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William Craven
FAS East Precinct Parking 12th Ave Arts ORD
August 16, 2012
Version #5

CITY OF SEATTLE
ORDINANCE _____
COUNCIL BILL 117559

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AN ORDINANCE relating to certain City-owned property located at 1620 12th Avenue East, commonly known as the East Precinct Parking Facility; authorizing the Director of Finance and Administrative Services to execute and record certain documents, including a Condominium Declaration, Survey Map and Plans, a Purchase and Sale Agreement, a Quit Claim Deed, a Ground Lease, a Sublease, and other agreements and documents in consideration of the development by Capitol Hill Housing Improvement Program of a six-story mixed-use facility with underground parking for the Seattle Police Department, commercial, retail and arts space, as well as affordable housing; and increasing appropriations in the 2012 Adopted Budget for certain activities of the Finance and Administrative Services Budget; all by a three-fourths vote of the City Council.

WHEREAS, in 1985 and 1988 the City acquired the real property commonly known as the "East Precinct Parking Facility" located at 1620 12th Avenue East (Property); and

WHEREAS, the Property, as it exists currently, provides 77 parking stalls and other ancillary uses to the Seattle Police Department's East Precinct; and

WHEREAS, in 2011 Capitol Hill Housing Improvement Program ("CHHIP") proposed that it construct a project on the Property that would provide an approximately 111-stall underground police parking facility for the City, together with two levels of retail/commercial/office space, and four levels of housing containing 88 units of affordable apartments; and

WHEREAS, after completing a feasibility analysis and other due diligence, CHHIP has decided to proceed with the project, and the City is willing to create a condominium on the Property and to lease and convey the units to CHHIP in consideration of CHHIP's agreement to construct the project as described in the transaction documents hereby authorized; and

WHEREAS, during the design process it became clear that the City's requirements for security, additional parking, and data infrastructure exceeded that which was stated in the original Letter of Intent, thereby increasing the project's scope and requiring additional appropriation authority; NOW THEREFORE,



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

2 Section 1. The Director of Finance and Administrative Services or his or her Designee
3 (“Director”) is authorized to execute and record a “Condominium Declaration” and “Survey Map
4 and Plans” substantially in the form of Attachments 1 and 2, respectively, and to execute,
5 deliver, administer, perform, enforce, record and file, as appropriate, all agreements and
6 documents necessary for creation of a mixed-used condominium for the property legally
7 described as follows (the “Property”):

8 LOTS 2, 3, 4 AND 5, BLOCK 22, ADDITION TO THE CITY OF SEATTLE,
9 AS LAID OFF BY D. T. DENNY, GUARDIAN OF THE ESTATE OF J. H. NAGLE
10 (COMMONLY KNOWN AS NAGLE'S ADDITION TO THE CITY OF SEATTLE),
11 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS,
12 PAGE(S) 153, IN KING COUNTY, WASHINGTON;

13 EXCEPT THE WEST 7 FEET THEREOF, CONDEMNED IN KING COUNTY
14 SUPERIOR COURT CAUSE NUMBER 61476 FOR THE WIDENING OF 12TH
15 AVENUE, AS PROVIDED BY ORDINANCE NUMBER 17972 OF THE CITY OF
16 SEATTLE.

17 Section 2. The Director is further authorized to execute a “Purchase and Sale Agreement”
18 and “Quit Claim Deed” substantially in the form of Attachments 3 and 4, respectively, and to
19 execute any and all agreements and documents necessary for conveyance of the Property
20 pursuant to the Purchase and Sale Agreement. In addition, the Director is authorized to execute a
21 “Ground Lease” substantially in the form of Attachment 5 and a “Sublease” substantially in the
22 form of Attachment 6.

23 Section 3. The Director’s authority to deliver and record all documents authorized herein
24 is conditioned on execution and delivery by CHHIP of the “Completion Guaranty” substantially
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1 in the form of Attachment 7 and the Director's satisfaction with the form and content of all
2 documents pertaining to the financing and construction of the project.

3 Section 4. The Director is further authorized to make technical, conforming or otherwise
4 nonmaterial changes and to negotiate material improvements benefitting the City to any of the
5 documents authorized to be executed herein; and to execute, record, deliver, administer, perform
6 and enforce such amendments and ancillary agreements or documents, and take such other
7 actions as the Director deems appropriate or necessary to carry out the terms and provisions of,
8 and complete the transactions contemplated by, this ordinance; with the form of such documents
9 and agreements requiring the approval of the City Attorney's Office.

10 Section 5. In order to pay for necessary costs and expenses incurred or to be incurred in
11 2012, but for which insufficient appropriations were made due to causes that could not
12 reasonably foreseen at the time of the making of the 2012 Budget, appropriations for the
13 following items in the 2012 Budget are increased from the funds show, as follows:

Item	Fund	Department	Budget Control Level	Amount
5.1	General Subfund (00100)	Finance General	Appropriation to General Subfunds and Special Funds Budget Control Level	\$393,750
5.2	Finance and Administrative Services Fund (50300)	Department of Finance & Administrative Services (FAS)	Facilities Services Budget Control Level	\$393,750
Total				\$787,500

22 Section 6. The foregoing appropriation is made to meet the actual and necessary
23 expenditures of the City for which insufficient appropriations has been made due to causes that
24 could not reasonably have been foreseen at the time of making the 2012 budget.



1 Section 7. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by 3/4 vote of the City Council the ____ day of
5 _____, 2012, and signed by me in open session in authentication of its
6 passage this
7 ____ day of _____, 2012.

8 _____
9 President _____ of the City Council

10 Approved by me this ____ day of _____, 2012.

11 _____
12 Michael McGinn, Mayor

13 Filed by me this ____ day of _____, 2012.

14 _____
15 Monica Martinez Simmons, City Clerk

16 (Seal)

17 Attachment 1: Form of Condominium Declaration

18 Attachment 2: Form of Survey Map and Plans

19 Attachment 3: Form of Purchase and Sale Agreement

20 Attachment 4: Form of Quit Claim Deed



- 1 Attachment 5: Form of Ground Lease
- 2 Attachment 6: Form of Sublease
- 3 Attachment 7: Form of Completion Guaranty
- 4 Attachment 8: Form of Pledge of Garage Lease Revenues

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FAS East Precinct Parking 12th Ave Arts ATT 1
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Attachment 1
FAS East Precinct Parking 12th Ave Arts



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 1
August 16, 2012
Version #1

Foster Pepper PLLC
Attention: Jamie M. Goodwin
1111 Third Avenue, Suite 3400
Seattle, Washington 98101-3299

CONDOMINIUM DECLARATION
FOR 12TH AVENUE ARTS, A CONDOMINIUM

Grantor/Declarant: THE CITY OF SEATTLE, a municipal corporation of the
State of Washington

Grantee: 12TH AVENUE ARTS, A CONDOMINIUM

Legal Description: LOTS 2-5, BLOCK 22, ADD. TO THE CITY OF
SEATTLE AS LAID OFF BY D. T. DENNY,
GUARDIAN OF THE ESTATE OF J. H. NAGLE
(COMMONLY KNOWN AS NAGLE.S ADD. TO THE
CITY OF SEATTLE, VOL. 1. P. 153, KING
COUNTY)Official legal description on Schedule A

Assessor's Tax Parcel ID#: 600300-0670-03; 600300-0645-05; 600300-0660-05;
600300-0665-00

Reference # (if applicable): _____ (Survey Map & Plans)

DEPARTMENT OF ASSESSMENTS
Examined and approved this _____ day of
_____, 2012

Assessor

Deputy Assessor



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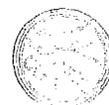
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Article 1. DEFINITIONS.

Section 1.1 Words Defined. For the purposes of this Declaration and any amendments hereto, the following definitions shall apply.

Allocated Interests means the allocation of Common Expense Liability, Interest in Common Elements and Voting for each of the Units in the Condominium, which is determined in accordance with the formula set forth in Section 5.4 and is listed in Schedule B.

Apartment means an individual single household residence located within the Housing Unit.

Articles means the Articles of Incorporation for the Association.

Assessments means all sums chargeable by the Association against a Unit, including, without limitation: (a) general and special assessments for Common Expenses and Specially Allocated Expenses; (b) charges and fines imposed by the Association; (c) interest and late charges on any delinquent account; and (d) costs of collection, including reasonable attorneys' fees, incurred by the Association in connection with the collection of a delinquent Owner's account.

Association means the owners association identified in Article 10.

Board means the board of directors of the Association, as described in Article 11.

Building means the primary structure in the Condominium which will be built within the Garage Unit, Commercial Unit and Housing Unit in accordance with the Building Plans.

Building Plans means the architectural and engineering drawings and specifications for the original construction of the Building dated _____, as the same may be revised from time to time. The Building Plans are not "as-built" plans and may be changed during the course of construction after the date this Declaration is recorded.

Bylaws means the bylaws of the Association as they may from time to time be amended.

City means The City of Seattle, a municipal corporation of the State of Washington.

Commercial Facilities means that portion of the Building located within the Commercial Unit including all foundation walls, bearing walls, roofing, columns, pillars,



beams, braces, shear walls, ceiling/floor slabs, structural members, footings, caissons, exterior Building skin, doors, windows, decks, patios, balconies, all elevator shafts, common fire stairs and chutes, and any other structural and supporting element or facility of the Building within the Commercial Unit, but excluding the Exclusive Easement Areas within the Commercial Unit.

Commercial Unit means the Unit so identified on the Survey Map and Plans.

Common Elements means all portions of the Condominium other than Units.

Common Expenses means expenditures made by or financial liabilities of the Association that are allocated in this Declaration in Schedule C to all Units in accordance with Common Expense Liability.

Common Expense Liability means the liability for Common Expenses allocated to each Unit, as set forth in Schedule B.

Condominium means 12th Avenue Arts, a condominium, created under the Declaration and the Survey Map and Plans.

Condominium Act means the Washington Condominium Act, codified at RCW 64.34, as it may be from time to time amended.

County means King County, Washington.

Declarant means The City of Seattle, a municipal corporation of the State of Washington.

Declaration means this Condominium Declaration for 12th Avenue Arts, a condominium, as it may from time to time be amended.

Exclusive Easement Areas mean, collectively, those areas of the Building that are subject to an easement to the exclusion of the Owner of the Unit in which the Exclusive Easement Area is located. The easements reserved in Subsections 21.2.2, 21.3.4, 21.3.5, 21.4.3, and 21.4.4 establish Exclusive Easement Areas.

Foreclosure means a forfeiture or judicial or nonjudicial foreclosure of a Mortgage or a deed in lieu thereof.

Garage Facilities means that portion of the Building located within the Garage Unit including all foundation walls, bearing walls, roofing, columns, pillars, beams, braces, shear walls, ceiling/floor slabs, structural members, footings, caissons, exterior Building skin, doors, windows, decks, patios, balconies, all elevator shafts, common fire stairs and chutes,



and any other structural and supporting element or facility of the Building within the Garage Unit, but excluding the Exclusive Easement Areas within the Garage Unit.

Garage Unit means the Unit so identified on the Survey Map and Plans.

Housing Unit means the Unit so identified on the Survey Map and Plans.

Level means any of the floor levels of the Building that will be enclosed within a Unit or Units after completion of construction of the Building pursuant to the Building Plans

Limited Common Element means a portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units.

Managing Agent means the person designated by the Board under Section 11.4.

Mortgage means a mortgage, deed of trust or real estate contract, including but not limited to a leasehold mortgage or leasehold deed of trust.

Mortgagee means any holder of a Mortgage on a Unit which has filed a written request with the Association for the notices specified in Section 25.2.

Notice and Opportunity to be Heard means the procedure described in Section 11.6.

Owner or Unit Owner means the Declarant or other Person who owns a Unit, but does not include any person who has an interest in a Unit solely as security for an obligation, or that is a vendee for the Unit under a real estate contract.

Parking Level means any of the Levels in the Garage Unit.

Person means a natural person, corporation, partnership, limited partnership, limited liability company, trust, governmental subdivision or agency, or other legal entity.

Regulatory Agreement means any of the following covenants (as they may be amended) recorded or to be recorded against the Housing Unit imposing certain low income housing restrictions: Regulatory Agreement (in favor of the City of Seattle); Low Income Housing Covenant Agreement (in favor of the State of Washington); Regulatory Agreement (in favor of Capitol Hill Housing Improvement Program) in connection with tax-exempt bonds; and Regulatory Agreement – Extended Use Agreement (in favor of the Washington State Housing Finance Commission) related to low-income housing tax credits.



Residential Facilities means that portion of the Building located within the Housing Unit including all foundation walls, bearing walls, roofing, columns, pillars, beams, braces, shear walls, ceiling/floor slabs, structural members, footings, caissons, exterior Building skin, doors, windows, decks, patios, balconies, all elevator shafts, common fire stairs and chutes, and any other structural and supporting element or facility of the Building within the Housing Unit, but excluding the Exclusive Easement Areas within the Housing Unit.

Specially Allocated Expenses means those expenditures or liabilities of the Association that are allocated among Units on some basis other than Common Expense Liability and that are set forth in Schedule D.

Special Declarant Rights means those rights reserved for the benefit of the Declarant pursuant to RCW 64.34.020 of the Condominium Act.

Survey Map and Plans means the survey map and plans filed simultaneously with the recording of this Declaration and any amendments, corrections, and addenda thereto subsequently filed.

Unit means a physical portion of the Condominium designated for separate ownership, the boundaries of which are described in Section 5.2 and shown on the Survey Map and Plans.

Section 1.2 Form of Words. The singular form of words shall include the plural and the plural shall include the singular. Masculine, feminine, and gender-neutral pronouns shall be used interchangeably.

Section 1.3 Statutory Definitions. Some of the terms defined above are also defined in the Condominium Act. The definitions in the Declaration are not intended to limit or contradict the definitions in the Condominium Act. To the extent there is any inconsistency or conflict between a definition in this Declaration and the Condominium Act, the definition in the Condominium Act will prevail.

Article 2. CONSTRUCTION AND VALIDITY OF DECLARATION.

The Declaration and the Condominium Act provide the framework by which the Condominium is created and operated. In the event of a conflict between the provisions of the Declaration and the Condominium Act, the Condominium Act shall prevail. In the event of a conflict between the provisions of this Declaration and the Bylaws, the Declaration shall prevail except to the extent the Declaration is inconsistent with the Condominium Act. The creation of the Condominium shall not be impaired and title to a Unit and its interest in the Common Elements shall not be rendered unmarketable or otherwise affected by reason of an



insignificant failure of this Declaration or the Survey Map and Plans or any amendment thereto to comply with the Condominium Act.

Article 3. NAME OF CONDOMINIUM.

The name of the Condominium created by this Declaration and the Survey Map and Plans is "12th Avenue Arts, a condominium."

Article 4. DESCRIPTION OF LAND.

The real property included in the Condominium and subjected to the Condominium Act is described in Schedule A, and includes all improvements and fixtures now and hereafter located thereon.

Article 5. DESCRIPTION OF UNITS; ALLOCATED INTERESTS.

Section 5.1 Number and Identification of Units. The Condominium has three Units which are designated as the Garage Unit, the Commercial Unit and the Housing Unit, as listed on Schedule B and shown on the Survey Map and Plans.

Section 5.2 Unit Boundaries. The Units in the Condominium are "air space units," the boundaries of which are the planes in space in the locations and at the elevations shown on the Survey Map and Plans. As of the date hereof, the improvements and Building within the Condominium have not been constructed. It is intended that the improvements will be constructed substantially in accordance with the Building Plans submitted to The City of Seattle Department of Planning and Development. Upon completion of construction of the Building, it is intended that the Unit boundaries will correspond with the following:

5.2.1 With respect to the vertical boundaries of the Units, the planes in space that are substantially consistent with the exterior cladding and/or exterior surfaces of the walls of the Building after completion of construction, except that as between the portions of the Units which are adjacent to each other, the vertical boundaries are intended to correspond to the planes in space consistent with the centerline of the demising wall of the Building to be constructed between the two Units.

5.2.2 The lower horizontal boundary of the Garage Unit corresponds to the plane in space consistent with the lower limits of fee ownership of land. The upper horizontal boundary of the Garage Unit corresponds to the planes in space at the elevations shown on the Survey Map and Plans. The upper horizontal boundary of the Garage Unit is intended to correspond to the bottoms of the concrete slabs which separate the Garage Facilities from the Commercial Facilities, and the concrete slabs which separate the Garage Facilities from the Housing Facilities. It is intended that the entirety of the Garage Facilities



and the foundation of the Building will be enclosed within the Garage Unit after completion of construction of the Building. The Garage Unit is subject to those easements set forth in Article 21.

5.2.3 As between the Garage Unit and Commercial Unit, the lower horizontal boundary of the Commercial Unit will correspond to the planes in space at the elevation shown on the Survey Map and Plans and is intended to be consistent with the lower surface of the concrete slabs separating the Commercial Facilities from the Garage Facilities at Level 1 and at Level 2 of the Building; as between the Housing Unit and the Commercial Unit at Level 1 and Level 2 of the Building, the lower horizontal boundary of the Commercial Unit which is above the Housing Unit is intended to be consistent with the lower surface of the concrete slabs separating the Commercial Facilities from the Housing Facilities. The upper horizontal boundary of the Commercial Unit will correspond to the planes in space at the elevations shown on the Survey Map and Plans and is intended to be consistent with the lower surface of the concrete slab which is between Levels 2 and 3 of the Building. Except for that portion of Level 1 on which the Garage Facilities will be located (which is designated as part of the Garage Unit) and that portion of the Level 2 of the Building on which the Housing Facilities will be located (which is designated as part of the Housing Unit), it is intended that the Commercial Facilities will be located on Levels 1 and 2 of the Building and be included within the Commercial Unit. The Commercial Unit is subject to those easements set forth in Article 21.

5.2.4 As between the Commercial Unit and the Housing Unit, the lower horizontal boundary of the Housing Unit will correspond to the planes in space at the elevations shown on the Survey Map and Plans which is intended to be consistent with the lower surface of the concrete slab separating Levels 2 and 3 of the Building. The upper horizontal boundary of the Housing Unit will correspond to the planes in space at the elevation shown on the Survey Map and Plans which is intended to be consistent with a plane in space above the highest finished surface of the roof of the Building. It is intended that the Residential Facilities will be located on Levels 1, 3, 4, 5 and 6 the Building and be included within the Housing Unit. The Housing Unit is subject to those easements set forth in Article 21.

All dirt, soil, structures, spaces, walls, fixtures and improvements within the boundaries of a Unit, except those Common Elements specified in Article 7, are a part of the Unit. Any awnings, canopies, balconies, planters, or roof overhangs that extend beyond the vertical boundaries of a Unit are part of that Unit.

Section 5.3 Unit Data. The following information is set forth in Schedule B: (i) Unit area; (ii) the Building Levels that will be located within each Unit after construction of the Building pursuant to the Building Plans; and (iii) the projected total finished floor area of



the Levels of the Building that will be enclosed within each Unit after construction of the Building pursuant to the Building Plans (including the Parking Levels in the Garage Unit, but excluding the surface of the roof). Because the Garage Unit, Housing Unit and the Commercial Unit are air space units and are not residential, the number of bedrooms, bathrooms and fireplaces is not provided. The location and configuration of each Unit is shown on the Survey Map and Plans.

Section 5.4 Allocated Interests. Schedule B sets forth the Allocated Interests of each of the Units in the Condominium for purposes of Common Expense Liability, interest in the Common Elements and voting. The formula for determining Common Expense Liability, interest in the Common Elements and voting is the relative projected finished floor area of all Levels of the Building within a Unit divided by the relative projected finished floor area of the Levels of the Building that will be enclosed within all Units, after construction of the Building pursuant to the Building Plans (including the Parking Levels in the Garage Unit, but excluding the surface of the roof).

Article 6. COMMON ELEMENTS.

Section 6.1 Description. The Common Elements are all portions of the Condominium other than the Units, including but not limited to, specifically, the grounds that are not included within the Garage Unit, the airspace above the Housing Unit, all exterior landscaping and sidewalks. The reciprocal easements benefitting all Units as described and granted in Section 21.1 of this Declaration are hereby designated as Common Elements.

Section 6.2 Use. Each Owner shall have the right to use the Common Elements for their intended purposes in common with all other Owners. The right to use the Common Elements extends not only to each Owner, but also to the agents, tenants, invitees, and licensees of the Owners. The right to use the Common Elements shall be governed by the provisions of the Condominium Act, this Declaration, the Bylaws, and the rules and regulations of the Association.

Article 7. LIMITED COMMON ELEMENTS.

There are no Limited Common Elements in the Condominium.

Article 8. PERMITTED USES; MAINTENANCE; CONVEYANCES.

Section 8.1 Garage Unit. Upon substantial completion of the improvements within the Garage Unit, the Garage Facilities will be restricted to motor vehicle parking; motor vehicle storage; motor vehicle service, electrical charging and repair; general office use associated with the operation of the Garage Facilities; any other motor vehicle use incidental to operation of the Garage Facilities; and general storage. Building systems and Building



infrastructure shall also located within the Garage Facilities and use thereof shall be governed by the easements provided in Article 21 of this Declaration. It is expected that there will be 111 parking spaces in the Garage Facilities upon substantial completion of the Building. Use of the Garage Unit shall also be subject to the easements benefitting and burdening the Garage Unit that are reserved in Article 21.

