter are:

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26 **III. Statement of NINTH AND LENORA LLC's Interest and Incorporation of**
27 **Prior Arguments**

28 NINTH AND LENORA LLC owns the property that is subject to the proposed final
29 assessment described in Section IV.

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32 NINTH AND LENORA LLC is amending its appeal as authorized in City of Seattle
33 Resolution 31979 to include additional arguments relevant to the revised Final
34 Recommendations of the Hearing Examiner issued on February 1, 2021. On February 4,
35 2020, NINTH AND LENORA LLC timely filed an objection to the assessment, which was
36 based on the Final Study. NINTH AND LENORA LLC further timely filed an appeal of the
37 Hearing Examiner's 2020 recommendations to the City Council. NINTH AND LENORA
38 LLC maintains and incorporates all objections and arguments raised in its appeal filed with
39 the City Clerk on September 22, 2020. This amendment is a supplement is to be read

1 together with NINTH AND LENORA LLC's appeal filed on September 22, 2020. NINTH
2 AND LENORA LLC incorporates by reference all filings, evidence, and pleadings filed by
3 any party before the Hearing Examiner as authorized by the Hearing Examiner, including
4 without limitation all records pertaining to the November 2020 through February 2021
5 remand hearing ordered by Council.
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11 **IV. Amended Arguments on Appeal**

12 NINTH AND LENORA LLC supplements its appeal of the Hearing Examiner's
13 recommendation to deny NINTH AND LENORA LLC's objection to the City of Seattle's
14 Waterfront Local Improvement District No. 6751 proposed final assessment dated
15 December 30, 2019 against the following property:
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21 King County Parcel No. 0660000540
22 Site Address: 2118 Westlake Ave., Seattle, Washington
23 Proposed Final LID Assessment for Parcel: \$7,053
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25 To avoid repetition, NINTH AND LENORA LLC incorporates the evidence and
26 arguments raised before the Hearing Examiner and before the City in its September 22, 2020
27 appeal, into this amended appeal.
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31 **A. The Anticipated Special Benefits to NINTH AND LENORA LLC's**
32 **Property should be Discounted to Present Value and Assessments**
33 **Adjusted as Appropriate**
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35 On remand, the City's appraiser acknowledged that special benefits to parcels can be
36 reduced, even to zero, if those benefits accrue in the future. *See* Declaration of Robert
37 Macaulay at 20 (Dec. 4, 2020). For that reason, the City's appraiser recommended the
38 assessment on CWF-442 (the Act Theatre) be reduced to zero because a restriction prohibits
39 redevelopment of the theatre's condominium until 2035, and therefore, any special benefit to
40 the theatre parcel is too remoted to support a current assessment. *Id.* The Examiner
41 accepted that recommendation. The City's appraiser further acknowledged that benefit
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1 reductions due to delays in delivery of benefits, e.g., to 2030 or 2025, could be determined
2 by discounting to present value. *Id.*; Macaulay Dep. at 51:16-17, 52:9-13 (Dec. 22, 2020)
3 (benefits to theatre “would be a long enough time out to where it wouldn’t measurably affect
4 value.”). Nevertheless, the appraiser refused to more generally discount his benefit
5 calculations to present value because the general benefits are not anticipated from the LID
6 improvements until after they are completed in 2024, 5 years after his 2019 assessment, and
7 perhaps not until 2029. The appraiser’s and Examiner’s recommendation to reduce the
8 theatre’s assessment to zero is reasonable. His refusal to make other discounts to his special
9 benefit calculation, and related assessments, to account for the delay between the assessment
10 and realization of any special benefits to Taxpayer’s property is unreasonable, contrary to
11 standard appraisal practice, and renders the other proposed Waterfront LID special
12 assessments, and the Examiner’s Recommendations, arbitrary and capricious and based on
13 “fundamentally wrong methods.”

14 All special benefit taxes assessed by a municipality must be based on “actual,
15 physical and material [special benefits that are] not merely speculative or conjectural.”
16 *Heavens v. King Cty. Rural Library Dist.*, 66 Wn. 2d 558, 563, 404 P.2d 453 (1965).
17 Additionally, the assessments may not materially exceed the actual special benefit conferred
18 by the LID Improvements. *Id.* Further, LID assessments must be proportionate. *Id.* Failure
19 to meet any of these legal requirements is fatal to the assessment. Taxpayer’s September 22,
20 2020 appeal challenged the City appraiser’s valuation because, among other flaws, it did not
21 discount benefits the City estimated would accrue to the properties from improvements to be
22 delivered sometime between 2024 and 2029 to present, 2019 value. Now, add to that the
23 appraiser’s inconsistent approach, selectively applying discounting to one (that we know of)
24 property while treating all or most others (including Taxpayer’s) differently, and