Section 8.2 Commercial Unit. Upon substantial completion of the improvements within the Commercial Unit, the Commercial Unit will be restricted to restaurant, office, meeting space, retail, theater, performing arts, and community service uses. Use of the Commercial Unit shall also be subject to the easements benefitting and burdening the Commercial Unit that are reserved in Article 21.

Section 8.3 Housing Unit. Upon substantial completion of the improvements within the Housing Unit, the Housing Unit will contain 88 Apartments and a rental office and other related facilities. The Housing Unit is intended for and restricted to residential use as a rental facility, including social, recreational, and other activities normally incident to residential uses of the Apartments, including use as a home office, together with any functionally related and subordinate uses which may be permitted by Section 42 of the Internal Revenue Code of 1986, as amended. Use of the Housing Unit shall also be subject to the easements benefitting and burdening the Housing Unit that are reserved in Article 21.

Section 8.4 Nuisance; Violation of Laws. The Owner of a Unit shall not use nor occupy the Unit in a manner that would, nor do or permit anything to be done therein that would make it impossible for the Association to carry insurance required or reasonably deemed to be necessary, or which would invalidate such insurance, or which would cause structural damage to the portions of the Building located within the Unit, or which would constitute a public or private nuisance or which will violate any laws, regulations, ordinances or requirements of the federal, state or local governments or of any other governmental authorities having jurisdiction over the property.

Section 8.5 Leases. The Owner of a Unit may lease all or any portion of the Unit for any purpose permitted by Section 8.1, Section 8.2, or Section 8.3, as applicable. Except for leases of individual apartments in the Housing Unit for residential occupancy, all leases of Units shall provide that they are subject in all respects to the provisions of the Declaration and the rules and regulations of the Association and that any failure by any tenant or subtenant to comply with the terms of such documents, rules, and regulations shall be a default under the lease agreement. If any lease or sublease of a Unit does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be part of the lease or sublease and binding upon the Owner and the tenant and subtenant by reason of their being stated in this Declaration.



Section 8.6 Construction, Operation, Maintenance, Repair and Replacement of Building, Units, Common Elements and Easement Areas. The Declarant will not be responsible for the construction of the Building or any improvements in the Condominium, including improvements to the Common Elements. The Owners shall contract between themselves outside of this Declaration for construction of the Building within the Units of the Condominium and improvements to the Common Elements. After substantial completion of the Building, except as set forth in this Declaration or modified by subsequent agreement between the Owners, each Owner is responsible for all costs of operation, maintenance, repair and replacement of the portions of the Building and improvements located within the Owner's Unit (including the non-exclusive easement areas within the Unit but excluding the Exclusive Easement Areas), including but not limited to the structural, non-structural and exterior portions of the Building; roofing and covering material; exterior walls; porches, patios and decks; elevators; and the plumbing, electrical systems, heating and ventilation systems which serve only that Unit. The Association will be responsible for the maintenance, repair and replacement of the Common Elements, the cost of which shall be a Common Expense or Specially Allocated Expense, as set forth in this Declaration. Any Exclusive Easement Area located within a Unit and from which the Owner of the Unit in which it is located is excluded, shall be maintained by the Owners of the Units benefitted by the Exclusive Easement Area at those Owners' sole cost and expense as further provided in Article 14. Each Owner shall be responsible for keeping the improvements within the Owner's Unit (excluding the Exclusive Easement Areas within the Unit) and the Exclusive Easement Areas outside of the Unit that benefit the Owner's Unit in a neat, clean and sanitary condition, free of rodents and pests, and in good condition and repair. Each Owner shall be responsible for the maintenance, repair, or replacement of any pipes, wiring, ducts or other equipment that serve only the Owner's Unit or the Exclusive Easement Areas benefitting the Owner's Unit, whether or not located in the Unit or the Exclusive Easement Area, including repair of any damage to the Common Elements or another Unit (including the structures which are within or part of the Unit) resulting therefrom. By way of illustration and not limitation, the Owner of the Garage Unit shall maintain the Garage Facilities; the Owner of the Commercial Unit shall maintain the Commercial Facilities; and the Owner of the Housing Unit shall maintain the Residential Facilities. Any cost-sharing between the Owners shall be as provided in Article 14 or pursuant to separate agreement between the affected Owners. The Association may, as a Common Expense, provide for the inspection of any portion of a Unit the failure of which to maintain properly may cause damage to the Common Elements or another Unit or cause unnecessary Common Expenses. If the inspection discloses the need for repair or replacement, after reasonable notice and an opportunity to be heard the Association may either require the responsible Owner to make the repair or replacement or to make the repair or replacement itself and allocate the cost thereof to such Owner. The Owners shall promptly, and in no event more than two business days after the occurrence, resurface or replace any glass and remove any graffiti from the exterior of the Building located within their Unit. If an Owner fails to repair such damage within the specified time period, the



Association may undertake the necessary repair itself and allocate the cost thereof to the affected Owner.

Section 8.7 Exterior Appearance. The Owner of the Garage Unit shall not make any substantial or significant change to the exterior appearance of the Garage Facilities within its Unit or to any Exclusive Easement Area benefitting its Unit or to any Common Elements that are the Owner's responsibility to maintain, repair and replace without the approval of the Owners of the other Units, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 8.8 Signs. The Owners and occupants of the Units shall be entitled to have reasonable signage for the businesses and non-commercial activities being conducted within the Units as long as such signage complies with all applicable laws and ordinances.

Section 8.9 Trash Removal. Each Owner and Unit occupant shall be responsible for removing all trash or garbage from the Unit and depositing it in trash or recycling receptacles designated exclusively for that Unit or otherwise removing it from the property.

Section 8.10 Hazardous Substances. The Owner of each Unit shall not permit any Hazardous Substance to be improperly or illegally generated, processed, stored, transported, handled or disposed of on, under, in or through the Unit or the Condominium; and each Owner shall indemnify, defend, and hold harmless the other Owner or Owners and the Association from all fines, suits, procedures, claims and actions of any kind arising out of or in any way connected with any spills or discharges of Hazardous Substances or wastes arising from the operation or use of the Unit or the Condominium by the Owner, occupants, tenants, subtenants or invitees of the Unit. As used herein, the term "Hazardous Substance" means any hazardous, toxic or dangerous substance, waste or material which is or becomes regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or cleanup, including without limitation any substance, waste or material which now or hereafter is designated as a "Hazardous Substance" under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), or under any local or state rule or regulation; without limiting the foregoing, Hazardous Substances shall include, but not be limited to, any substance which after being released into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer and/or genetic abnormalities; provided, however, Hazardous Substances shall not include cleaning solvents, paint, herbicides for landscape maintenance and similar materials which are incidental to normal commercial, rental or residential uses. The Association may adopt a Hazardous Substances management plan to further address the use and storage of Hazardous Substances and non-hazardous substances at the Condominium.



Section 8.11 Satellite Facilities. Subject to the conditions set forth in this Section, the Owner of the Garage Unit shall have the right to install and maintain antennas, satellite systems, broadcast facilities and other similar over-the-air reception facilities, including any pad, structure or platform for support therefore, (the "Satellite Facilities") to be located on the roof of the Building within the Housing Unit for the use of the Parking Facilities and/or the Owner of the Garage Unit, and shall be responsible for all costs associated therewith; provided, however, that the Owner of the Housing Unit shall also have the right, at its sole cost and expense, to install and maintain antennas, satellite systems and other over-the-air reception facilities to be located on the roof of the Building for the exclusive use and benefit of such Unit and its respective facilities. The Satellite Facilities installed by the Owner of the Garage Unit shall be for the sole benefit of the Garage Unit. The Owner of the Garage Unit shall not be entitled to lease, sublease or assign the rights hereunder to any third-parties. The Owner of the Garage Unit may only install the Satellite Facilities in the designated area on the Building Plans. The Owner of the Garage Unit shall cause the Satellite Facilities to be designed to fit within the designated area on the Building Plans and shall endeavor to design them to be as visually unobtrusive as possible. The Owner of the Garage Unit shall notify the Owner of the Housing Unit in writing at least ninety (90) days before installing any Satellite Facilities, and include plans and specifications therefor. If the Owner of the Housing Unit objects to the proposed Satellite Facilities by written notice delivered to the Owner of the Garage Unit within twenty (20) days of receipt of such notice, on the belief that it will jeopardize or impair the structural integrity of the Building or void or adversely affect any warranty, then the Owner of the Housing Unit and the Owner of the Garage Unit shall cooperate in good faith to resolve any such matters and, if unable to resolve such matters within ten (10) days thereafter, shall submit them to arbitration as provided in the Bylaws. A failure to object within such twenty (20) day period shall be deemed to be the Owner of the Housing Unit's consent and it shall be deemed to have approved the matters set forth in such installation notice. The Owner of the Garage Unit and the Owner of the Housing Unit shall maintain their Satellite Facilities in good and slightly order and condition, at their cost and expense.

Section 8.12 Damage to Units and Common Elements. Each Unit Owner shall be responsible for any damage to the other Units or the Common Elements caused by the negligence or willful misconduct of the Owner or tenant or subtenant of the Owner's Unit.

Article 9. ENTRY FOR REPAIRS OR MAINTENANCE.

The Association and its agents or employees may enter any Unit to effect repairs, improvements, replacements, maintenance or sanitation work deemed by the Board to be necessary in the performance of its duties, to do necessary work that the Owner has failed to perform, or to prevent damage to the Common Elements or to the other Units. Except in cases of emergency that preclude advance notice, the Board shall give the Unit Owner, tenant,



subtenant and occupant advance notice of entry of three (3) business days. Such entry shall be made with as little inconvenience to the Owners and occupants as practicable. The Board may levy a special Assessment against the Owner of the Unit for all or part of the cost of work that the Owner has failed to perform, which may be collected and foreclosed by the Association in the same manner as Assessments are collected and foreclosed under Article 13. Any entry by the Board into an Apartment shall be in compliance with applicable residential landlord-tenant statutes and ordinances.

Article 10. OWNERS ASSOCIATION.

Section 10.1 Form of Association. The Owners of Units shall constitute an owners association to be known as "12th Avenue Arts Condominium Association." The Association shall be organized as a nonprofit corporation. It will be governed by a Board of five members, appointed by the Owners as provided in the Bylaws.

Section 10.2 Bylaws. The Board will adopt Bylaws to supplement the Declaration and to provide for the administration of the Association and the property and for other purposes not inconsistent with the Condominium Act or the Declaration.

Section 10.3 Qualification and Transfer. Each Owner of a Unit (including the Declarant) shall be a member of the Association and shall be entitled to one membership for each Unit owned, which membership shall be considered appurtenant to that member's Unit. Ownership of a Unit shall be the sole qualification for membership in the Association. A membership shall not be transferred in any way except upon the transfer of title to the Unit and then only to the transferee of title to the Unit; provided, that if a Unit has been sold on contract, the contract purchaser shall exercise the rights of the Owner for purposes of the Association, this Declaration, and the Bylaws, except as hereinafter limited, and shall acquire the voting rights and the right to appoint Board members unless otherwise specified. Any attempt to make a prohibited transfer shall be void. An Owner may, however, grant a proxy to any Mortgagee of the Owner's Unit, such that the Mortgagee shall have the right, subject to applicable law and any conditions stated in the proxy, to exercise the Owner's rights to vote (or give consent or approval) on matters on which the Owner has a right to vote (or give consent or approval), including the rights with respect to the election and removal of Board members, with respect to all Units covered by such proxy. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association to the new Owner.

Section 10.4 Voting. The total voting power of the members in the Association shall be allocated as stated in Section 5.4.



Section 10.5 Powers of the Association. In addition to those actions authorized elsewhere in the Declaration, the Association shall have the power to:

- 10.5.1 Adopt and amend the Bylaws and the rules and regulations;
- 10.5.2 Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect Assessments for Common Expenses and Specially Allocated Expenses from Owners;
- 10.5.3 Hire and discharge or contract with Managing Agents and other employees, agents, and independent contractors;
- 10.5.4 Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself on matters affecting the Condominium;
- 10.5.5 Make contracts and incur liabilities;
- 10.5.6 Regulate the use, maintenance, repair, replacement, and modification of the Common Elements;
- 10.5.7 Cause additional improvements to be made as a part of the Common Elements;
- 10.5.8 Acquire, hold, encumber, convey, and dispose of, in the Association's name, right, title, or interest to real or tangible and intangible personal property, and arrange for and supervise any addition or improvement to the Condominium;
- 10.5.9 Grant easements, leases, licenses, and concessions through or over the Common Elements and petition for or consent to the vacation of streets and alleys;
- 10.5.10 Impose and collect any payments for services provided on behalf of the Owners;
- 10.5.11 Acquire and pay for all goods and services reasonably necessary or convenient for the efficient and orderly functioning of the Condominium;
- 10.5.12 Impose and collect charges for late payment of Assessments as further provided in Article 13 and, after Notice and an Opportunity to be Heard by the Board or by such representative designated by the Board and in accordance with such procedures as provided in this Declaration, the Bylaws, or rules and regulations adopted by the Board, levy reasonable fines in accordance with a previously established schedule thereof adopted by the Board and furnished to the Owners for violations of this Declaration, the Bylaws, and rules and regulations of the Association;



10.5.13 Impose and collect reasonable charges for the preparation and recording of amendments to this Declaration, resale certificates required by RCW 64.34.425 and statements of unpaid Assessments;

10.5.14 Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance;

10.5.15 Assign its right to future income, including the right to receive Assessments;

10.5.16 Provide or pay Common Expenses and Specially Allocated Expenses on behalf of the Owners;

10.5.17 Exercise all other powers that may be exercised in this state by the same type of corporation as the Association; and

10.5.18 Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 10.6 Financial Statements and Records. The Association shall keep financial records in accordance with generally accepted accounting principles. All financial and other records shall be made reasonably available for examination by any Unit Owner and the Owner's authorized agents. At least annually, the Association shall prepare, or cause to be prepared, a financial statement of the Association in accordance with generally accepted accounting principles. Unless unanimously waived annually by the Unit Owners, the annual financial statement shall be audited at least annually by a certified public accountant who is not a member of the Board or a party related to an Owner. The financial statement shall be completed in time for the Association's annual meeting and in any event within 120 days following the end of the fiscal year. Any Mortgagee shall, upon request, be entitled to receive the annual financial statement within 120 days following the end of the fiscal year. The Board may require that an audit of the Association and management books be presented at any meeting. An Owner, at the Owner's expense, may at any reasonable time conduct an audit of the books of the Board and Association.

Section 10.7 Inspection of Condominium Documents, Books and Records. The Association shall make available to Owners, Mortgagees, prospective purchasers and their prospective Mortgagees, and the agents or attorneys of any of them, current copies of this Declaration, the Articles, the Bylaws, the rules and regulations of the Association, and other books, records, and financial statements of the Association. "Available" shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances. These records shall be available for inspection without charge, but the



Association may require the requesting party to pay a reasonable charge to cover the cost of making any copies.

Section 10.8 No Reserve Study Required. In accordance with the exception for condominiums restricted to non-residential use set forth in RCW 64.34.380(4), the Association shall not be required to have a reserve study of the Condominium performed.

Article 11. THE BOARD.

Section 11.1 Selection of the Board. The Owners of the Units shall appoint the number of Board members as provided in the Bylaws. Each Board member shall serve at the pleasure of the appointing Owner. The Board shall elect officers in accordance with the procedures provided in the Bylaws. The members of the Board and officers shall take office upon their appointment or election.

Section 11.2 Powers of the Board. Except as provided in this Declaration, the Bylaws or the Condominium Act, the Board shall at all times act on behalf of the Association. The Board may exercise all powers of the Association, except as otherwise provided in the Condominium Act, the Declaration or the Bylaws. The Board shall be required to exercise the care required of fiduciaries of the Owners.

Section 11.3 Decisions of the Board. Except for those Board decisions which require unanimous approval as further set forth in this Declaration or the Bylaws, all other decisions of the Board shall be by majority vote at a meeting at which a quorum is present or without a meeting to the extent permitted by law and as authorized by the Bylaws, subject to arbitration pursuant to the Bylaws. The rights and duties of the Board and of the Association shall be governed by the provisions of the Condominium Act, the Declaration and the Bylaws.

Section 11.4 Managing Agent. The Board may contract with an experienced Managing Agent to assist the Board in the management and operation of the Condominium and may delegate such of its powers and duties to the Managing Agent as it deems to be appropriate, except as limited herein.

Section 11.5 Limitations on Board Authority. The Board shall not take final action on behalf of the Association to amend the Declaration in any manner that requires the vote or approval of the Unit Owners and Mortgagees pursuant to Article 23, to terminate the Condominium pursuant to Article 24, or to elect members of the Board or determine the qualifications, powers, and duties, or terms of office of members of the Board.

Section 11.6 Right to Notice and Opportunity to Be Heard. Whenever this Declaration requires that an action of the Board be taken after "Notice and Opportunity to be Heard," the following procedure shall be observed: The Board shall give written notice of the



proposed action to all Owners, Mortgagees, tenants or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing, which shall be not less than five days from the date notice is delivered by the Board. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Board. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Article 12. BUDGET AND ASSESSMENTS.

Section 12.1 Fiscal Year. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year.

Section 12.2 Preparation of Budget. Not less than 90 days before the end of the fiscal year the Board shall prepare a proposed budget for the Association for the coming year. In preparing its budget the Board shall estimate the Common Expenses and Specially Allocated Expenses of the Association to be paid during the year, including amounts reasonably anticipated to be required for the operation, maintenance, and repair of the Common Elements, and shall take into account any surplus or deficit carried over from the preceding year and any expected income to the Association. The budget may include reserves for repair or replacement of the Common Elements.

Section 12.3 Supplemental Budget. If during the year the budget proves to be inadequate for any reason, including nonpayment of any Assessments, the Board may prepare a supplemental budget for the remainder of the year.

Section 12.4 Regular Assessments. The amounts required by the Association for Common Expenses and Specially Allocated Expenses as reflected by the annual budget and any supplemental budgets shall be divided into installments to be paid regularly, as determined by the Board, over the period of time covered by the budget or supplemental budget or as is necessary for the Association to pay obligations to the third-party providers. The regular Assessment for each Unit is the total of (a) the Common Expense Liability share of that Unit set forth in Schedule C and (b) any Specially Allocated Expenses allocated to the Unit as set forth in Schedule D.

Section 12.5 Common Expenses. The Common Expenses of the Association are set forth in Schedule C. The Common Expenses are allocated to Units based upon each Unit's Common Expense Liability percentage which is set forth in Schedule B.



Section 12.6 Specially Allocated Expenses. The Specially Allocated Expenses are set forth in Schedule D and are specially allocated to Units based on usage, risk or benefit.

Section 12.7 Special Assessments. For those Common Expenses or Specially Allocated Expenses which cannot reasonably be calculated and paid on a monthly basis, the Board may levy special Assessments for such expenses against the Units. To the extent that any Common Expense or Specially Allocated Expense is caused by the misconduct of an Owner, tenant, subtenant or occupant of any Unit, the Association may, after Notice and Opportunity to be Heard, levy a special Assessment for the expense against the Unit.

Section 12.8 Creation of Reserves; Assessments. The Board may create reserve accounts for anticipated expenses for repairs, replacement and improvements to the Common Elements which will occur in the future. The operation of reserve accounts and Assessments for reserve accounts shall be further governed by the Bylaws.

Section 12.9 Notice of Assessments. The Board shall provide reasonable advance notice in writing to each Owner of the amount of the monthly general and special Assessments to be paid for the Unit and shall furnish copies of all budgets on which the general and special Assessments are based. The Board shall furnish the same information to an Owner's Mortgagee if so requested.

Section 12.10 Payment of Regular Assessments. The Board shall determine the frequency that Assessments shall be paid by each Owner, and the due date for each payment of regular assessments. Each Owner shall pay or cause to be paid to the treasurer or designated agent of the Association all Assessments against the Unit for that period. Any Assessment not paid within ten (10) days from date upon which it is due shall be delinquent and subject to late charges, interest charges and collection procedures as provided in Article 13.

Section 12.11 Proceeds Belong to Association. All Assessments and other receipts received by the Association on behalf of the Condominium shall belong to the Association.

Section 12.12 Failure to Assess. Any failure by the Board or the Association to make the budgets and Assessments hereunder before the expiration of any year for the ensuing year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owners from the obligation to pay Assessments during that or any subsequent year, and the regular Assessment amounts established for the preceding year shall continue until new Assessments are established. To the extent that the Association has insufficient funds to pay third-party expenses as a result of its failure to approve a budget for the then current fiscal year, in addition to collecting regular Assessments based upon the preceding year's budget, the Association may levy special assessments for the payment of third party expenses, to the extent that such third party expenses are known.



Section 12.13 Reconciliation of Assessments to Actual Expenses. The Association shall establish and maintain its accounts and records in a manner that will enable it to credit Assessments for Common Expenses and Specially Allocated Expenses, including allocations to reserves, and income to the Association to the account of the appropriate Units and make its expenditures from the appropriate accounts. In order that the Units are correctly assessed for the actual expenses of the Association, the accounts of the Association shall be reconciled at least annually; and any surpluses (or deficits) in the accounts shall be credited to the benefit of or paid to (or charged to the account of or assessed against) the Owner who paid the surplus (or owes the deficit).

Section 12.14 Certificate of Unpaid Assessments. Upon the request of any Owner or Mortgagee of a Unit, the Board will furnish a certificate stating the amount, if any, of unpaid Assessments charged to the Unit. The certificate shall be conclusive upon the Board and the Association as to the amount of such indebtedness on the date of the certificate in favor of all purchasers and Mortgagees of the Unit who rely on the certificate in good faith. The Board may establish a reasonable fee to be charged to reimburse it for the cost of preparing the certificate.

Section 12.15 Recalculation of Assessments. If Common Expense Liabilities are reallocated, Assessments, special Assessments, and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities.

Section 12.16 Damage to Units. Each Unit Owner shall be responsible for any damage to any of the other Units caused by the negligence or willful misconduct of the Owner, tenant, subtenant or occupant of its Unit.

Article 13. LIEN AND COLLECTION OF ASSESSMENTS.

Section 13.1 Assessments Are a Lien; Priority. To the extent permitted by law, the Association has a lien on a Unit for any unpaid Assessment levied against a Unit from the time the Assessment is due. A lien under this Article shall be prior to all other liens and encumbrances on a Unit except: (a) liens and encumbrances recorded before the recording of this Declaration; (b) a Mortgage on the Unit recorded before the date on which the Assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the Unit. Recording of this Declaration constitutes record notice and perfection of the lien for Assessments; however, the Association may record a notice of claim of lien for Assessments in the real property records of the county in which the Condominium is located. Such recording shall not constitute the written notice of delinquency to a Mortgagee referred to above.

Section 13.2 Lien May be Foreclosed; Judicial Foreclosure. The lien arising under this Article may be enforced judicially by the Association or its authorized representative in



the manner set forth in RCW 61.12. The Association or its authorized representative shall have the power to purchase the Unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this Section shall prohibit the Association from taking a deed in lieu of foreclosure. The holder of a Mortgage or other purchaser of a Unit who obtains the right of possession of a Unit through foreclosure shall not be liable for any Assessments or installments thereof that became due prior to such right of possession. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all the Owners and including such Mortgagee or other purchaser of the Unit. Foreclosure of a Mortgage does not relieve the prior Owner of personal liability for Assessments accruing against the Unit prior to the date of such sale.

Section 13.3 Extinguishment of Lien and Personal Liability. A lien for unpaid Assessments and the personal liability for payment of Assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the Assessments sought to be recovered becomes due.

Section 13.4 Joint and Several Liability. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent Assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

Section 13.5 Late Charges and Interest on Delinquent Assessments. The Association may from time to time establish reasonable late charges and a rate of interest to be charged on all delinquent Assessments or installments thereof. In the absence of another established nonusurious rate, delinquent Assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the Assessments became delinquent.

Section 13.6 Recovery of Attorneys' Fees and Costs. The Association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent Assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the Association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

Section 13.7 Remedies Cumulative. The remedies provided herein are cumulative and the Board may pursue them, and any other remedies which may be available under law although not expressed herein, either concurrently or in any order.



Article 14. COST SHARING.

Section 14.1 Generally. The following expenses shall not pass through the Association and shall be borne by the Unit Owners as follows:

14.1.1 The costs of operation, maintenance, repair and replacement of an Exclusive Easement Area shall be borne by the benefitted Owners in equal shares. All operations, maintenance, repair and replacement shall be contracted for and/or performed by a benefitted Owner, and the non-performing benefitted Owner shall reimburse the other on demand for all costs and expenses of such maintenance, repair and replacement incurred on its behalf.

Section 14.2 Lien for Amounts Owed. If at any time, any Owner (the "Defaulting Owner") fails within the time period set forth for payment, or if no time period is set forth, then within ten (10) days after notice or demand to the Defaulting Owner, to pay any sum of money due any Owner (the "Creditor Owner") under or pursuant to the provisions of this Declaration (including, without limitation, cost-sharing as set forth in Section 14.1 above), then, in addition to any other rights or remedies such Creditor Owner may have, such Creditor Owner shall have a lien against the Defaulting Owner's Unit and a lien against any insurance proceeds and condemnation awards payable to the Defaulting Owner to secure the repayment of such sum of money and all interest on such sum accruing pursuant to the provisions of this Article. Such liens shall arise immediately upon the recording of a notice by the Creditor Owner in the real property records of King County, Washington, and may be enforced by a proceeding in equity to foreclose such lien in like manner as a mortgage of real property in the State of Washington or by any other remedy available by statute or at law or in equity. Such liens shall continue in full force and effect until such sum of money and any accrued interest thereon shall have been paid in full.

Section 14.3 Priority of Liens. The liens provided for in Section 14.2 shall be subject and subordinate to the lien of any recorded, mortgage, trust deed or other similar encumbrance on the Defaulting Owner's Unit at the time of the recording of the notice of lien for all amounts (whenever advanced or accrued) secured by said mortgage, trust deed or other encumbrance.

Section 14.4 Interest. Interest shall accrue on sums owed by a Defaulting owner to a Creditor Owner and shall be payable from the date any such sum first became due hereunder until paid in full, at a variable rate per annum equal to four percent (4%) in excess of the rate of interest from time to time announced by U.S. Bank National Association, as its prime rate, reference rate or corporate base rate or the maximum rate allowed by law, if less. In the event a prime rate, reference rate or corporate base rate is not announced, and no maximum lawful rate applies, then interest shall accrue at the annual rate of eighteen percent (18%).



Section 14.5 No Defense or Offset. Each claim of any Owner arising under this Declaration shall be separate and distinct, and no defense, set-off, offset or counterclaim arising against the enforcement of any lien or other claim of any Owner shall thereby be or become a defense, set-off, offset or counterclaim against the enforcement of any other lien or claim.

Section 14.6 Legal Expenses. A Defaulting Owner shall pay the reasonable attorneys' fees and court costs paid or incurred by a Creditor Owner in successfully enforcing its rights against the Defaulting Owner under this Declaration.

Article 15. ENFORCEMENT OF DECLARATION, BYLAWS AND RULES AND REGULATIONS.

Section 15.1 Rights of Action. Each Owner, the Board and the Association shall comply strictly with this Declaration, the Bylaws, and the rules and regulations adopted pursuant thereto, as they may be lawfully amended from time to time, and the decisions of the Board, subject to arbitration as provided in the Bylaws. Failure to comply with any of the foregoing shall be grounds for an action to recover sums due and/or damages or for injunctive relief, or any or all of them, maintainable by the Board on behalf of the Association or by an Owner.

Section 15.2 Failure of Board to Insist on Strict Performance No Waiver. The failure of the Board in any instance to insist upon the strict compliance with this Declaration or the Bylaws or rules and regulations of the Association, or to exercise any right contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of any right, term, covenant, condition, or restriction. The receipt by the Board of payment of an Assessment from an Owner with knowledge of a breach by the Owner shall not be a waiver of the breach. No waiver by the Board of any requirement shall be effective unless expressed in writing and signed for the Board.

Article 16. TORT AND CONTRACT LIABILITY.

Section 16.1 Declarant Liability. Neither the Association nor any Owner except the Declarant is liable for the Declarant's torts in connection with any part of the Condominium which the Declarant, as Declarant and not as Unit Owner, has the responsibility to maintain. Otherwise, an action alleging a wrong done by the Association must be brought against the Association and not against any Owner, or any officer or director of the Association. An Owner is not precluded from bringing an action against the Association because the Owner is a Unit Owner or is a member or officer or director of the Association.

Section 16.2 Limitation of Liability for Utility Failure, etc. Except to the extent covered by insurance obtained by the Board, neither the Association, the Board, the Managing



Agent, nor the Declarant shall be liable for the failure of any utility or other service to be obtained and paid for by the Board; for injury or damage to person or property caused by the elements, or resulting from electricity, water, rain, dust, or sand which may leak or flow from outside or from any parts of the Building, or from any of their pipes, drains, conduits, appliances, or equipment, or from any other place; or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of Assessments shall be claimed or allowed for any such utility or service failure, or for such injury or damage, or for such inconvenience or discomfort.

Section 16.3 No Personal Liability. So long as a Board member, or Association committee member, or Association officer, or the Declarant or the Managing Agent has acted in good faith, without willful or intentional misconduct, upon the basis of such information as is then possessed by such person, no such person shall be personally liable to any Owner or to any other person, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of such person; provided, that this Section shall not apply where the consequences of such act, omission, error, or negligence is covered by insurance obtained by the Board.

Article 17. INDEMNIFICATION.

Each Board member, Association committee member, Association officer, the Declarant and the Managing Agent shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which such person may be a party, or in which such person may become involved, including appeals of such proceedings, by reason of holding or having held such position, or any settlement thereof, whether or not such person holds such position at the time such expenses or liabilities are incurred, except to the extent such expenses and liabilities are covered by any type of insurance and except in cases wherein such person has engaged in intentional misconduct or willful misfeasance in the performance of such person's duties; provided, that in the event of a settlement, the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

Article 18. INSURANCE.

Section 18.1 General Requirements. Unless the Owners unanimously elect to waive all or a portion of this Article 18 as permitted by RCW 64.34.352(8), the Association shall maintain, to the extent reasonably available, a policy or policies and bonds necessary to provide property insurance of the Common Elements and Building, commercial general liability insurance, fidelity insurance, and such other insurance as the Board deems advisable.] All insurance shall be obtained from insurance carriers that are generally acceptable for



similar projects, authorized to do business in the state of Washington and have an A.M. Best rating, most current edition, of "A" or better, or, if such rating company ceases to exist, a comparable rating from a similar or successor entity. All such insurance policies shall provide that coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice (or 10 days' prior written notice in the case of cancellation for non payment of premium) to any and all insureds named therein, including Owners, the special member or limited partner of any Owner that is a limited liability company or limited liability partnership, Mortgagees, and designated servicers of Mortgagees. The Association (or if any insurance required by this Section is obtained by the Unit Owners and not the Association, each Owner) shall furnish evidence to the Owners and Association, if applicable, that such insurance is in effect. If any insurance required by this Section is obtained by the Association on behalf of the Owners, the premiums therefore (and any applicable deductible in the event of casualty) may be specially allocated to the Owners in accordance with risk as determined by an independent third party insurance consultant.

Section 18.2 Insurance for Units. Each Owner shall obtain and maintain property insurance, liability insurance, and such other insurance for the Unit owned by such Owner as the Board deems advisable. Unless an Owner is self-insuring, all insurance shall be obtained from insurance carriers that are generally acceptable for similar properties and authorized to do business in the state of Washington. If any Owner elects to self-insure, it shall obtain the prior written consent of the Board, which shall stipulate their acceptance of such a plan and may set forth coverage conditions including reasonable coverage amounts, deductibles, and policy terms which could reasonably be obtained from a commercial insurance carrier. Each Owner shall furnish the Association and the other Owners with proof of insurance upon request, or in the case of self-insurance, provide periodic reports on the maintenance of such self-insurance coverage.

18.2.1 The property insurance maintained by the Association (or, if applicable, each Owner) shall, at the minimum, provide all risk or special cause of loss coverage in an amount equal to the full replacement cost of the Building and improvements (or, if maintained by each Owner, only with respect to those improvements contained within the Owner's Unit), with such reasonable deductibles, co-insurance clauses and exclusions from coverage as the Board may from time to time approve or by rule or regulation establish, but in no event shall the deductible exceed \$10,000 per occurrence (as such amount may be adjusted annually after _____ by a multiple of the "C.P. Index All-Urban Consumers U.S. City Average All-Items (1982-84=100)" as published by the U.S. Bureau of Labor Statistics. The property insurance shall include a code or ordinance endorsement and such other endorsements or coverages as the Board may from time to time approve or by rule or regulation establish, and shall name the Association and the Owner of the other Unit as



additional insureds to which notice must be given at least 30 days prior to the termination of any policy.

18.2.2 The liability insurance coverage maintained by each Owner shall cover liability of the insureds for property damage, personal injury and bodily injury and death of persons arising out of the operation, maintenance, and use of the Unit and such other risks as are customarily covered for similar properties with a limit of liability of at least \$10,000,000 and shall name the Association and the Owner of each of the other Unit as additional insureds to which notice must be given at least 30 days prior to the termination of any policy.

18.2.3 Any portion of improvements within the Condominium for which insurance is required under this Article which is damaged or destroyed shall be repaired or replaced promptly by the applicable Owner pursuant to Article 19 unless the Condominium is terminated or repair or replacement would be illegal under any state or local health or safety statute or ordinance.

18.2.4 Any property insurance required to be maintained or actually maintained by the Association relating to the Building or an Owner relating to the Owner's Unit or its appurtenances or contents shall contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owner of any Unit, and/or their respective agents, members of the Owner's household, employees, or lessees, and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

18.2.5 An Owner which is a governmental agency, institution, or entity, and which by law may be self-insured with respect to some or all of the risks identified in this Article may provide proof of such self-insurance, to the extent applicable.

Section 18.3 Use of Insurance Proceeds. Any portion of the Condominium for which insurance is required under this Article that is damaged or destroyed shall be repaired or replaced promptly pursuant to Article 19 unless: (a) the Condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) all Owners vote not to rebuild. If all of the damaged or destroyed portions of the Condominium are not repaired or replaced: (i) the insurance proceeds attributable to the damaged portions of the Condominium shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium; and (ii) the insurance proceeds attributable to improvements that are not rebuilt shall be distributed to the Owners of those improvements, or to lienholders, as their interests may appear. The Board shall be responsible for the distribution of insurance proceeds paid from policies procured by the Association. Notwithstanding the provisions of this Section, Article 24 governs the distribution of insurance proceeds if the Condominium is terminated.



Article 19. DAMAGE AND REPAIR OR DAMAGE TO PROPERTY.

In the event of damage or destruction by casualty of any improvements within the Condominium, the damage or destruction shall be repaired, reconstructed or rebuilt unless, within 15 business days of such damage or destruction, the Board or a Unit Owner shall have requested a special meeting of the Association and the Owners and their Mortgagees have elected not to repair, reconstruction or rebuild in accordance with this Article. Such special meeting shall be held within 30 business days of the date of damage or destruction, unless the Board determines it is necessary or appropriate to extend the time for the meeting. At the time of such meeting, unless the Owners of all Units, whether in person, by writing or by proxy, with the approval of their Mortgagees and any special member or partner of an Owner that is a limited liability company or limited liability partnership, vote not to repair, reconstruct or rebuild the damaged property or vote otherwise to modify the improvements so that each Unit may continue be used for its intended purpose, the damage or destruction shall be repaired, reconstructed or rebuilt or otherwise modified by the Owner or Owners responsible for the maintenance, repair or replacement thereof, as provided in Article 8 and Section 18.2. If the damage or destruction is not repaired, reconstructed or rebuilt or otherwise modified and if the improvements within any of the Units cannot be used for its intended purpose, the Condominium shall be terminated.

Article 20. CONDEMNATION.

Section 20.1 Consequences of Condemnation; Notices. If the Building, any Unit or portion thereof, or any of the Common Elements is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to the Association, each Owner and the Mortgagees and the provisions of this Article shall apply.

Section 20.2 Condemnation of a Unit. If all of a Unit is acquired by condemnation, the proceeds from the condemnation of a Unit shall be paid to the Owner or lienholder of the Unit, as their interests may appear; provided, however, if any Unit is condemned and improvements within another Unit are deprived of vertical support, the Owner of the deprived Unit shall be entitled to assert against the condemning authority a claim for any damage to the deprived Unit resulting therefrom. Upon acquisition, unless the decree otherwise provides, the condemned Unit's Allocated Interests are automatically reallocated to the remaining Units in accordance with their relative Allocated Interests, and the Association shall promptly prepare, execute, and record an amendment to this Declaration reflecting the reallocation.

Section 20.3 Condemnation of Part of a Unit. If part of a Unit is acquired by condemnation, the proceeds from the condemnation awarded to the Unit Owner shall be paid to the Owner or lienholders of the Unit, as their interests may appear; provided, however, that



if a portion of any Unit is condemned and any other Unit is deprived of its vertical support, the Owner of the deprived Unit shall be entitled to assert against the condemning authority a claim for any damage to that Unit resulting therefrom. Upon partial condemnation of a Unit, unless the decree otherwise provides: the Allocated Interests of the Units automatically will be adjusted in conformance with the formula set forth in Section 5.4 of this Declaration..

Section 20.4 Condemnation of Common Elements. If part of the Common Elements is acquired by condemnation, the portion of the award attributable to the Common Elements taken shall be used to restore or replace such Common Elements with any remaining award proceeds paid to the Owners based upon their respective interests in the Common Elements.

Section 20.5 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article 19.

Article 21. EASEMENTS.

Section 21.1 Reciprocal Easements. The following perpetual non-exclusive reciprocal easements are hereby declared and created:

21.1.1 An easement in and through each Unit for the benefit of the other Units for construction of the Building substantially in accordance with the Building Plans. Each Unit Owner shall have the right of ingress and egress in and through each Unit to complete such construction including, without limitation, easements for entry, excavation, support and the overhead operation of construction cranes. Such reciprocal easement shall be further governed by a development agreement or such other separate agreements as may be practicable between the Owners.

21.1.2 An easement in and through each Unit and the Common Elements for the benefit of the other Units for location and operation of all support elements and utility, wiring, cabling, HVAC facilities, and service elements of the Building, and for reasonable access thereto by a Unit Owner or the Association, as applicable, as required to effectuate and continue proper operation of the Building and the Condominium.

21.1.3 Each Unit and all Common Elements are hereby declared to have an easement over all adjoining Units and Common Elements for the purpose of accommodating any present or future minor encroachment as a result of engineering errors, construction, reconstruction, repairs, settlement, shifting, or movement of any portion of the property, or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of the encroaching Units and Common Elements so long as the encroachments shall exist and are minor, and the rights and obligations of Owners shall not be altered in any way by the encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of a



Unit if the encroachment was caused by the willful act with full knowledge of the Owner. The encroachments described in this Section shall not be construed to be encumbrances affecting the marketability of title to any Unit.

21.1.4 An easement over each Unit and the Common Elements for the purpose of fulfilling the maintenance responsibilities of each Unit Owner which are set forth in this Declaration.

Section 21.2 Easements benefitting the Garage Unit. The following easements benefitting the Garage Unit and burdening the Housing Unit and/or the Commercial Unit are hereby declared and created:

21.2.1 A non-exclusive perpetual easement in and to all Structural Elements at any time located within or constituting a part of the Commercial Unit or the Housing Unit for the support of the Garage Unit and the Garage Facilities. The Owners of the Housing Unit and Commercial Unit shall at all times maintain the structural integrity of the Residential Facilities and Commercial Facilities, respectively, as required to provide such structural support and shall not undertake or permit any other person to undertake any activity in the Owner's respective Unit that would adversely affect the structural support of the Garage Unit and Garage Facilities or make any structural modification to any portion of the Building that is contained within such Owner's Unit that would adversely affect the structural support of the Garage Unit and the Garage Facilities without the prior written consent of the Owner and Mortgagee of the Garage Unit.

21.2.2 An exclusive perpetual easement for the location, operation and maintenance of the exhaust system that will serve the Garage Facilities, and a non-exclusive easement for reasonable access thereto, to be located through and across the northeast corner of Level 2 of the Building within the Commercial Facilities of the Commercial Unit. The exhaust system serving the Garage Facilities is shown on the Building Plans.

21.2.3 A non-exclusive perpetual easement for use of and access to the bicycle parking areas to be located on Level 1 of the Building within the Commercial Facilities of the Commercial Unit for the purpose of bicycle parking and access to Stairway #2 of the Building. The bicycle parking area is shown on the Building Plans.

21.2.4 A non-exclusive perpetual easement for the use of and access to Stairway #2 to be located on Level 1 of the Building within the Commercial Facilities of the Commercial Unit for the purpose of ingress and egress from the Garage Facilities to the Common Elements and public right-of-way. Stairway #2 is shown on the Building Plans.

21.2.5 A non-exclusive perpetual easement for the use of and access to the transformer vault room serving the Garage Facilities to be located on Level 1 of the Building



within the Housing Unit for the purpose of operation, maintenance, repair and replacement of the transformers serving the Garage Facilities. The transformer vault room is shown on the Building Plans.

21.2.6 Subject to the restrictions set forth in this Declaration, an exclusive perpetual easement for the installation, location, operation and maintenance of the Satellite Facilities which will serve the Garage Facilities and benefit the Owner of the Garage Unit, and a non-exclusive easement for reasonable access thereto if such facilities are installed by the Owner of the Garage Unit, to be located on the roof of the Building within the Housing Unit.

Section 21.3 Easements benefitting the Commercial Unit. The following easements benefitting the Commercial Unit and burdening the Housing Unit and/or the Garage Unit are hereby declared and created:

21.3.1 A non-exclusive perpetual easement in and to all Structural Elements at any time located within or constituting a part of the Garage Unit and the Housing Unit for the support of the Commercial Unit and the Commercial Facilities. The Owners of the Garage Unit and Housing Unit shall at all times maintain the structural integrity of the Residential Facilities and Garage Facilities, respectively, as required to provide such structural support and shall not undertake or permit any other person to undertake any activity in the Owner's respective Unit that would adversely affect the structural support of the Commercial Unit and Commercial Facilities or make any structural modification to any portion of the Building that is contained within such Owner's Unit that would adversely affect the structural support of the Commercial Unit and the Commercial Facilities without the prior written consent of the Owner and Mortgagee of the Commercial Unit. Such easement shall include a right of structural support from the Garage Facilities, soils within the Garage Unit, and Residential Facilities, including the foundation of the Building, and all soils and all other materials below the lower foundation of the Building. Such easement shall include a right of structural support from the soils below the Garage Facilities and the Garage Facilities and/or the Residential Facilities, to rebuild any portions of the Commercial Facilities that are part of the Commercial Unit or Exclusive Easement Areas benefitting the Commercial Unit which are damaged or destroyed by casualty if the Owners and the Mortgagees elect to repair, reconstruct or rebuild pursuant to and in accordance with Article 19.