1 withholding any discount. This inconsistent treatment is both arbitrary and capricious and
2 disproportionate, where the appraiser has arbitrarily decided that no assessment is warranted
3 for some properties because the benefits are too distant, while assessing other properties as
4 though distant benefits have already been secured. As Taxpayer identified in its September
5 22, 2020 appeal, the City appraiser's own materials show that benefits for a project like this
6 may not accrue for at least five years after they are completed, in 2029. *See* Gibbons Decl.
7 ISO Closing Stmt., Ex. C at 24, 30-31 (dated 7/7/2020). The City Council should either
8 reject the improper calculation of the benefit or remand and require the appraiser to discount
9 the benefits to net present value.
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19 **B. In Light of Covid's Continuing Impact on NINTH AND LENORA LLC**
20 **and other Downtown Property Owners and other Material Changes**
21 **Since October 2019, the LID Should be Cancelled, or at Least**
22 **Assessments Recalculated, to take Into Account Property Value**
23 **Reductions**
24

25 In Taxpayer's September 22, 2020 appeal, Taxpayer requested the Council "[t]ak[e]
26 into account the effects of the COVID-19 pandemic on the value of Taxpayer's property and
27 other relevant developments since October 2019." When Washington's first COVID
28 restrictions were imposed in March and April 2020, there was an assumption that they
29 would be short-lived. A year later, the Puget Sound area is finally again moving to "Phase
30 II." Many downtown hotels are closed, and our hotels are not anticipated to fully recover
31 for another 5 years. Retail stores are boarded up. Homelessness and related challenges have
32 gotten much worse. The City has already imposed higher minimum wages and taxes on
33 businesses to try to fund recovery. The West Seattle Bridge and other bridges are in
34 immediate need of repairs and maintenance. Pier 58, instead of the vibrant waterfront park
35 hypothesized in the City's appraisal to exist as of October 2019, collapsed, and is several
36 years from completion, as a best case. In current circumstances, a downtown tax to fund
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1 new, non-essential park improvements against financially strapped taxpayers, and likely
2 passed through to financially strapped tenants and customers would be unfair to taxpayers
3 and a misallocation of city resources. COVID threw everyone for a loop. But as the City
4 rethinks its budget priorities for the next few years, and its potentially funding sources,
5 Taxpayer respectfully requests that the City dissolve the assessment, at least until it (and
6 property owners) have a chance to recover, and that any assessment take into account the
7 changed circumstances since this appeal process started on February 4, 2020 to avoid
8 unnecessarily and perhaps permanently killing downtown properties and businesses in the
9 name of bettering them.
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19 **V. Relief Requested**

20 Particularly in light of the Committee's decision not to take further comment,
21 NINTH AND LENORA LLC respectfully request that each Committee member carefully
22 review the record transmitted to Council before voting on our appeal.
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24 NINTH AND LENORA LLC respectfully reiterates its request from the September
25 22, 2020 appeal that the City Council:
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- 27 1. Cancel the Waterfront Local Improvement District No. 6751 proposed final
28 assessment dated December 30, 2019; or
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- 30 2. Revise Taxpayer's Waterfront Local Improvement District No. 6751
31 proposed final assessment to \$0 (zero), or such amount as Taxpayer
32 establishes at the hearing in this matter; or
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- 34 3. Grant the Examiner's recommended remand but with instructions to
35 recalculate and reduce Taxpayer's assessment using recognized appraisal
36 techniques consistent with USPAP and
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- 1 a. Excluding any property value increase attributable to viaduct removal
2 and other planned WSDOT Improvements;
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5 b. Taking into account the effects of the COVID-19 pandemic on the
6 value of Taxpayer's property and other relevant developments since
7 October 2019;
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10 c. Accounting for and excluding (1) any special benefits from existing
11 or planned improvements that already provide similar benefits to
12 Taxpayer's property, and (2) any special detriments from construction
13 and other anticipated LID-related disamenities;
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16 d. Accounting for and including only those actual benefits anticipated to
17 accrue to Taxpayer's property based on its location relative to Pier 58,
18 Overlook Walk, and the Promenade, and specific elements of the LID
19 Improvements;
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22 e. Discounting anticipated special benefits to present value, based on
23 reliable estimates regarding when special benefits will start accruing
24 following completion of the LID Improvements; and
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27 f. Accounting for such other issues specific to Taxpayer's property
28 relevant to calculation of such assessment; and
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37 4. Grant such further relief as the City Council deems just and proper.
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2 DATED: February 16, 2021
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22 Attorneys for NINTH AND LENORA LLC
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