21.3.2 A non-exclusive perpetual easement for the use of and access to Stairway #2 to be located on Parking Levels 1 and 2 of the Building within the Garage Facilities of the Garage Unit for the purpose of access between the Commercial Facilities and those easement areas serving the Commercial Facilities and Commercial Unit which are located within the Garage Facilities of the Garage Unit. Stairway #2 is shown on the Building Plans.



21.3.3 A non-exclusive perpetual easement for use of and access to the electrical meter room, water room and mechanical room to be located on Parking Level 1 of the Building within the Garage Facilities of the Garage Unit for the purposes of location, maintenance and operation of the electrical, water, and mechanical systems of the Building which serve the Commercial Facilities and Commercial Unit. The electrical meter room, water room and mechanical room are shown on the Building Plans.

21.3.4 An exclusive perpetual easement also benefitting and in common with the Housing Unit for use of and access to Stairway #1 and for the elevator lobby, and elevator machine room to be located on Parking Level 1 of the Building within the Garage Facilities of the Garage Unit for the purposes of location, maintenance, and operation of the elevator and elevator equipment that serve the Commercial Facilities and Commercial Unit. Stairway #1, the elevator lobby and elevator machine room located on Parking Level 1 are shown on the Building Plans.

21.3.5 An exclusive perpetual easement also benefitting and in common with the Housing Unit for use of and access to Stairway #1, elevator lobby, elevator machine room, storage/mechanical rooms, elevator vaults, water heater room and machine area corridor to be located on Parking Level 2 of the Building within the Garage Facilities of the Garage Unit for the purposes of location, maintenance, and operation of the elevator, elevator equipment and building systems which serve the Commercial Facilities and Commercial Unit. Stairway #1, the elevator lobby, elevator machine room, storage/mechanical rooms, elevator vaults, water heater room and machine area corridor are shown on the Building Plans.

Section 21.4 Easements benefitting the Housing Unit. The following easements benefitting the Housing Unit and burdening the Garage Unit and/or the Commercial Unit are hereby declared and created:

21.4.1 A non-exclusive perpetual easement in and to all Structural Elements at any time located within or constituting a part of the Commercial Unit and the Garage Unit for the support of the Housing Unit and the Residential Facilities. The Owners of the Garage Unit and Commercial Unit shall at all times maintain the structural integrity of the Garage Facilities and Commercial Facilities, respectively, as required to provide such structural support and shall not undertake or permit any other person to undertake any activity in the Owner's respective Unit that would adversely affect the structural support of the Housing Unit and Residential Facilities or make any structural modification to any portion of the Building that is contained within such Owner's Unit that would adversely affect the structural support of the Housing Unit and the Residential Facilities without the prior written consent of the Owner and each Mortgagee of the Housing Unit. Such easement shall include a right of structural support from the Garage Facilities, soils within the Garage Unit and the



Commercial Unit for support, including the foundation of the Building, and all soils and all other materials below the lower foundation of the Building. Such easement shall include a right of structural support from the soils below the Garage Facilities and the Garage Facilities and/or Commercial Facilities, to rebuild any portions of the Residential Facilities that are part of the Housing Unit or Exclusive Easement Areas benefitting the Housing Unit that are damaged or destroyed by casualty if the Owners and the Mortgagees elect to repair, reconstruct or rebuild pursuant to and in accordance with Article 19.

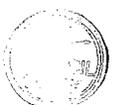
21.4.2 A non-exclusive perpetual easement for the use of and access to Stairway #2 to be located on Parking Levels 1 and 2 of the Building within the Garage Facilities of the Garage Unit for the purposes of ingress and egress between the Residential Facilities and those easement areas serving the Residential Facilities and Housing Unit that are located within the Garage Facilities of the Garage Unit. Stairway #2 is shown on the Building Plans.

21.4.3 A non-exclusive perpetual easement for use of and access to the electrical meter room, water room and mechanical room to be located on Parking Level 1 of the Building within the Garage Facilities of the Garage Unit for the purposes of location, maintenance and operation of the electrical, water, and mechanical systems of the Building that serve the Residential Facilities and Housing Unit. The electrical meter room, water room and mechanical room are shown on the Building Plans.

21.4.4 An exclusive perpetual easement also benefitting and in common with the Commercial Unit for use of and access to Stairway #1 and the elevator lobby, and elevator machine room to be located on Parking Level 1 of the Building within the Garage Facilities of the Garage Unit for the purposes of location, maintenance, and operation of the elevator and elevator equipment that serve the Residential Facilities and Housing Unit. Stairway #1, the elevator lobby and elevator machine room located on Parking Level 1 are shown on the Building Plans.

21.4.5 An exclusive perpetual easement also benefitting and in common with the Commercial Unit for use of and access to Stairway #1, elevator lobby, elevator machine room, storage/mechanical rooms, elevator vaults, water heater room and machine area corridor to be located on Parking Level 2 of the Building within the Garage Facilities of the Garage Unit for the purposes of location, maintenance, and operation of the elevator, elevator equipment and building systems that serve the Residential Facilities and Housing Unit. Stairway #1, the elevator lobby, elevator machine room, storage/mechanical rooms, elevator vaults, water heater room and machine area corridor are shown on the Building Plans.

Section 21.5 Utility Easements Granted by the Declarant. The Declarant reserves the right to grant easements to the various companies or municipalities who provide, or wish



to provide, utility services to the Condominium or to the Units in the Condominium for the installation, construction, maintenance, repair and reconstruction of all utilities serving the Condominium or the Owners, including, without limitation, such utility services as water, sanitary sewer, storm sewer, electricity, cable television, data and telephone, and an easement for access over and under the Common Elements of the Condominium to the utility service facilities.

Article 22. PROCEDURES FOR SUBDIVIDING OR ALTERING UNITS.

Section 22.1 Submission of Proposal to Subdivide Unit. No Unit or Units shall be subdivided either by agreement or legal proceedings, except as provided in this Article. The term "subdivision", as used in this Article, shall mean the legal division of a Unit into two or more new Units, with each Unit having a separate and unique indentifying unit name and all the attributes of a Unit under this Declaration and the Condominium Act. An Owner may propose subdividing a Unit or Units by submitting the proposal in writing to the Board and to all other Owners and Mortgagees of the Unit(s) to be subdivided or combined, as applicable. Notice of such proposal to subdivide must also be given to the Mortgagees of all other Units in the Condominium. The proposal must include complete plans and specifications for accomplishing the subdivision and proposed amendments of this Declaration and the Survey Map and Plans, which amendments shall assign an identifying number to each Unit created and reallocate the allocated interests and liabilities formerly allocated to the subdivided Unit to the new Units in any reasonable manner prescribed by the Owner of the subdivided Unit. The proposal shall also address allocation of the right to appoint Board members. The Owner of the Unit to be subdivided shall bear all costs of the subdivision. The amendments shall be executed by the Owner of the Unit to be subdivided upon approval pursuant to Section 22.2. A proposal that contemplates subdivision of a Unit will be accepted only if approved in writing by all Owners and Mortgagees of the Unit or Units to be subdivided, the Board, and all other Mortgagees. The submission of a Unit and appurtenances to the Act and creation of condominium units within that Unit shall not be considered to be a subdivision of a Unit within the meaning of this Section.

Section 22.2 Exterior and Structural Alterations. A proposal that contemplates a change in the appearance of the Common Elements, the structural elements of the Building, the mechanical or electrical systems of the Building if those systems serve more than one Unit, or that may impair the structural integrity or lessen the support of any portion of the Condominium is subject to the prior approval by the Owners and Mortgagees of the other Units so affected.



Article 23. AMENDMENT OF DECLARATION, SURVEY MAP AND PLANS,
ARTICLES OR BYLAWS.

The Declaration, the Survey Map and Plans, the Articles and the Bylaws may be amended only with the unanimous consent of the Owners and all Mortgagees. An Owner or a Board member may propose amendments to this Declaration or the Survey Map and Plans, the Articles or the Bylaws to the Board. With the approval of the Board, the proposed amendment shall be submitted to the members of the Association and Mortgagees for their consideration. Amendments may be adopted at a meeting of the Association or by written consent of the requisite number of persons entitled to vote, after notice has been given to all persons entitled to receive notices, including Mortgagees. The notice of a meeting at which an amendment is to be considered shall include the text of the proposed amendment. Upon the adoption of an amendment to the Declaration or the Survey Map and Plans, it shall become effective when it is recorded or filed in the real property records in the county in which the Condominium is located. The amendment shall be indexed in the name of the Condominium and shall contain a cross-reference by recording number to the Declaration and each previously recorded amendment thereto. Such amendments shall be prepared, executed, recorded and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. No action to challenge the validity of an amendment adopted by the Association and approved by the Owners and Mortgagees pursuant to this Article may be brought more than one year after the amendment is recorded. An amendment to the Articles shall be effective upon filing the amendment with the Secretary of State. An amendment to the Bylaws shall be effective upon adoption.

Article 24. TERMINATION OF CONDOMINIUM.

Section 24.1 Action Required. Except as provided in Article 19 and Article 20, the Condominium may be terminated only by agreement or with the written consent of all Unit Owners and all Mortgagees and in accordance with the Condominium Act.

Section 24.2 Condominium Act Governs. The provisions of the Condominium Act relating to termination of a condominium contained in RCW 64.34.268, as it may be amended, shall govern the termination of the Condominium, including, but not limited to, the disposition of the real property in the Condominium and the distribution of proceeds from the sale of that real property. Any termination agreement must provide that upon termination of the Condominium, any Regulatory Agreement then in force against any Unit and any easement in favor of the City over any part of the Condominium, shall remain in effect according to its own terms against the portion of the real property that formerly constituted such Unit or other part of the Condominium, whether the property in the Condominium is sold or not. Whether or not so provided in any termination agreement, to the extent that,



immediately prior to termination, the Housing Unit is subject to any Regulatory Agreement, such Regulatory Agreement shall continue to burden the interests of the Owner of such Unit in the real property formerly constituting such Unit including, without limitation, rights of exclusive occupancy under RCW 64.34.268 or successor provision, and if the real property that formerly constituted such Unit shall be transferred after termination, the transferee shall take subject to the terms of such Regulatory Agreement.

Article 25. NOTICES.

Section 25.1 Form and Delivery of Notice. Unless provided otherwise in this Declaration, all notices given under the provisions of this Declaration or the Bylaws or rules or regulations of the Association shall be in writing and may be delivered either personally or by facsimile transmission or mail. If delivery is made by mail, the notice shall be deemed to have been delivered upon being deposited in the United States mail, first class postage prepaid, addressed to the person entitled to such notice at the most recent address known to the Board. Notice to the Owner of any Unit shall be sufficient if mailed to the Unit if no other mailing address has been given to the Board. Mailing addresses may be changed by notice in writing to the Board. Notices to the Board shall be given to the president or secretary of the Association.

Section 25.2 Notices to Mortgagees. The Board shall send to Mortgagees timely written notice of any proposed amendment of the Declaration, Bylaws, Articles of Incorporation, or Survey Map and Plans; any proposed termination of condominium status; any proposed transfer of any part of the Common Elements; any proposed termination of professional management of the Condominium; any potential condemnation loss and any casualty loss that affects a material portion of the Condominium or that affects any Unit on which the Mortgagee has a Mortgage; any delinquency which has continued for 60 days in the payment of Assessments or charges owed by an Owner of a Unit on which a Mortgagee has a Mortgage; any lapse, cancellation, or material modification of any insurance policy maintained by the Association pursuant to Article 18; and any proposed action that would require the consent of all or a specified percentage of Mortgagees pursuant to Article 19, Article 22, or Article 23.

Section 25.3 Severability. The provisions of this Declaration shall be independent and severable, and the unenforceability of any one provision shall not affect the enforceability of any other provision, if the remaining provision or provisions comply with the Condominium Act.

Article 26. EFFECTIVE DATE.

This Declaration shall take effect upon recording.



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 1
August 16, 2012
Version #1

Article 27. REFERENCE TO SURVEY MAP AND PLANS.

The Survey Map and Plans were filed with King County Recorder's Office, simultaneously with the recording of this Declaration under File No. _____.

Article 28. ASSIGNMENT BY DECLARANT.

The Declarant reserves the right to assign, transfer, sell, lease, or rent all or a portion of the property then owned by it and reserves the right to assign all or any of its rights, duties, and obligations created under this Declaration.

DATED: _____, 2012.

THE CITY OF SEATTLE, a municipal corporation of
the State of Washington

By: _____
Name: _____
Title: _____



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 1
August 16, 2012
Version #1

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____
signed this instrument, on oath stated that he/she was authorized to execute the instrument and
acknowledged it as the _____ of THE CITY OF SEATTLE, a
municipal of the State of Washington, to be the free and voluntary act of such party for the
uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of

Washington, residing at _____

My appointment expires _____



SCHEDULE A

12TH AVENUE ARTS, A CONDOMINIUM

Description of Land in Condominium

LOTS 2 THROUGH 5, INCLUSIVE, BLOCK 22, ADDITION TO THE CITY OF SEATTLE AS LAID OFF BY D. T. DENNY, GUARDIAN OF THE ESTATE OF J. H. NAGLE (COMMONLY KNOWN AS NAGLE'S ADDITION TO THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 153, IN KING COUNTY, WASHINGTON; EXCEPT THE WEST 7 FEET THEREOF, CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 61476 FOR THE WIDENING OF 12TH AVENUE AS PROVIDED BY ORDINANCE NO. 17972 OF THE CITY OF SEATTLE.



SCHEDULE B

12TH AVENUE ARTS, A CONDOMINIUM

Unit Data; Allocated Interests; Voting

UNIT	LEVELS	PROJECTED FINISHED FLOOR AREA (SQ. FT.)	COMMON EXPENSE LIABILITY AND INTEREST IN THE COMMON ELEMENTS	VOTING
Garage Unit	P1, P2, 1 (partial)	47,977	30%	30
Commercial Unit	1 (partial), 2	43,392	27%	27
Housing Unit	1 (partial), 3, 4, 5, 6	69,760	43%	43
TOTALS		161,129	100.00%	100



SCHEDULE C

12TH AVENUE ARTS, A CONDOMINIUM

Common Expenses

Common Expenses shall consist of all costs of the Association other than Specially Allocated Expenses including Association administrative costs, and shall be allocated to all Units in accordance with Common Expense Liability. Notwithstanding the foregoing, certain costs affecting some but not all of the Owners shall not pass through the Association and shall not be a Common Expense nor a Specially Allocated Expense. Such costs shall instead be shared between the affected Owners pursuant to Article 14 or in an agreement separate and apart from this Declaration.



SCHEDULE D

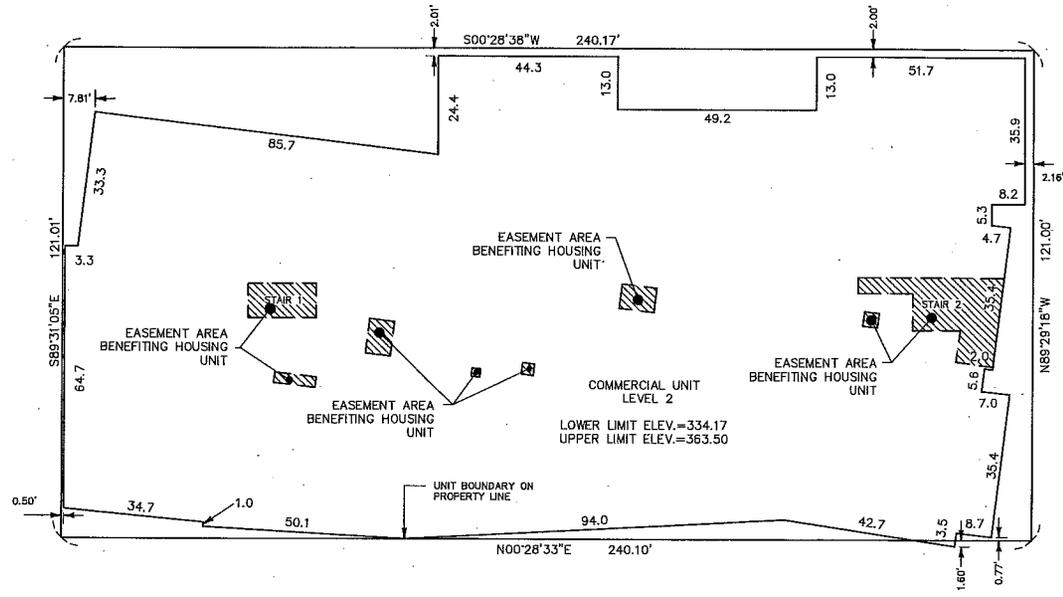
12TH AVENUE ARTS, A CONDOMINIUM

Specially Allocated Expenses

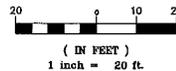
1. The cost of water and sewer service (including irrigation for exterior Common Elements) shall be specially allocated to the Unit Owners based upon _____.
2. The cost of natural gas service shall be specially allocated to the Unit Owners based upon _____.
3. The cost of electricity for the exterior Common Elements shall be specially allocated to the Unit Owners based upon _____.
4. The cost of Common Element landscaping shall be specially allocated to the Unit Owners based upon the following percentages: _____.
5. Any expense of the Association or portion thereof benefiting fewer than all of the Units must be allocated exclusively against the Units benefited in proportion to the benefit derived by each such Unit.
6. The cost of property insurance for Condominium and the Units covered by the Association's insurance policy shall be specially allocated among the Units in accordance with risk as determined by a qualified insurance consultant selected by the Board.
7. Any assessments or charges imposed by a governmental authority on the Association or paid by the Association, such as business improvement area assessments or sewer capacity charges, shall be specially assessed to the Units on the same basis as the assessments or charges are levied by the governmental authority.
8. The cost of any other utility service shared by the Units shall be specially allocated among the Units in proportion to usage to the extent that it can reasonably be determined, or in proportion to Common Expense Liability if it cannot.



**SURVEY MAP AND PLANS FOR
 12th AVENUE ARTS, A CONDOMINIUM
 NE 1/4 OF THE NE 1/4 OF SECTION 32, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M.
 CITY OF SEATTLE, KING COUNTY, WASHINGTON**



LEVEL 2



BUSH, ROED & HITCHINGS, INC.
 CIVIL ENGINEERS & LAND SURVEYORS
 2009 MINOR AVE. EAST
 SEATTLE, WA 98102 (206) 323-4144

**12th AVENUE ARTS,
 A CONDOMINIUM**

SEATTLE		WASHINGTON	
DWN. BY: OQR	DATE: 06/2012	JOB NO. 2011070.03	
CHK. BY: OQR	SCALE: 1:20	SHEET 6 OF 8	

**SURVEY MAP AND PLANS FOR
 12th AVENUE ARTS, A CONDOMINIUM
 NE 1/4 OF THE NE 1/4 OF SECTION 32, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M.
 CITY OF SEATTLE, KING COUNTY, WASHINGTON**

LEGAL DESCRIPTION:

LOTS 2 THROUGH 5, INCLUSIVE, BLOCK 22, ADDITION TO THE CITY OF SEATTLE AS LAID OFF BY D. T. DENNY, GUARDIAN OF THE ESTATE OF J. H. NAGLE (COMMONLY KNOWN AS NAGLE'S ADDITION TO THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 153, IN KING COUNTY, WASHINGTON; EXCEPT THE WEST 7 FEET THEREOF, CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 01478 FOR THE WIDENING OF 12TH AVENUE AS PROVIDED BY ORDINANCE NO. 17972 OF THE CITY OF SEATTLE.

RESTRICTIONS:

REFER TO DECLARATION, RECORDED UNDER SEPARATE DOCUMENT FOR ANY RESTRICTIONS.

DECLARATION:

WE, THE UNDERSIGNED OWNER OF IN THE REAL PROPERTY DESCRIBED HEREIN, HEREBY DECLARE THIS SURVEY MAP AND PLANS FOR 12TH AVENUE ARTS, A CONDOMINIUM AND DEDICATE THE SAME FOR A CONDOMINIUM SOLELY TO MEET REQUIREMENTS OF THE WASHINGTON CONDOMINIUM ACT, RCW 64.34, ET. SEQ., AND NOT FOR ANY PUBLIC PURPOSES.

THIS SURVEY MAP AND THESE PLANS AND ANY PORTION THEREOF ARE RESTRICTED BY LAW AND THE DECLARATION FOR 12TH AVENUE ARTS, A CONDOMINIUM, RECORDED UNDER KING COUNTY RECORD NO. _____

IN WITNESS WHEREOF, THE DECLARANT HAS EXECUTED THIS DECLARATION.

DECLARANT:

THE CITY OF SEATTLE, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON

BY: _____

ITS: _____

BY: _____

ITS: _____

STATE OF _____)
) SS
 COUNTY OF _____)

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT _____ IS THE PERSON WHO APPEARED BEFORE ME, AND SAID PERSONS ACKNOWLEDGED THAT HE/SHE SIGNED THIS INSTRUMENT, ON OATH STATED THAT HE/SHE WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS THE _____ OF THE CITY OF SEATTLE, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS ____ DAY OF _____, 20__.

SIGNATURE: _____

NAME (PRINT): _____

MY APPOINTMENT EXPIRES: _____

SURVEYOR'S CERTIFICATE:

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF _____ ON _____, 20__.

OLIVER Q. ROBAR P.L.S.
 CERTIFICATE NO. 45170

AUDITOR'S CERTIFICATE:

FILED FOR RECORD THIS ____ DAY OF _____, 20__ AT _____ M. IN BOOK _____ OF _____ AT PAGE _____ AT THE REQUEST OF _____

COUNTY AUDITOR

ASSESSOR'S APPROVAL:

EXAMINED AND APPROVED THIS ____ DAY OF _____, 20__.

ASSESSOR _____ DEPUTY ASSESSOR _____



BUSH, ROED & HITCHINGS, INC.
 CIVIL ENGINEERS & LAND SURVEYORS
 2009 MINOR AVE. EAST
 SEATTLE, WA 98102 (206) 328-4144

**12th AVENUE ARTS,
 A CONDOMINIUM**

SEATTLE		WASHINGTON	
DWN. BY: OQR	DATE: 06/2012	JOB NO. 2011070.03	
CHK. BY: OQR	SCALE: N/A	SHEET 1 OF 8	

SURVEY MAP AND PLANS FOR 12th AVENUE ARTS, A CONDOMINIUM NE 1/4 OF THE NE 1/4 OF SECTION 32, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M. CITY OF SEATTLE, KING COUNTY, WASHINGTON

HORIZONTAL DATUM: NAD 83/91

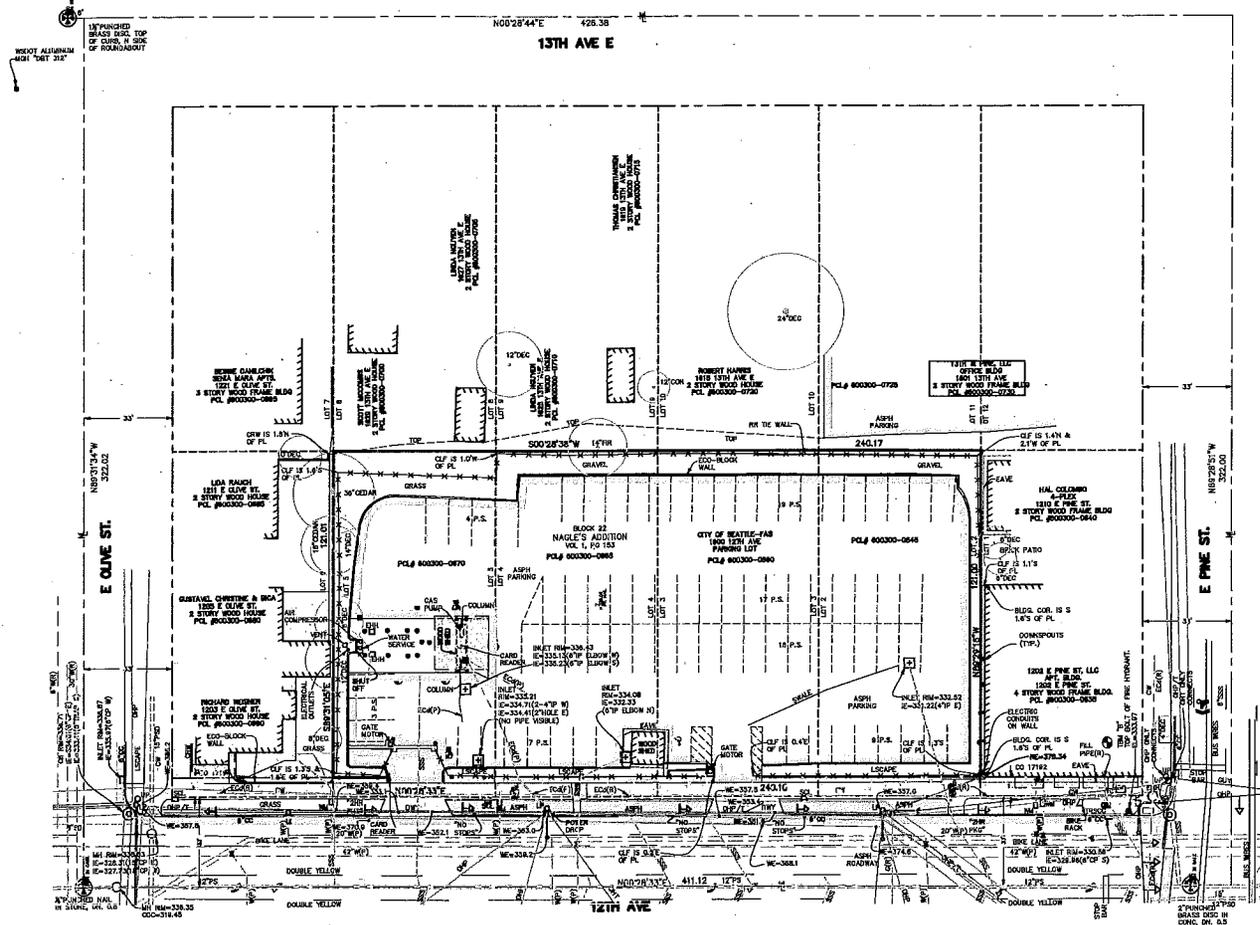
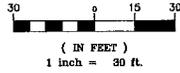
DESCRIPTION: 1/4" PUNCHED NAIL IN STONE, DN, 0.8'
 LOCATION: INTERSECTION OF 12TH AVE AND OLIVE ST.
 NORTHING: 228392.29
 EASTING: 1274542.41

OWNER: CITY OF SEATTLE
 DESCRIPTION: 2" PUNCHED BRASS DISC IN CONC, DN, 0.5'
 LOCATION: INTERSECTION OF 12TH AVE AND E PINE ST.
 NORTHING: 227971.15
 EASTING: 1274538.99

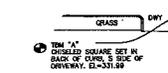
VERTICAL DATUM: NAVD88

SOURCE: CITY OF SEATTLE
 ID# SNV-2501
 DESCRIPTION: BRASS CAP
 LOCATION: 1'N & W OF INTERSECTION OF BACK OF WALK, SE QUADRANT OF INTERSECTION OF E MADISON ST. AND 12TH AVE
 ELEVATION: 306.95

SOURCE: CITY OF SEATTLE
 ID# 36834802
 DESCRIPTION: 2" BRASS DISC STAMPED "56634802"
 LOCATION: 0.5' W & S OF BACK OF WALK AT THE NE ENTRY TO CAL ANDERSON PARK, SW QUADRANT OF INTERSECTION OF E DENNY WAY AND 11TH AVE
 ELEVATION: 328.19



- | | | |
|---------------|--|---|
| LEGEND | <ul style="list-style-type: none"> DA ELECTRICAL METER DH1 ELECTRICAL HANDBOLE DM FOUND MONUMENT IN CASE D FIRE HYDRANT DS GAS MANN GS GAS VALVE GP QUARD POST GP/HP CONC./IRON PIPE HS INSERTED IE INVERT ELEVATION LP LIGHT POLE(METAL) LP W LIGHT POLE(WOOD) LSO/ASPE LANDSCAPE PLANTER MANHOLE CHP/PT OVERHEAD POWER/TELEPHONE P.S. PARKING SPACE PL PROPERTY LINE PU PARKED UTILITY LOCATION PE PIPE SENSR PC PRIVATE CATCH BASIN RD RECORD DATA | <ul style="list-style-type: none"> SL STREET NAME SIGN RE ROOF ELEVATION SCL SEATTLE CITY LIGHT HANDHOLE SSS SANITARY SIDE (SEWER/RECORD) SRN SOIL BORING TOP TOP OF BANK TRSD TRAFFIC CONTROL, CANNET TRM TEMPORARY BENCHMARK TDG TELEPHONE CORDANT (BURIED) TRFD TRAFFIC FLOW DIRECTION TRFB TRAFFIC SIGNAL TC TRAFFIC CONTROL HANDBOLE WV WATER VAULT WM WATER MANN WS WATER SACTER WV WATER VALVE CO CONDOMINIUM ORNANCE RE ROOF ELEVATION OL OIL FILL CAP WE WIRE ELEVATION |
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SURVEY

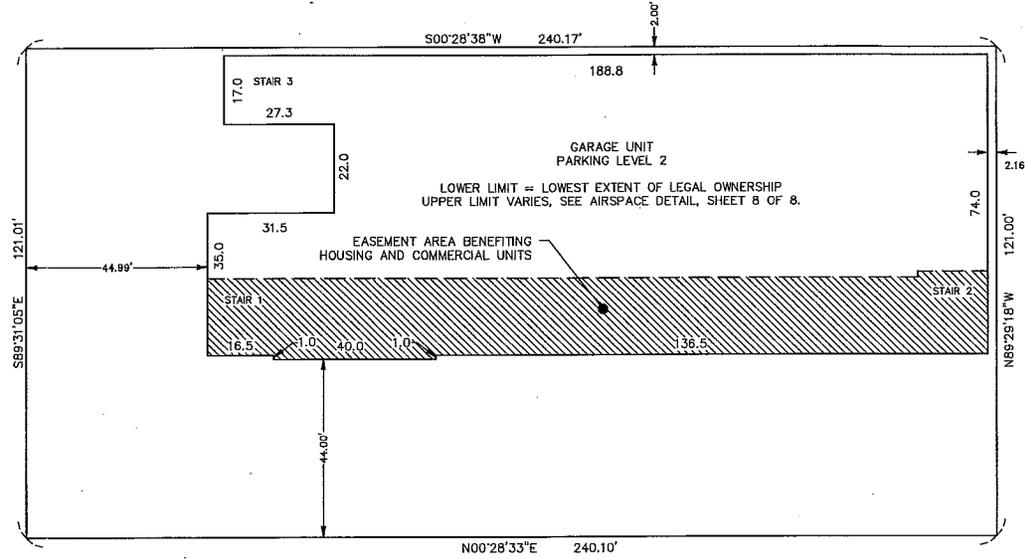


BUSH, ROED & HITCHINGS, INC.
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 2009 MINOR AVE EAST
 SEATTLE, WA 98102 (206) 328-4144

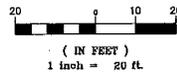
SEATTLE		WASHINGTON	
12th AVENUE ARTS, A CONDOMINIUM			
DWN. BY: OQR	DATE: 06/2012	JOB NO. 2011070.03	
CHK. BY: OQR	SCALE: 1:30	SHEET 2 OF 8	



**SURVEY MAP AND PLANS FOR
 12th AVENUE ARTS, A CONDOMINIUM
 NE 1/4 OF THE NE 1/4 OF SECTION 32, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M.
 CITY OF SEATTLE, KING COUNTY, WASHINGTON**



LEVEL P2

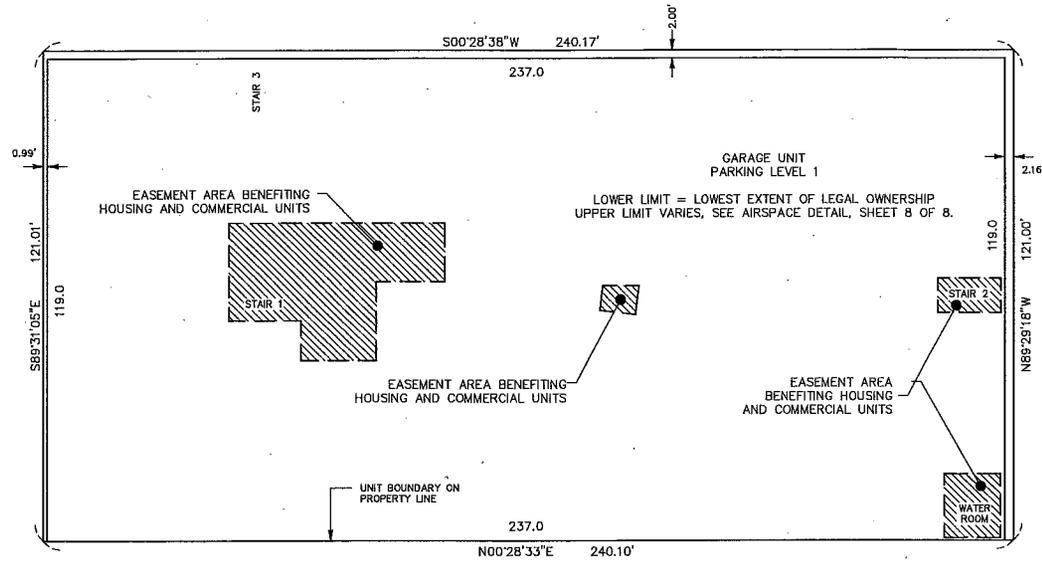


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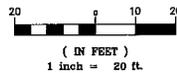
**12th AVENUE ARTS,
 A CONDOMINIUM**

SEATTLE		WASHINGTON	
DWN. BY: OQR	DATE: 06/2012	JOB NO. 2011070.03	
CHK. BY: OQR	SCALE: 1:20	SHEET 3 OF 8	

**SURVEY MAP AND PLANS FOR
 12th AVENUE ARTS, A CONDOMINIUM
 NE 1/4 OF THE NE 1/4 OF SECTION 32, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M.
 CITY OF SEATTLE, KING COUNTY, WASHINGTON**



LEVEL P1



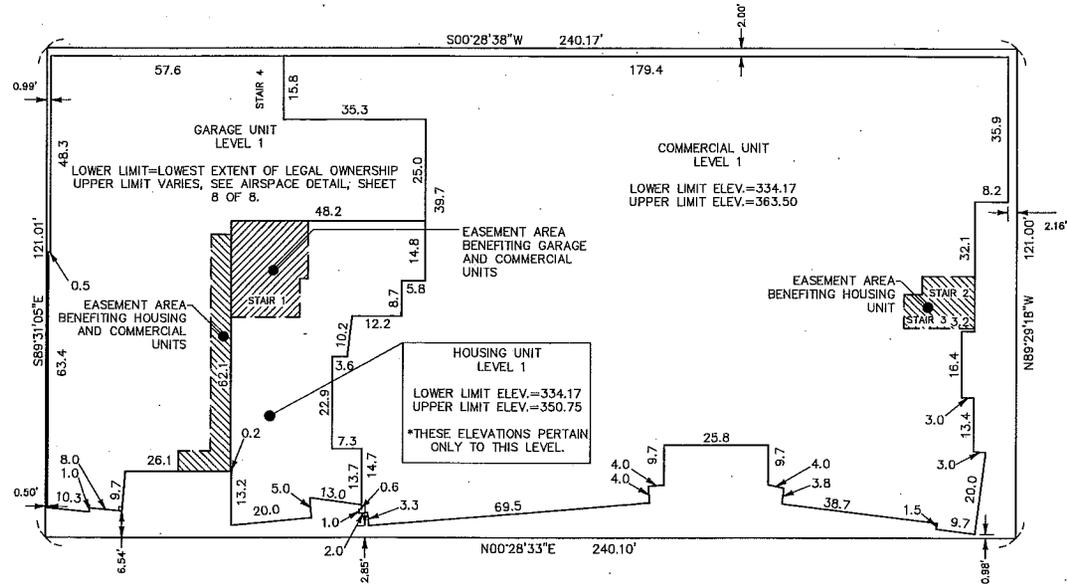
BUSH, ROED & HITCHINGS, INC.
 CIVIL ENGINEERS & LAND SURVEYORS
 3009 MINOR AVE. EAST
 SEATTLE, WA 98102 (206) 323-4144

**12th AVENUE ARTS,
 A CONDOMINIUM**

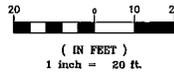
SEATTLE		WASHINGTON	
DWN. BY: OQR	DATE: 06/2012	JOB NO. 2011070.03	
CHK. BY: OQR	SCALE: 1:20	SHEET 4 OF 8	



**SURVEY MAP AND PLANS FOR
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 NE 1/4 OF THE NE 1/4 OF SECTION 32, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M.
 CITY OF SEATTLE, KING COUNTY, WASHINGTON**



LEVEL 1

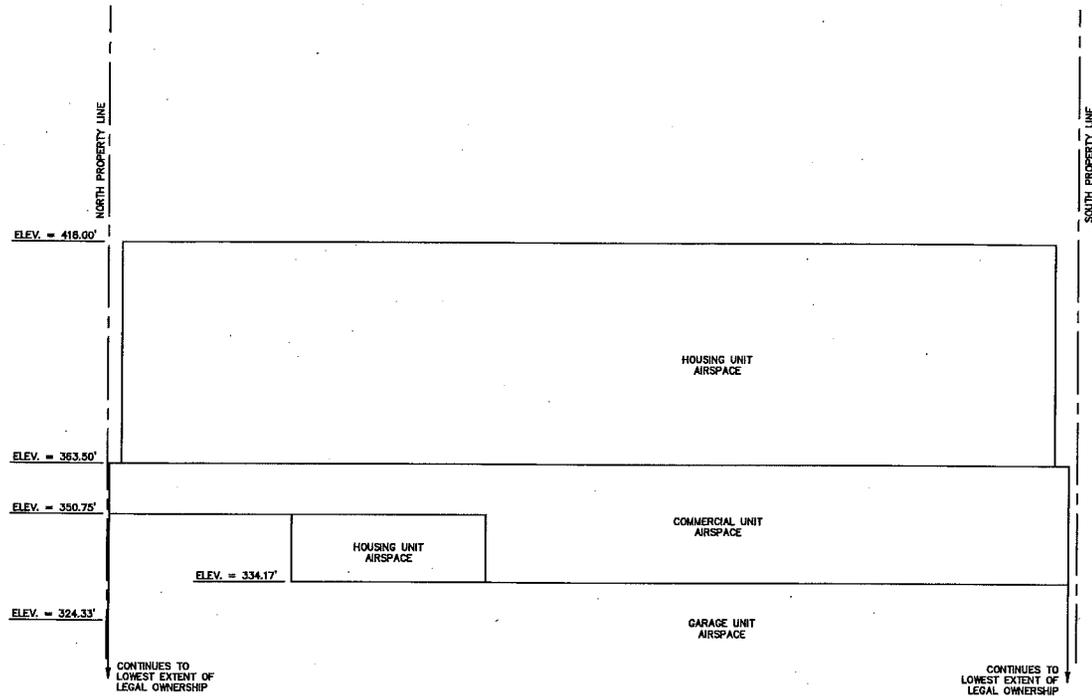


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**12th AVENUE ARTS,
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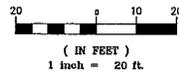
SEATTLE		WASHINGTON	
DWN. BY: OQR	DATE: 06/2012	JOB NO. 2011070.03	
CHK. BY: OQR	SCALE: 1:20	SHEET 5 OF 8	

**SURVEY MAP AND PLANS FOR
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 NE 1/4 OF THE NE 1/4 OF SECTION 32, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M.
 CITY OF SEATTLE, KING COUNTY, WASHINGTON**



ELEVATION VIEW LOOKING EAST

AIRSPACE DETAIL



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**12th AVENUE ARTS,
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SEATTLE		WASHINGTON	
DWN. BY: OQR	DATE: 06/2012	JOB NO. 2011070.03	
CHK. BY: OQR	SCALE: 1:20	SHEET 8	OF 8

William Craven
FAS East Precinct Parking 12th Ave Arts ATT 3
August 16, 2012
Version #1

Attachment 3
FAS East Precinct Parking 12th Avenue Arts



REAL PROPERTY PURCHASE AND SALE AGREEMENT

This Real Property Purchase and Sale Agreement (the “*Agreement*”) is made and entered into as of this ___ day of _____, 2012, by and between Twelfth Avenue Arts Development LLC, a Washington limited liability company (“*Buyer*”), and The City of Seattle, a Washington municipal corporation (“*Seller*”).

RECITALS

- A. Seller is the owner of certain real property located in Seattle, Washington.
- B. Buyer desires to purchase from Seller and Seller desires to sell to Buyer the Property (as hereinafter defined) on the terms and conditions set forth below.

AGREEMENT

In consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE I. PROPERTY

Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, the obligations of each of them subject to the terms and conditions set forth herein, the following:

1.1 Property. Two airspace condominium units referred to in the Condominium Documents (defined below) as the “*Housing Unit*” and the “*Commercial Unit*,” respectively, to be created on certain real property legally described in the attached Exhibit A (the “*Underlying Parcel*”), to be governed by those Condominium Documents listed in Section 1.2 below, together with all rights, privileges and easements, development rights, air rights, water rights and all easements, rights-of-way, permits, licenses and other rights appurtenant to or used in connection therewith (the Housing Unit and the Commercial Unit, together with all such rights and privileges, etc. is referred to herein as the “*Property*”). The Housing Unit and the Commercial Unit are located above one other unit to be created by the Condominium Documents. This additional unit is also legally described in the attached Exhibit A and is referred to herein as the “*Garage Unit*”. Buyer and Seller will, upon closing of the transactions contemplated herein, also hold a long-term leasehold interest in the Garage Unit.

1.2 Condominium Documents. The term “*Condominium Documents*” refers to the Condominium Declaration for 12th Avenue Arts, a Condominium, substantially in the form attached hereto as Exhibit B; the bylaws and articles of incorporation of 12th Avenue Arts Condominium Association, substantially in the form attached hereto as Exhibit C; and the Survey Map and Plans, substantially in the form attached hereto as Exhibit D.



ARTICLE II. CONSIDERATION

2.1 Consideration. In consideration for Seller conveying the Property to Buyer, Buyer agrees that it shall construct or cause to be constructed within the Property and the Garage Unit improvements substantially as described in those plans and specifications prepared by [NAME OF ARCHITECT] dated as of [DATE OF SPECIFICATIONS] titled [TITLE OF RESIDENTIAL UNIT PLANS AND SPECS; TITLE OF COMMERCIAL UNIT PLANS AND SPECS; TITLE OF GARAGE PLANS AND SPECS], all of which plans and specifications are incorporated herein by reference, and which improvements shall be used respectively as 1) a [SQUARE FOOTAGE] square foot residential rental apartment project with rents affordable to households with incomes at the time of initial occupancy of 60% or less than the area median income, as defined by the U.S. Department of Housing and Urban Development (the "**Housing Project**"); 2) [SQUARE FEET] of performing arts, retail and office space (the "**Arts/Commercial Project**"); and 3) a [SQUARE FEET] parking garage (the "**Garage Project**"). *[note: further details will be set forth in a separate Development Agreement]*

2.2 Escrow Holder. First American Title Insurance Company ("**Escrow Holder**" in its capacity as escrow holder and "**Title Company**" in its capacity as title insurer) has been designated as Escrow Holder hereunder by mutual agreement of Seller and Buyer. Upon execution of this Agreement by both Seller and Buyer (such date herein referred to as the "**Date of this Agreement**"), Escrow Holder shall open a closing escrow for the benefit of Buyer and Seller in accordance with the terms of this Agreement.

2.3 Earnest Money. Not later than three (3) days following the Date of this Agreement, Buyer shall deposit with Escrow Holder a promissory note in the principal sum of One Hundred Twenty Thousand Dollars (\$120,000.00), in the form of Exhibit E hereto, as earnest money (the "Earnest Money Note"). In the event this transaction fails to close as a result of Seller's default or the failure of any condition precedent to Buyer's obligations set forth in Article V, the Earnest Money Note shall be returned to Buyer. In the event this transaction fails to close as a result of Buyer's default or any reason other than the failure of any condition precedent to Buyer's obligations set forth in Article V, Seller shall be entitled to enforce the Earnest Money Note as Seller's sole and exclusive remedy.

ARTICLE III. TITLE

3.1 Review of Title. The parties acknowledge that as of the date of this Agreement, Buyer has received from the Title Company a preliminary commitment for title insurance for the Property dated May 8, 2012 including copies of all exceptions and encumbrances noted thereon (the "**Preliminary Commitment**"). Buyer has approved of all exceptions in the Commitment other than special exceptions 1, 2, 3 and 4, which Seller has agreed to remove.

(a) If Buyer receives notice of additional exceptions to title other than those shown in the Preliminary Commitment or the Condominium Documents, Buyer shall have twenty days from receipt of such notice and copies of the exceptions to review the new exception(s). If Buyer objects to any such exceptions within the twenty-day period, Seller shall



advise Buyer in writing within 5 days after receipt of Buyer's written objections whether Seller will remove the objectionable exception(s) at Closing, whether the Title Company has agreed to insure around the objectionable exceptions in the title policy to be issued at Closing (together with the proposed form of endorsement) or whether the objectionable exception(s) will not be removed or insured around by Seller.

(b) After receipt of Seller's response to Buyer's written objections, and if Seller has not agreed to remove or insure over the exception(s) to which Buyer objects, Buyer within ten days after receipt of Seller's notice shall notify Seller in writing of Buyer's election to either: (a) terminate this Agreement, in which event the Earnest Money Note shall be returned to Buyer, or (b) waive its objections to the exception(s) that Seller will not remove or insure around, in which event such exception(s) shall be deemed accepted by Buyer.

(c) If the time period for delivery of any notice extends beyond the Closing Date, the Closing Date shall be extended to accommodate the notice periods outlined above.

(d) The term "**Permitted Exceptions**" as used hereafter means: (a) the exceptions accepted or deemed accepted by Buyer as provided above; (b) the lien of real estate taxes and assessments payable in the calendar year of closing which shall be prorated to the Closing Date as provided in Section 7.5; and (c) local, state and federal laws, ordinances and governmental regulations.

3.2 Title Insurance. Subject to Buyer fulfilling its obligations hereunder, Seller shall cause Title Company to make available to Buyer at Closing a Standard Coverage Owner's Policy of title insurance or, if Buyer so requests in writing, an Extended Coverage Owner's Policy of title insurance, issued by Title Company in the amount of \$[VALUE ALLOCATED TO RESIDENTIAL UNIT AND COMMERCIAL UNIT], dated the date of Closing, insuring Buyer's title to the Property subject to no exceptions other than the standard printed exceptions and the Permitted Exceptions (the "**Title Policy**"). The Title Policy shall contain such endorsements as Buyer may specify and which Title Company is willing to issue provided that Buyer shall pay: (a) the cost of all such endorsements; (b) the cost of the premium increase for extended coverage if requested by Buyer; and (c) the cost of any update of the survey required for such extended coverage.

3.3 Conveyance of Property. At Closing Seller shall convey to Buyer fee simple title to the Property by execution and delivery of a quit claim deed to the Property, subject only to the Permitted Exceptions (the "**Deed**").

ARTICLE IV. BUYER CONTINGENCIES

Buyer's obligations under this Agreement are contingent upon Buyer's ability to secure financing for construction of the Housing Project, Arts/Commercial Project and the Garage Project, satisfactory to Buyer in Buyer's sole and absolute discretion. Buyer shall have until December 31, 2012 to invoke this contingency by providing written notice to Seller that it has been unable to secure such financing and that it desires to terminate this Agreement. Upon delivery of such notice to Seller, Buyer and Seller's obligations under this Agreement shall

terminate, and the Earnest Money Note shall be returned to Buyer and the parties shall have no further obligation with respect to this Agreement. Buyer may waive this contingency by fulfilling its obligations and closing the transaction contemplated herein.

ARTICLE V. CONDITIONS PRECEDENT TO CLOSING

5.1 Conditions Precedent to Buyer Obligations. Buyer's obligations under this Agreement are expressly conditioned on, and subject to satisfaction of, the following conditions precedent:

(a) Performance by Seller. Seller shall have performed all material obligations required by this Agreement to be performed by it.

(b) Title Policy. Title Company shall be committed to issuing the Title Policy subject only to the Permitted Exceptions, provided Buyer has fulfilled its obligations with respect to the Title Company.

(c) Representations and Warranties True. The representations and warranties of Seller contained herein shall be true and correct in all material respects.

(d) Execution of Ground Lease. Seller shall have executed and delivered to Buyer that certain Ground Lease Agreement pursuant to which Seller is conveying to Buyer a 65-year leasehold interest in the Garage Unit.

The conditions set forth in Sections 5.1(a) through (d) above are intended solely for the benefit of Buyer. If any of the foregoing conditions are not satisfied as of the Closing Date, Buyer shall have the right at its sole election either to waive the condition in question and proceed with the purchase of the Property or, in the alternative, to terminate this Agreement, whereupon the Earnest Money Note shall be returned to Buyer and the parties shall have no further obligations hereunder other than those obligations which survive the termination of this Agreement by their express terms.

5.2 Conditions Precedent to Seller Obligations. Seller's obligations under this Agreement are expressly conditioned on, and subject to satisfaction of, the following conditions precedent:

(a) Performance by Buyer. Buyer shall have performed all material obligations required by this Agreement to be performed by it.

(b) Representations and Warranties True. The representations and warranties of Buyer contained herein shall be true and correct in all material respects.

(c) Review and Approval of Transaction Documents. Seller shall have reviewed and approved of all transaction documents relating to the financing and construction of, or that constitute an encumbrance on, the Garage Unit.



The conditions set forth in Sections 5.2(a) through (c) above are intended solely for the benefit of Seller. If any of the foregoing conditions are not satisfied as of the Closing Date, Seller shall have the right at its sole election either to waive the condition in question and proceed with the sale or, in the alternative, to terminate this Agreement. No such termination, however, shall waive Seller's right to enforce the Earnest Money Note if Buyer is then in default under this Agreement.

ARTICLE VI. SELLER COVENANTS

6.1 Authority. Seller has full power, authority and legal right to execute, deliver and perform this Agreement, and all other documents contemplated hereby; the Seller has duly authorized the execution, delivery and performance thereof; and has authorized the person executing this Agreement to do so; except as expressly provided herein, there is not pending or, to the best of Seller's knowledge, threatened (i) condemnation or similar proceedings with respect to the Property or any part thereof, or (ii) legal action of any kind or nature, served on the Seller, affecting the Property, which would enjoin or restrict the right of Seller to consummate the transactions contemplated hereby.

6.2 Condition of Title. Seller shall not allow any lien to attach to the Property or any part thereof except the lien for ad valorem taxes that are not due and payable and any liens that result from the activities of Buyer in connection with the Property, nor will Seller grant, create, or voluntarily allow the creating of, or amend, extend, modify or change, any easement, right-of-way, encumbrance, restriction, covenant, lease, license, option or other right affecting the Property or any part thereof without Buyer's written consent first having been obtained.

ARTICLE VII: ENVIRONMENTAL INDEMNITY

Intentionally omitted.

ARTICLE VIII. CLOSING AND ESCROW

8.1 Closing. The closing of the transaction contemplated in this Agreement (the "**Closing**") shall take place no later than December 31, 2012, or as otherwise mutually agreed to by Buyer and Seller (the "**Initial Closing Date**").

8.2 Closing Extensions and Termination. Buyer shall have the option to extend the Initial Closing Date by two (2) sixty (60)-day periods. Each sixty (60) day extension option may be exercised by Buyer upon Buyer's delivery to Seller no later than ten (10) days prior to the Initial Closing Date (or, in the case of the second 60-day extension, no later than ten (10) days prior to the Initial Closing Date *as extended*) written notice of its intent to extend the Initial Closing Date.

The Initial Closing Date, as it may be extended pursuant to this Section 7.2, shall be referred to as the "**Closing Date**". At any time prior to the Closing Date, the City may terminate this Agreement in its sole discretion without penalty upon delivery of written notice to the Buyer.



8.3 Delivery by Seller. On or prior to the Closing Date, Seller shall deposit with Escrow Holder, the following:

(a) a duly executed and acknowledged quit claim deed for the Property ready for recordation on the Closing Date together with a duly executed real estate excise tax affidavit and a non-foreign certificate;

(b) any documents required to eliminate of record any existing encumbrances on the Property and any customary affidavits or certifications required by Title Company to issue the Title Policy; and

(c) such other instruments or documents as may be required pursuant to the provisions hereof or as mutually agreed by counsel for Seller and Buyer to be necessary to fully consummate the transaction contemplated hereby.

8.4 Delivery by Buyer. On or prior to the Closing Date Buyer shall deposit with Escrow Holder the following:

(a) a duly executed real estate excise tax affidavit;

(b) a duly executed certificate of non-foreign status; and

(c) such other instruments or documents as may be required pursuant to the provisions hereof or as mutually agreed by counsel for Seller and Buyer to be necessary to fully consummate the transaction contemplated hereby.

8.5 Title Policy; Other Instruments. Title Company shall issue the Title Policy at Closing or as soon thereafter as practicable. Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder, Title Company or otherwise required to close the escrow and consummate the purchase and sale of the Property in accordance with the terms hereof.

8.6 Prorations. All expenses of the Property, including but not limited to, real property taxes, drainage district service charges, water, sewer and utility charges, current years' installments of assessments or LID's and other expenses normal to the maintenance of the Property, but excluding insurance premiums, shall be prorated as of 12:01 a.m. on the Closing Date.

8.7 Closing Costs and Expenses. Buyer and Seller shall each pay their own attorney's fees and expenses to perform their obligations hereunder in addition to the following:

(a) Seller shall pay all real estate excise taxes, and other transfer taxes applicable to the transfer of the Property.

(b) Buyer shall pay:

(i) The fees for the Escrow Holder;



(ii) All costs and expenses of Buyer's consultants and investigations;

(iii) The premium for the Title Policy, together with the cost of all endorsements requested by Buyer.

8.8 Closing Statements. The prorations shall be made on the basis of a written closing statement submitted by Escrow Holder to Buyer and Seller prior to the Closing Date and approved by Buyer and Seller, which approval shall not unreasonably be withheld. In the event any prorations or apportionments made hereunder shall prove to be incorrect for any reason, then either party shall be entitled to an adjustment to correct the same. Any item which cannot be prorated because of the unavailability of information shall be tentatively prorated on the basis of the best data then available and re-prorated between Buyer and Seller when the information is available. Notwithstanding the foregoing, any adjustments or re-prorations shall be made, if at all, within one hundred eighty (180) days after the Closing Date.

ARTICLE IX. REPRESENTATIONS AND WARRANTIES

Seller and Buyer make the following representations and warranties:

9.1 Seller's Representations. Seller represents and warrants to Buyer as of the Date of this Agreement:

(a) Litigation. There is no litigation or proceeding pending against Seller, or to Seller's current actual knowledge threatened against Seller, which relate to the Property or the Underlying Parcel, or the transaction contemplated by this Agreement.

(b) Compliance. Seller has no knowledge that the Property or the Underlying Parcel or the operation and use thereof does not comply in any material respect with applicable laws.

(c) No Prior Options, Sales or Assignments. Seller has not granted any options nor obligated itself in any manner whatsoever to sell the Property or the Underlying Parcel or any portion thereof to any party other than Buyer.

(d) Special Assessments. Seller has no knowledge of contemplated public improvements to the Property or the Underlying Parcel or the area surrounding the Property or the Underlying Parcel which would result in the assessment of special improvement assessments against the Property or the Underlying Parcel.

(e) Condemnation. Seller has not been notified, and does not know of any, planned or threatened condemnation or similar proceedings with respect to the Property or the Underlying Parcel or any part thereof.

(f) Environmental Compliance. Seller has no current actual knowledge of any Hazardous Substances on or adjacent to the Property or any underground storage tanks on the Property except as disclosed in the following reports, true and correct copies of which have



been delivered to Buyer: Sound Earth Strategies Phase I/Phase II Environmental Site Assessment, dated July 25, 2011.

(g) Authority. Seller is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington. This Agreement and all documents to be executed by Seller at Closing have been duly authorized, executed and delivered by Seller and are binding on and enforceable against Seller in accordance with their terms. Seller has obtained all authorizations or approvals necessary for Seller to enter into and perform its obligations under this Agreement.

(h) Bankruptcy. None of the following has occurred with respect to the Property, the Underlying Parcel or Seller: (i) appointment of a receiver, liquidator, or trustee; (ii) institution of any proceeding for dissolution or liquidation; (iii) filing of any petition for bankruptcy, or action toward reorganization; (iv) notice of default, trustee's sale, foreclosure or forfeiture.

(i) Taxes. All taxes and assessments and other governmental or quasi-governmental levies of any kind which are due for payment prior to the date hereof, the non-payment of which would in any way affect the Property, the Underlying Parcel or any part of either, or Buyer's title thereto or in any way impose any liability on Buyer, have been paid, or shall be paid by Seller, prior to or at the Closing Date, together with all interest and penalties thereon.

(j) Liens. There are no unpaid bills, claims, or liens pending or contemplated by mechanics, material suppliers, surveyors, or others, recorded or unrecorded in connection with the Property or the Underlying Parcel.

(k) Property Information. The Property Information is complete, accurate, true and correct and does not fail to state any fact without which the Property Information would be misleading.

9.2 Buyer's Representations. Buyer represents and warrants to Seller as of the Closing Date that this Agreement and all documents to be executed by Buyer at Closing have been duly authorized, executed and delivered by Buyer and are binding on and enforceable against Buyer in accordance with their terms.

9.3 General Provision Regarding Warranties and Representation. If, prior to Closing, either Buyer or Seller discovers a fact or circumstance which might render a representation or warranty by that party inaccurate in any material respect, it shall promptly advise the other party thereof in writing. If Buyer is so advised of such a fact or circumstance prior to Closing, it shall have the option, exercisable within five (5) days thereafter to either (a) elect to terminate this Agreement and receive a return of the Earnest Money Note or (b) to waive such inaccuracy, in which event Buyer shall be deemed to have waived all rights, claims and causes of action against Seller related thereto and the representation or warranty shall be deemed amended to reflect such fact or circumstance.



9.4 No Public Offering. Seller and Buyer hereby agree and acknowledge that in accordance with RCW 64.34.400 (1), Seller shall not deliver to Buyer a public offering statement in connection with the sale of the Housing Unit and Commercial Unit to Buyer, and Buyer hereby waives receipt of the same, together with any right of review and rescission of this Agreement in connection therewith.

ARTICLE X. LOSS BY CONDEMNATION OR CASUALTY

In the event that all or any material portion of the Property or the Underlying Parcel becomes the subject of a taking or condemnation under the provisions of eminent domain law or suffers a casualty after the Date of this Agreement but prior to the Closing Date, Buyer may either (i) terminate this Agreement, in which case the Earnest Money Note shall be returned to Buyer and the parties shall have no further rights or obligations hereunder, or (ii) elect to proceed with the Closing, in which case Seller shall turn over or assign to Buyer all condemnation and/or insurance proceeds. Buyer shall make such election within thirty (30) days after receiving written notice from Seller of the occurrence of such event, including the factual circumstances and anticipated condemnation and/or casualty proceeds.

ARTICLE XI. INDEMNIFICATION

Buyer shall defend, indemnify and hold Seller harmless from and against and reimburse Seller on demand for, any and all obligations, losses, liabilities, claims, cost or expense (including reasonable attorneys' fees), whether direct, contingent or consequential, resulting from claims asserted against Seller by any third party relating to the Property or the Underlying Parcel and arising out of actions or circumstances occurring on or after Closing, other than claims arising from any misrepresentation, breach of warranty or non-fulfillment of any covenant or agreement on the part of Seller under this Agreement.

ARTICLE XII. POSSESSION

Possession of the Property shall be delivered to Buyer on the Closing Date.

ARTICLE XIII. DEFAULT; REMEDIES

13.1 Default by Buyer. If Buyer fails, without legal excuse, to complete the purchase of the Property in accordance with the terms of this Agreement or otherwise defaults hereunder for any reason, Seller's sole and exclusive remedy shall be to enforce the Earnest Money Note as liquidated damages. The Buyer expressly agrees that the payment of the amount due by Buyer to Seller under the Earnest Money Note represents a reasonable estimation of the damages in the event of Buyer's default, that actual damages may be difficult to ascertain and that this provision does not constitute a penalty. The foregoing limitation on the liability of Buyer shall not be applicable with respect to Buyer's obligations to be performed or enforced after Closing.

13.2 Default by Seller. If Seller fails, without legal excuse, to complete the sale of the Property in accordance with the terms of this Agreement or otherwise defaults hereunder for any



reason, Buyer may elect to pursue any remedy under law or equity, including, but not limited to one or more of the following remedies: (a) terminate this Agreement and all obligations under the Earnest Money Note; (b) sue for damages; and (c) specifically enforce this Agreement and recover any incidental damages.

ARTICLE XIV. MISCELLANEOUS

14.1 Voluntary Purchase. Purchaser may utilize federal funds with respect to the acquisition and/or development of the Property. Because federal funds may be used, Purchaser and Seller agree as follows:

(a) This sale is voluntary. Purchaser does not have the power to acquire the property by condemnation or eminent domain.

(b) Purchaser estimates the fair market value of the Property to be \$[VALUE ALLOCATED TO RESIDENTIAL UNIT AND COMMERCIAL UNIT].

14.2 Notices. All notices, demands, requests, consents and approvals which may, or are required to, be given by any party to any other party hereunder shall be in writing and shall be deemed to have been duly given if: (i) delivered personally, (ii) sent by a nationally recognized overnight delivery service, (iii) electronically transmitted with confirmation sent by another method specified in this Section 14.2 or (iv) if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Buyer at: Twelfth Avenue Arts Development LLC
c/o Capitol Hill Housing Improvement Program
1406 10th Avenue, Suite 101
Seattle, WA 98122
Attn: Executive Director
Facsimile: (206) 329-1857

With a copy to: Kantor Taylor Nelson Boyd & Evatt P.C.
901 Fifth Avenue, Suite 4000
Seattle, WA 98164
Attn: Mark Kantor
Facsimile: (206) 607-1850

Seller at: The City of Seattle
Seattle Municipal Tower
700 5th Avenue, Suite 4350
P.O. Box 94689
Seattle, WA 98124-4669
Attn: Director, Finance and Administrative Services
Facsimile: (206) 684-0525

With a copy to: The City of Seattle



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City Hall
600 4th Avenue, 4th Floor
PO Box 94769
Seattle, WA 98124-4769
Attn. City Attorney
Facsimile: (206) 684-8284

or to such other addresses as either party hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

14.3 Amendment, Waiver. No modification, termination or amendment of this Agreement may be made except by written agreement. No failure by Seller or Buyer to insist upon the strict performance of any covenant, agreement, or condition of this Agreement or to exercise any right or remedy shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. All the terms, provisions, and conditions of this Agreement shall inure to the benefit of and be enforceable by Seller's or Buyer's permitted successors and assigns.

14.4 Survival. All provisions of this Agreement which involve obligations, duties or rights to be performed after the Closing Date or the recording of the Deed, and all indemnifications, representations and warranties made in or to be made pursuant to this Agreement shall survive the Closing Date and/or the recording of the Deed only to the extent expressly provided herein.

14.5 Captions. The captions of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

14.6 Merger of Prior Agreements; Reliance. This Agreement and any exhibits hereto, constitute the final and complete agreement between the parties with respect to the purchase and sale of the Property and supersede all prior and contemporaneous agreements, letters of intent and understandings between the parties hereto relating to the subject matter of this Agreement. There are no oral or other agreements, including but not limited to any representations or warranties, which modify or affect this Agreement. Seller shall not be bound by, nor liable for, any warranties, representations or statements of fact or opinion made by any other person, partnership, corporation or other entity, including, without limitation, the Title Company, any surveyor and any consultants. Buyer acknowledges to Seller that in entering into this Agreement, Buyer is not relying on any warranties except those expressly set forth herein.

14.7 No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Buyer and Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.



14.8 Governing Law; Time. This Agreement and the rights of the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Washington. “*Day*” as used herein means a calendar day and “*Business Day*” means any day on which commercial banks in Seattle, Washington are generally open for business. Any period of time which would otherwise end on a non-Business Day shall be extended to the next following Business Day. Time is of the essence of this Agreement.

14.9 Exhibits. All exhibits attached hereto or referenced herein are incorporated in this Agreement.

14.10 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such provisions had not been contained herein.

14.11 Counterparts. This Agreement and the documents to be delivered hereunder may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

14.12 Assignment. Seller’s rights and obligations under this Agreement are not assignable without the prior written consent of Buyer. Buyer’s rights and obligations under this Agreement are not assignable without the prior written consent of Seller, except that Buyer may assign its rights and obligations hereunder to another entity controlled by Capitol Hill Housing Improvement Program without the consent of Seller.

14.13 Agency Disclosure and Brokerage Provisions. No brokers or agents have represented either party in this transaction.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 3
August 16, 2012
Version #1

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first above written.

SELLER: THE CITY OF SEATTLE,
a Washington municipal corporation

By: _____
Name: _____
Its: _____

BUYER: TWELFTH AVENUE ARTS DEVELOPMENT LLC,
a Washington limited liability company

By: CH Development Association
Its: Sole member and manager

By: _____
Name: _____
Its: _____



Exhibit A

Description of Underlying Parcel

Lots 2 through 5, inclusive, Block 22, Addition to the City of Seattle as laid off by D. T. Denny, Guardian of the Estate of J. H. Nagle (commonly known as Nagle's Addition to the City of Seattle), according to the plat thereof recorded in Volume 1 of Plats, page 1536, in King County, Washington;

EXCEPT the west 7 feet thereof, condemned in King County Superior Court Cause No. 61476 for the widening of 12th Avenue as provided by Ordinance no 17972 of the City of Seattle.



Exhibit B

Form of Deed

After recording, return to:

QUIT CLAIM DEED

Reference number of related documents:

Grantor: The City of Seattle

Grantee: Twelfth Avenue Arts Development LLC

Legal Description:

1. Abbreviated Form:
2. Additional legal description is on Page ____ of document.

Assessor's Property Tax Parcel Account Number(s):

Grant. The City of Seattle, a Washington municipal corporation, acting by and through its Department of Finance and Administrative Services ("Grantor"), hereby conveys and quit claims to Twelfth Avenue Arts Association ("Grantee"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), that certain real property located in the City of Seattle, King County, Washington, and legally described as follows:

[INSERT LEGAL]

Executed this ____ day of _____, 2012, pursuant to Ordinance _____ of The City of Seattle.

THE CITY OF SEATTLE
FINANCE AND ADMINISTRATIVE SERVICES

By: _____
Print Name: _____
Print Title: _____



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Exhibit C

Condominium Declaration



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FAS East Precinct Parking 12th Ave Arts ATT 3
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Exhibit D

Condominium Association Articles and Bylaws



EXHIBIT E

TO REAL PROPERTY PURCHASE AND SALE AGREEMENT

Form of Earnest Money Note

\$120,000.00 (U.S.)

Seattle, Washington
_____, 2012

FOR VALUE RECEIVED, the undersigned ("Maker") promises to pay to the order of First American Title Company, the sum of One Hundred Twenty Thousand and 00/100 Dollars (\$120,000.00) due and payable pursuant to section 2.3 of that Real Property Purchase and Sale Agreement dated as of _____, 2012 by and between The City of Seattle, as "Seller", and [CHDA ENTITY], the undersigned, as "Buyer", the terms and conditions of which are incorporated herein by this reference (the "Agreement").

If this Note shall be placed in the hands of an attorney for collection or it suit shall be brought to collect this Note, the undersigned promises to pay reasonable attorney's fees and any and all cost for collection of the same, including appeals.

This Note shall be construed and enforced in accordance with the laws of the State of Washington, and venue for any action to enforce or collect this Note shall be in King County, Washington.

[CHDA ENTITY],
a Washington limited liability limited partnership

By: [HOUSING GP]
Its: General partner

By: Capitol Hill Housing Improvement Program
Its: Sole member and manager

By: _____
Its: _____

By: _____
Its: _____



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 4
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Attachment 4
FAS East Precinct Parking 12th Avenue Arts



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 4
August 16, 2012
Version #1

After recording, return to:

QUIT CLAIM DEED

Reference number of related documents:

Grantor: The City of Seattle

Grantee: Twelfth Avenue Arts Development LLC

Legal Description:

1. Abbreviated Form:
2. Additional legal description is on Page ____ of document.

Assessor's Property Tax Parcel Account Number(s):

Grant. The City of Seattle, a Washington municipal corporation, acting by and through its Department of Finance and Administrative Services ("Grantor"), hereby conveys and quit claims to Twelfth Avenue Arts Association ("Grantee"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), that certain real property located in the City of Seattle, King County, Washington, and legally described as follows:

[INSERT LEGAL]

Executed this ____ day of _____, 2012, pursuant to Ordinance _____ of The City of Seattle.

THE CITY OF SEATTLE
FINANCE AND ADMINISTRATIVE SERVICES

By: _____
Print Name: _____
Print Title: _____



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
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Attachment 5
FAS East Precinct Parking 12th Avenue Arts



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
Version #1

GROUND LEASE AGREEMENT

BETWEEN

THE CITY OF SEATTLE
(Lessor)

and

CH DEVELOPMENT ASSOCIATION
(Lessee)

Dated _____, 2012

This document was prepared by

*Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 447-4400*



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GROUND LEASE AGREEMENT

This Ground Lease Agreement (this "Lease") is dated _____, 2012 (the "Effective Date"), by and between CH DEVELOPMENT ASSOCIATION, a Washington nonprofit corporation, or its assigns ("Lessee"), and The CITY OF SEATTLE, a municipal corporation of the State of Washington ("Lessor").

Recitals

A. Lessor is the legal owner of the real property described in Exhibit A (the "Property").

B. Lessor and Lessee acknowledge and agree that the Property is one unit of a multi-unit condominium project, and the Lease is subject to that certain "Condominium Declaration for 12th Avenue Arts, a condominium," dated _____, 2012 and filed with the King County Recorder under Recorder's No. _____ (the "Declaration"), and the survey map and plans filed with the King County Recorder under Recorder's No. _____ (collectively with the Declaration, the "Condominium Documents").

C. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the Property, under the terms and conditions set forth herein.

D. As part of the consideration for the lease of the Property, Lessee (or its successors and assigns) will construct, or cause to be constructed, improvements that will be used for the parking of authorized City of Seattle vehicles (the "Improvements" and, collectively with the Property, the "Garage").

E. Lessor (in its capacity as lessor hereunder) shall have no responsibility for, and Lessee shall pay all costs associated with, Lessee's operation of the Garage.

F. Upon the execution of this Lease, Lessee will sublease its interests in the Property to Twelfth Avenue Arts Associates (the "QALICB") pursuant to that certain Ground Sublease Agreement dated _____, 2012, and the QALICB will assume all obligations of Lessee hereunder, including Lessee's obligation to construct and equip the Garage.

Agreement

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals; Defined Terms.** The foregoing recitals are true and correct and are incorporated herein by this reference. Certain capitalized terms used herein have the meanings set forth in Exhibit C, which is incorporated fully into the terms of this Lease.



2. **Grant.** Lessor leases to Lessee, and Lessee leases from Lessor, the Property, upon the terms and conditions contained in this Lease. During the term of this Lease, the Improvements and all other improvements located on the Property, including without limitation, all additions, alterations, and improvements thereto or replacements thereof and all appurtenant fixtures, machinery, and equipment installed therein, shall be and remain the property of Lessee or its subtenants. At the expiration or earlier termination of this Lease, the Property, the Improvements and all other improvements and all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein (excluding any personal property of Lessee), shall become the property of Lessor, and at no cost to Lessor. Notwithstanding the foregoing, Lessee's tenancy in the Property will at all times be the subject to the Condominium Documents, including the easements set forth in Article 21 of the Declaration.

Lessee acknowledges that except as specifically provided in Section 17.1 below, (i) neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the condition of the Property, and (ii) the Property is being accepted by Lessee "As-Is," in its present condition and without any representation or warranty of Lessor with respect to the condition thereof or the suitability for Lessee's intended use.

3. **Use.** Until such time as a certificate of occupancy is received for the Improvements, the Property shall be used solely for the purpose of constructing the foundation of the Building, the Common Elements, and the Improvements. From and after such time as a certificate of occupancy is received for the Improvements, Lessee shall use the Property and the Improvements solely for the purpose of maintaining a parking structure for authorized City of Seattle vehicles. In no event shall the residents or occupants of the Housing Unit and the Commercial Unit, or any member of the general public, be granted any rights to park in or otherwise use the Garage. Simultaneously herewith, Lessee shall grant to Lessor a license in the form of Exhibit D attached hereto, which license shall permit Lessor to use the Property for the parking of authorized City of Seattle vehicles until the commencement of construction of the Improvements. Lessee shall obtain all permits or licenses necessary for its operation. In the event that Lessee is unable, by reason of injunction or other interference, to use the Property for parking of motor vehicles, or in the event such use is or becomes prohibited by ordinance, law, regulation or order, either party shall have the right to terminate this Lease, upon giving the other party at least thirty (30) days' notice in writing.

4. **Term.** This Lease shall commence on _____, 2012 ("Commencement Date"), and shall expire on that date which is sixty-five (65) years from the Commencement Date, unless earlier terminated as herein provided or as otherwise provided by law. Notwithstanding the foregoing, in the event Lessee has not obtained permits, arranged financing and completed construction of the Improvements by _____, 2015, Lessor shall have the right to terminate this Lease. However, before Lessor may terminate this Lease, Lessor must first provide notice of its intent to exercise this termination right to Lessee. Lessee shall then have ninety (90) days to obtain permits, arrange financing and complete construction on the Improvements and if Lessee shall fail to do so within such 90-day period, this Lease shall terminate. Upon such termination, Lessor shall, at its option, (i) succeed to all of Lessee's interest



in all work product, permits, entitlements and designs associated with the development or potential development of the Improvements on the Property, at no cost to Lessor (in which case Lessee shall cause all such work product, permits, entitlements and designs to be assigned to Lessor), or (ii) require Lessee to restore the Property to a condition that is suitable for use by Lessor as parking lot for law enforcement vehicle (in which case Lessee shall deliver the Property in a suitable condition for such use).

5. Rent.

5.1 **Base Rent.** Lessee shall pay to Lessor, at The City of Seattle, Finance and Administrative Services, P.O. Box 94689, Suite 5200, Seattle, Washington 98124-4689, or at such other address as Lessor shall specify from time to time, rent in the amount of \$8,333.33 per month on or before the first business day of each month during the term of this Lease, commencing on the earlier of (i) _____, 2015, or (ii) the first business day of the month that immediately follows the month in which a certificate of occupancy for the Improvements is issued. The amount of monthly rent shall increase by \$416.67 on the first business day of each January, commencing in January 2016.

5.2 **Additional Payments.** Lessee shall pay, within ten (10) days of a request from Lessor therefor, all expenses incurred by Lessor in enforcing the provisions of this Lease; *provided*, to the extent an action to enforce or interpret this Lease is commenced, Section 21.7 of this Lease shall govern the recovery of reasonable costs and attorneys' fees relating to such action.

5.3 **Leasehold Excise Tax.** In addition to the monthly rental specified in Section 5.1 above, Lessee shall pay to Lessor monthly, in advance, on the first day of each calendar month, any leasehold excise tax assessed pursuant to RCW 82.29A against Lessee in respect of the monthly rent paid pursuant to Section 5.1 above. Lessee shall in addition pay to Lessor when due the leasehold excise tax in respect of any payment or obligation hereunder which is deemed to be taxable rent.

6. No Security Deposit. No security deposit shall be required as part of this Lease.

7. Improvements.

7.1 **Plans.** Lessee covenants that it will develop and construct the Improvements and Lessor consents to such development and construction of the Improvements, subject to the provisions of this Section 7. Prior to commencing construction of the Improvements, Lessee shall obtain Lessor's approval of the plans and specifications for the Improvements (the "Plans") and Lessee's budget for such construction. The Plans shall be prepared by a licensed architect ("Architect") selected by Lessee and approved by Lessor, such approval not to be unreasonably withheld, conditioned or delayed. Following Lessor's approval of the Plans, any subsequent material modification of the Plans shall be subject to Lessor's approval. By way of example, a "material" modification would be any modification or series of modifications that, singularly or in the aggregate, could reasonably be expected to: (i) cause any



line item in Lessee's construction budget to decrease by more than \$25,000.00, (ii) result in the use of building materials of a lesser quality or the installation of different fixtures and equipment than those in the approved Plans, (iii) result in a structural change to the Garage (e.g. a lower ceiling height, the relocation of fixtures) or a difference in the building systems servicing the Garage, or (iv) result in less than 111 parking stalls that are the following dimensions (all excluding stripe width):

- (a) 80 parking stalls that are 8 feet wide by 16 feet deep;
- (b) 21 parking stalls that are 11 feet wide by 19 feet deep; and
- (c) 10 parking stalls that are 8½ feet wide by 19 feet deep.

7.2 **Evidence of Funding.** In reliance on that certain Completion Guaranty made as of _____, 2012, by Capitol Hill Housing Improvement Program to and for the benefit of Lessor, Lessor has waived its requirement that Lessee provide evidence of funding for the Improvements.

7.3 **Contractor; Bond; Builder's Risk Insurance.** Lessee shall enter into a contract with Architect for the design of the Improvements, and shall enter into a contract with a general contractor to be approved by Lessor ("Contractor"), such approval not to be unreasonably withheld, conditioned or delayed, for the construction of the Improvements. Each such contract must be assignable to Lessor in the event this Lease is terminated pursuant to Section 4 hereof. Once approved, Lessee shall not replace the Architect or Contractor without Lessor's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. Lessee shall require its Contractor to obtain a payment and performance bond for the full amount of the construction of the Improvements, naming Lessor as a co-obligee and Lessee or the Contractor shall obtain and maintain in force at all times during which construction is in progress on the Property builder's risk insurance as required under Section 13. With respect to the Improvements, Lessor approves _____ as the Contractor and Stickney Murphy Romine as the Architect.

7.4 **Permits.** All use permits, building permits and other permits, licenses, permissions, consents and approvals required to be obtained from governmental agencies or third parties in connection with any construction shall be acquired by and at the sole cost and expense of Lessee. Lessor agrees to cooperate reasonably with Lessee as required to apply for and obtain all such permits and approvals, provided Lessor incurs no cost or expense (other than the reasonable time of Lessor's own employees) in connection therewith. Nothing in the foregoing sentence shall affect The City of Seattle, in its capacity as the governmental agency responsible for issuing any such permit, license, permission, consent or approval, from exercising its governmental powers to do so.

7.5 **Approvals; Consents in General.**



(a) All Plans submitted to Lessor for approval hereunder (including proposed modifications to the Plans requiring Lessor's approval pursuant to Section 7.1 of this Lease) shall be approved or disapproved by Lessor (in its capacity as lessor hereunder) in writing within fifteen (15) business days after submittal of such Plans (or modifications thereof). Any substitution of the Architect or Contractor shall be approved or disapproved by Lessor in writing within ten (10) business days after submittal of a request by Lessee for Lessor's approval of such substitution. Lessee shall, upon receipt of Lessor's reasonable objections, modify the Plans or designations for approval by Lessor in accordance with this Section 7.5(a). Such process of submittal, review and comment by Lessor, and resubmittal by Lessee, shall continue until such time as the Plans or designations submitted by Lessee have been approved by Lessor, or are deemed approved as provided herein. Failure by Lessor to approve or disapprove the Plans, subsequent material modification of the Plans, or a substitution of the Architect or Contractor within the time limits set forth herein shall be deemed an approval by Lessor.

(b) Lessor (in its capacity as lessor hereunder) shall not unreasonably withhold, condition or delay its approval of the Plans or any subsequent material modification of the Plans. Any objections to the Plans or subsequent material modification of the Plans must be in writing and must specify with particularity the matters to which Lessor objects. Any objections to the substitution of the Architect or Contractor must be in writing and must specify with particularity the reason for Lessor's objection.

(c) Each party shall designate one or more individuals to give consents and approvals on behalf of such party hereunder (which designation may be changed from time to time by such party upon written notice issued to the other party). The consent or approval of such designated individual shall be binding upon such party and all managers, members, partners, or other agents of such party. The initial designee of Lessee for such purposes shall be _____. The initial designee of Lessor for such purposes shall be Lessor's Director, Finance and Administrative Services.

(d) Any consent or approval that Lessor is required to or may give under this or any other provision of this Lease is for purposes of this Lease only and shall not be construed to be the consent or approval of The City of Seattle acting in its regulatory capacity.

7.6 Compliance with Plans, Laws and Permits. All construction shall be undertaken and completed in compliance with the approved Plans, all laws, codes, regulations and ordinances and all applicable permits and entitlements. Lessor shall have the right to inspect such work to confirm such compliance. Any such inspections shall be coordinated with Lessee and shall not unreasonably or materially interfere with construction activities. Such inspections shall be for Lessor's use only, and shall not constitute any approval of or assurance from Lessor with respect to such compliance.

7.7 Progress Reports. From and after the commencement of construction of the Improvements, and through the completion date thereof, Lessee shall provide to Lessor monthly progress reports consisting of, at a minimum: (a) the then current construction schedule prepared by the Contractor (including the expected completion date); (b) a summary of all



change orders approved by Lessee subsequent to the preceding monthly progress report; and (c) notice of any laborer's or materialmen's liens filed against the Property.

7.8 Plans and Specifications. Within three (3) months following the completion date for the Improvements, Lessee shall deliver to Lessor two (2) copies of complete as-built drawings.

7.9 Surrender Upon Termination. Upon expiration or earlier termination of this Lease, Lessee shall remove its personal property and shall surrender the Property, and equipment relating to mechanical and security systems (i.e., electrical, access cards) as is necessary for the proper and normal operation of the Garage for its then current and permitted use, to Lessor in its then-current condition, except for ordinary wear and tear and obsolescence that has occurred over the term of this Lease and damage by fire, casualty or condemnation which Lessee is not required to restore elsewhere hereunder. Lessee shall not remove from the Garage any appurtenant fixtures, machinery, or equipment permanently attached to or used in connection with operation of the Garage, or any additions to or replacements thereof made during the term of this Lease, it being the intent of the parties that upon expiration or earlier termination of this Lease, Lessor shall receive an operating Garage. Any personal property of Lessee not removed by Lessee at expiration or other termination of this Lease shall be considered abandoned and Lessor may dispose of such property in accordance with the law governing abandoned property then in effect at Lessee's cost. All transfers will be made without representation, recourse or warranty.

7.10 Condition of Property. Lessee assumes full responsibility for the design and construction of the Improvements, and any other improvements constructed on the Property by Lessee during the term of this Lease and Lessee hereby fully releases Lessor from any and all liability relating thereto. If in connection with the construction and development of the Improvements by Lessee, hazardous substances are discovered on the Property which must be remediated and which existed on the Property on or before the Effective Date, Lessee agrees at Lessee's cost to remediate such hazardous substances to meet the requirement of applicable laws in light of the intended use of the Property. Lessee shall give notice to Lessor promptly after learning of any hazardous substances on the Property, including, without limitation, any hazardous substances introduced onto the Property by Lessee.

7.11 Alterations. After completion of the Improvements, Lessee shall not make any Alteration, or demolish any portion of the Improvements, without first presenting to Lessor complete Plans therefor and obtaining Lessor's written consent thereto (which consent shall not unreasonably be withheld so long as, in Lessor's reasonable judgment, such Alteration will not violate this Lease or materially impair the value or utility of the Garage). Any improvements made to the Garage shall be made in a good and workmanlike manner using new materials of the same or better quality as the original improvements, and in accordance with all applicable building codes.



8. Repairs and Maintenance.

8.1 **Repairs.** Lessee shall be responsible for any repairs and replacements, whether structural or nonstructural, ordinary or extraordinary, necessary to maintain the Garage, unless such repairs and replacements arise out of or are related to the negligence or misconduct of the Lessor or its elected officials, officers, employees and agents. Lessee will permit no waste, damage, or injury to the Garage.

8.2 **Maintenance.** Lessee shall keep the Garage in good and safe condition, in compliance with all applicable laws, codes and regulations, and in good order and repair, ordinary wear and tear and damage by fire, casualty or condemnation which Lessee is not required to restore elsewhere hereunder excepted, and Lessee shall conform to and comply with the Condominium Documents and all valid ordinances, regulations and laws affecting the Garage or any improvements thereon or the use thereof. Lessor shall have the right to inspect the Garage, upon reasonable notice and subject to the rights of occupants, to confirm Lessee's compliance with this paragraph.

8.3 **No Obligation of Lessor.** Lessor (in its capacity as lessor hereunder) shall have no obligation whatsoever to keep, maintain, alter, remodel, improve, repair, decorate, replace, or paint the Improvements. It is the intention of the parties that Lessee and not Lessor shall have the full responsibility and obligation for the repair, replacement, and maintenance of the Garage, and Lessee waives, to the fullest extent allowed by law, any right or remedy against Lessor (in its capacity as lessor hereunder) based upon the condition of the Garage, any failure by Lessor (in its capacity as lessor hereunder) or Lessee to repair, replace, or maintain the Garage, or based upon any condition occurring on or omission in connection therewith.

9. **Services.** Lessee shall pay costs of any kind relating to the use, operation maintenance, repair and replacement of the Garage, including without limitation all charges for gas, electricity, light, heat, power, water, sewer, security, telephone, communications and other services uses, rendered or supplied upon or in connection with the Garage, or levied or charged against the Garage beginning on the Effective Date and continuing through the term of this Lease.

10. **Conditions, Covenants and Restrictions.** Lessee shall operate the Garage in compliance with all applicable conditions, covenants and restrictions recorded against the Property and shall pay all required assessments properly imposed.

11. **Taxes.** Lessee shall pay all taxes and assessments levied or assessed directly against the Garage, if any, including income taxes, property taxes, leasehold excise taxes and business and occupation taxes. Lessee may at its sole cost and expense, and in its own name, dispute and contest any taxes or assessments charged against the Garage. Lessor (in its capacity as lessor hereunder) agrees to reasonably cooperate with any such dispute or contest.

12. **Indemnification.** During the term of this Lease, Lessee agrees to indemnify Lessor and its elected officials, officers, employees and agents for and hold Lessor and its



elected officials, officers, employees and agents harmless from all claims, actions, causes of action, judgments, liabilities, expenses, costs and reasonable attorneys' fees and all limitations, restraints, penalties or obligations pertaining to Lessor or its elected officials, officers, employees or agents arising out of any act, omission, or neglect in connection with Lessee's (including Lessee's employees, agents, officers, licensees, invitees, contractors or other occupants of the Garage) construction, use or occupancy of the Garage, except where such is a result solely of the negligence or willful misconduct of Lessor or its elected officials, officers, employees or agents.

During the term of this Lease, Lessor agrees, subject to the limitations imposed by law, to indemnify and hold harmless Lessee and its partners, officers, employees and agents from all claims, actions, causes of action, judgments, liabilities, expenses, costs and reasonable attorneys' fees and from all limitations, restraints, penalties or obligations pertaining to Lessee or its partners, officers, employees or agents arising out of any act, omissions or neglect in connection with Lessor's (including Lessor's elected officials, employees, agents, officers, licensees, or invitees) ownership of the premises covered by this Lease, except where such is a result of the negligence or willful misconduct of Lessee or its partners, officers, agents or employees.

The respective indemnity agreements of Lessor and Lessee shall survive the termination of this Lease as to any act alleged to have occurred during the term of this Lease, and shall survive until the expiration of the applicable statute of limitations.

13. Insurance; Damage, Destruction and Condemnation. During the term hereof, Lessee shall maintain at its sole cost and expense liability insurance and property insurance, including business interruption coverage and replacement cost valuation for buildings and personal property insurance against loss and/or damage to the Garage and all equipment therein under a policy or policies including fire and extended coverage insurance covering such risks as are ordinarily insured against by like organizations engaged in like activities of comparable size and commercial general liability exposure. For purposes of this section, replacement coverage shall include an agreed upon amount endorsement with no co-insurance provision. All insurance required by this section shall be carried by insurers that Lessee reasonably determines are financially responsible and capable of fulfilling the requirements of such policies. All policies evidencing insurance shall be in the usual form and shall name Lessee as the insured party or loss payee and shall also name Lessor as an additional insured party or loss payee. Lessee shall provide to Lessor copies of certificates from an insurance agent or consultant indicating that the insurance required by this section has been obtained within 30 days after the end of each calendar year after the date hereof, and shall provide copies of the insurance policies providing such coverage to Lessor before the date hereof. Lessor (as lessor hereunder) shall not be required to hold or maintain insurance policies. Lessee shall maintain such insurance in the types and amounts sufficient to satisfy the requirements of the Condominium Documents, if applicable, and compliance with the insurance provisions of the Condominium Documents shall be deemed compliance with the insurance provisions of this Lease. Lessee shall (or shall cause any management company hired to it to operate the Garage) carry garage keeper's legal liability insurance (if applicable) insuring any and all automobiles that are parked in the Garage by Lessee's attendants or for which a bailment otherwise is created, with limits of liability not less than \$1,000,000 per occurrence.



In addition, during construction of the Improvements (or any additional improvements), Lessee shall (or shall cause its Contractor to) carry builder's risk insurance upon the entire work on the Property and/or the Improvements in the amount of one hundred percent (100%) replacement value thereof against "all risks" of physical loss or damage to the property insured, including earth movement and flood (and subject to reasonable and appropriate limits or as otherwise commercially available in the insurance marketplace). Such builder's risk insurance shall include Lessor as additional insured or loss payee.

If the Property is damaged or destroyed by casualty or taken by the power of eminent domain, Lessee shall forthwith commence, and thereafter diligently and continuously prosecute to completion, the repair of such damage and the restoration of such Improvements to their condition immediately prior to such damage, and any Insurance Proceeds or Condemnation Awards shall be available to Lessee to make such repairs and restoration. All such repairs and restoration shall be completed as promptly as possible. In the event of a total casualty loss or taking, Lessee may, in lieu of repairing or restoring the Property, pay Lessor such Insurance Proceeds and/or Condemnation Awards, and this Lease shall terminate. Lessee shall also promptly take all steps necessary to assure that the Property shall be and remain safe and the damaged Improvements not constitute a hazard or danger to persons or property from the time of the fire or other casualty.

14. Successors. All covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Lessor and Lessee and their respective permitted successors and/or assigns.

15. Labor and Material Liens. Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use in the Garage, which claims are or may be secured by mechanics' or materialmen's liens against the Garage or an interest therein, provided that the Lessee shall not be required to pay any such claims for so long as Lessee in good faith disputes the validity of such claim and diligently contests any lien filed against the Garage securing such disputed claims; provided, however, if such time period exceeds thirty (30) days, Lessor may require that Lessee provide a bond over such lien in form reasonably satisfactory to Lessor and its title insurer. If Lessee, in good faith, contests the validity of any lien, claim or demand, Lessee shall, at its sole expense, defend itself and Lessor and shall satisfy any adverse judgment before its enforcement against Lessor or the Garage. It is the intent of the parties that neither Lessee nor any of Lessee's agents, employees, representatives, contractors or subcontractors shall have any power or authority to do any act or thing or to make any contract or agreement which shall result in the creation of any mechanic's or materialmen's lien or claim upon or against Lessor or Lessor's fee simple interest in the Property.

16. Assignment, Subletting or Substitution of Lessees. Lessee agrees that it will not voluntarily sell, assign, transfer or hypothecate all or substantially all of its interest in this Lease except with the consent of Lessor. Lessor's consent shall not be unreasonably withheld but may be conditioned upon (1) reasonable evidence satisfactory to Lessor that Lessee is not then in default hereunder; (2) an opinion of counsel for the Transferee, delivered to Lessor, to the effect



that the Transferee has assumed in writing and in full all duties and obligations of Lessee under this Lease and that this Lease constitutes the legal, valid and binding obligation of the Transferee; (3) a determination by Lessor that the Transferee has the capacity to assume responsibility for the management of the Garage and the payment of any obligations secured by any interest in this Lease, and with regard to any project of the Transferee financed by Lessor, that (i) the Transferee is not now in arrears on any payments of taxes or fees due and owing to Lessor or in default under any agreement with Lessor, (ii) the Transferee does not have a documented history of noncompliance with nonmonetary provisions of agreements that are not cured after notice thereof and within the applicable cure period or grace period, and (iii) the Transferee does not have a documented history of failure to pay taxes and fees due and owing to Lessor or other public agencies that are not paid within a reasonable period after notice thereof; and (4) any other conditions which may be reasonably imposed by Lessor. Any sale, transfer or other disposition of this Lease in violation of this section shall be ineffective. The Transferee shall provide to Lessor copies of all instruments of assumption referred to in item (2) above.

Notwithstanding any permitted assignment or subletting, except as expressly provided herein, Lessee shall at all times remain directly, primarily and fully responsible and liable for all payments hereunder and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease.

Notwithstanding the foregoing, Lessee shall have the right to sublease its entire interest in the Property (but not just a portion thereof) to the QALICB, provided that Lessee provides notice and a copy of the assignment to Lessor. If the QALICB assumes all of Lessee's obligations under this Lease and remakes all representations and warranties set forth in Section 17.2 below, Lessee shall be released from its obligations under this Lease.

17. Representations and Warranties.

17.1 Representations and Warranties of Lessor. As of the date hereof, Lessor hereby represents and warrants as follows:

(a) Lessor is a municipal corporation of the State, duly organized and validly existing under and pursuant to the constitution and laws of the State, and has full power and authority under the Constitution and laws of the State to enter into the transactions contemplated on its part by this Lease, and to carry out its obligations hereunder. Lessor has duly authorized the execution and delivery of this Lease and the performance of its obligations under this Lease.

(b) This Lease is the valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms.

(c) Neither Lessor's execution and delivery of this Lease, Lessor's consummation of the transactions contemplated on its part hereby, nor Lessor's fulfillment of or compliance with the terms and conditions or provisions of this Lease conflicts with or results in the breach of any of the terms, conditions or provisions of any agreement, instrument, judgment,



order or decree to which Lessor is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance of any nature upon any property or assets of Lessor prohibited under the terms of any instrument or agreement.

(d) There is no litigation pending or, to the best of Lessor's knowledge, threatened against Lessor questioning Lessor's execution, delivery or performance of its obligations under this Lease, or the organization, powers or authority of Lessor, or the right of the officers of Lessor to hold their respective offices.

(e) No consent, approval, authorization or order of any governmental body is required to be obtained by Lessor for the execution, delivery or performance of its obligations under this Lease, except such as have already been obtained or will be obtained in a timely manner.

(f) Lessor has fee title to the Property, and there are no liens or encumbrances against the Property other than Permitted Encumbrances.

17.2 Representations and Warranties of Lessee. As of the date hereof, Lessee hereby represents and warrants as follows:

(a) Lessee (1) is a nonprofit corporation duly organized under the laws of the State, (2) is qualified, licensed and authorized to conduct affairs in the State; (3) has full power and authority to lease and operate the Garage, to carry on its business as now conducted and to enter into this Lease; and (4) has duly authorized the execution and delivery of this Lease by proper corporate action.

(b) This Lease is the valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms.

(c) Neither Lessee's execution and delivery of this Lease and Lessee's consummation of the transactions contemplated hereby, nor Lessee's fulfillment of or compliance with the provisions of this Lease conflicts with, violates or will result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement, instrument, statute, governmental rule or regulation, court order, judgment or decree to which Lessee is now a party or by which it or any of its property is bound, or constitutes a material default under any of the foregoing which has not been waived or consented to in writing by the appropriate party or parties, or results in the creation or imposition of any lien, charge, security interest or encumbrance of any nature whatsoever upon any of the property or assets of Lessee prohibited under the terms of any such restriction, agreement, instrument, statute, governmental rule or regulation, court order, judgment or decree. Lessee will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.



(d) There is no litigation pending or, to the best of Lessee's knowledge, threatened against Lessee affecting its ability to construct the Garage or the performance of its obligations hereunder.

(e) No consent, approval, authorization or order of any governmental body is required to be obtained by Lessee for the execution and delivery of this Lease, the fulfillment of and compliance with the provisions hereof, or the construction of the Garage, except such as have already been obtained or will be obtained in a timely manner.

18. Permitted Encumbrances. Each of Lessor and Lessee covenants and agrees that it will keep the Garage free from liens and claims of all kinds, except Permitted Encumbrances. Lessor hereby reserves the right to (and upon request from Lessee agrees that it will) enter into such reciprocal easements and other agreements as reasonably necessary to accommodate the condominium structure of the Property. Lessee agrees to join in such agreements to the extent necessary.

19. Defaults; Remedies.

19.1 Defaults. Each of the following shall constitute an Event of Default hereunder:

(a) Failure by Lessee to make any required rent or any other payment as and when due, if the failure continues for a period of 10 days after written notice from Lessor.

(b) Failure by Lessee to comply with any of the covenants or provisions of this Lease, other than those described in Section 19.1(a), if the failure continues for a period of 30 days after written notice from Lessor. If the nature of Lessee's default reasonably requires more than 30 days for its cure, Lessee will not be in default if it commences to cure within the 30-day period and thereafter diligently pursues its completion.

(c) Lessee's making any general assignment or arrangement for the benefit of creditors; the filing by or against Lessee of a petition to have it adjudged a bankrupt or a petition for reorganization or arrangement under any bankruptcy law (unless any petition filed against Lessee is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets at the Garage or its interest in this Lease, if possession is not restored to Lessee within 60 days; or the attachment, execution or other judicial seizure of substantially all of Lessee's assets at the Garage or its interest in this Lease, if that seizure is not discharged within 60 days.

19.2 Remedies. Upon the occurrence of an Event of Default, Lessor may at any time thereafter without notice or demand do any or all of the following:

(a) Terminate this Lease by giving Lessee 30 days' written notice thereof, in which event this Lease and the leasehold estate created hereby and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon



the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice were the date originally fixed in this Lease for the expiration of the term of this Lease, and Lessor, its agents or representatives, shall have the right, without further demand or notice, to reenter and take possession of the Property and any Improvements, reserving Lessor's right to seek damages.

(b) Upon 30 days' written notice to Lessee, terminate Lessee's right to possession of the Property and the Improvements (if any) and this Lease. Lessor may then reenter and take possession of and remove all persons or property, with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for any breaches of covenants, and Lessee shall immediately surrender possession of the Garage to Lessor. Lessor may recover from Lessee all damages incurred by Lessor resulting from the Event of Default, including but not limited to reasonable attorney's fees and costs.

(c) Maintain Lessee's right to possession, and continue this Lease in force whether or not Lessee has abandoned the Garage. Lessor shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due.

(d) Cure any such default or any portion thereof for the account of and at the expense of Lessee, either concurrently with, or at any time before or after, the exercise of any other remedy granted herein or by law.

(e) Pursue any other remedy available to Lessor under the law.

No remedy conferred upon or reserved to Lessor by this Lease is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute, and Lessor shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Lease, or otherwise.

Notwithstanding any other provision herein, in the event Lessor exercises its remedies pursuant to Section 19.2(a) or 19.2(b) and terminates this Lease, Lessee may, within 30 days following such termination reinstitute this Lease for the balance of the term, by paying to Lessor an amount equal to the actual damages incurred by Lessor as a result of such breach and payment of any actual costs or expenses incurred by Lessor, including reasonable attorneys' fees and disbursements, as a result of such reinstatement of this Lease.

19.3 Default by Lessor. Lessor is not in default unless it fails to perform obligations required of it within a reasonable time, and not later than 30 days after delivery of written notice by Lessee to Lessor specifying Lessor's failures to perform its obligations. If Lessor's obligation reasonably requires more than 30 days for performance or cure, Lessor is not in default if it commences performance or cure within the 30-day period and thereafter diligently pursues its completion. In the event of default by Lessor, Lessee may pursue all remedies available to it at law or in equity.



20. Covenants.

20.1 **Payment of Debt.** Lessee covenants that it will pay as they become due all obligations secured by Lessee's interest in the Garage.

20.2 **Compliance with Laws.** Lessee covenants to maintain its existence as an entity duly qualified to do business in the State. With respect to the Garage and any additions, alterations and improvements thereto, Lessee covenants and agrees to comply at all times with all applicable requirements of federal and State laws, including those related to environmental matters (subject to the provisions of this Lease), and with all applicable lawful requirements of any agency, board, or commission created under the laws of the State or of any other duly constituted public authority; provided, however, that Lessee shall be deemed in compliance with this section so long as it is contesting in good faith any such requirement by appropriate legal proceedings.

21. General Provisions.

21.1 **Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction will not affect the validity of any other provision.

21.2 **Time of Essence.** Time is of the essence of this Lease.

21.3 **Notices.** Any notice required or allowed by this Lease shall be in writing and shall be (i) hand-delivered, effective upon receipt, or (ii) sent by United States Express Mail or by private overnight courier, effective upon receipt, or (iii) served by certified mail, postage prepaid, return receipt requested, deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three (3) business days after the date of mailing, whichever is earlier; addressed to the party intended to receive the same at the address set forth below:

If to the Lessor: The City of Seattle
Seattle Municipal Tower
700 5th Avenue, Suite 4350
P.O. Box 94669
Seattle, WA 98124-4669
Attn. Director, Finance and Administrative Services

If to Lessee: CH Development Association
c/o Capitol Hill Housing Improvement Program
1406 10th Avenue, Suite 101
Seattle, WA 98122
Attn. Executive Director

21.4 **Waiver.** Waiver by Lessor of the breach of any provision of this Lease is not a waiver of any subsequent breach by Lessee of the same or any other provision. Lessor's



consent to or approval of any act does not make Lessor's consent to or approval of any subsequent act unnecessary. Acceptance of rent by Lessor is not a waiver of any preceding breach of any provision of this Lease other than Lessee's failure to pay the rent so accepted.

21.5 Covenants and Conditions. Each provision of this Lease performable by Lessor or Lessee is both a covenant and a condition.

21.6 Authority. Each individual executing this Lease on behalf of the respective entities represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such entity, and that this Lease is binding upon that entity in accordance with its terms.

21.7 Attorneys' Fees. In any action to enforce or interpret this Lease the prevailing party is entitled to recover reasonable costs and attorneys' fees from the losing party.

21.8 Quiet Possession. Upon paying the rent and observing and performing all of its covenants and conditions, Lessee shall have quiet possession of the Garage for the entire term subject to all of the provisions of this Lease.

21.9 Relationship of Parties. Nothing herein shall be construed so as to create a partnership, joint venture, or agency relationship between the parties.

21.10 Intention of the Parties. It is the intention of the parties hereto that pursuant to the terms of this Lease, the full burdens and benefits associated with the Garage, except those pertaining to ownership for state law purposes, shall pass to Lessee during the term of this Lease.

21.11 Consent. Consent or approval of parties whenever required under this Lease shall not be unreasonably withheld or delayed, unless otherwise specifically provided by the terms of this Lease.

21.12 Governing Law and Venue. The validity of this Lease, the interpretation of the rights and duties of the parties hereunder and the construction of the terms hereof shall be governed in accordance with the internal laws of the State. Venue in the event of any dispute shall be King County, Washington.

21.13 Memorandum of Ground Lease Agreement. The parties hereto agree to the recording of a Memorandum of Ground Lease Agreement in the form of Exhibit B hereto upon satisfaction of the conditions set forth in Section 5.

21.14 Estoppel Certificates. Each party hereto shall, upon 10 days' prior written request, provide an estoppel certificate addressing such matters as the requesting party may reasonably request.

22. Put Right. Lessor hereby grants to Lessee an option to require Lessor to purchase Lessee's entire leasehold interest in the Property (the "Interest") at the time commencing on



January 1, 2020, for one thousand dollars (\$1,000.00) (the "Put"). Lessee shall exercise the Put by providing Lessor written notice of its intent to exercise the Put (the "Put Notice"). Once the Put Notice has been provided to Lessor, the transfer of Interest shall occur pursuant to Section 23.4 of this Lease.

23. Purchase Option.

23.1 Purchase Option Granted. Lessee hereby grants to Lessor an option (the "Option") to purchase the Interest at the time commencing on January 1, 2020. The purchase price for the Interest pursuant to the Option (the "Option Price") shall be one hundred percent (100%) of the fair market value of the Interest, less a six percent (6%) credit because the sale will occur without payment of real estate broker or agent fees. Upon Lessee's receipt of Lessor's written notice of its intent to exercise the Option (the "Exercise Notice"), Lessor and Lessee each shall exercise its best efforts in good faith to agree on the Option Price for the Interest. If the parties fail to agree to the Option Price, then the Option Price shall be determined by appraisal in accordance with the provisions of Section 23.2 below.

23.2 Appraisal Process. In any instance in which the fair market value of the Interest is required to be determined by appraisal, the provisions of this paragraph shall apply. Any such appraisal shall be conducted by one or more Independent Appraisers (as defined below), to be selected within thirty (30) days following the delivery of an Exercise Notice. If the parties are unable to agree upon an Independent Appraiser within such thirty (30) day period, Lessor and Lessee each shall select an Independent Appraiser. If the difference between the two appraisals is within ten percent (10%) of the lower of the two appraisals, the fair market value shall be the average of the two (2) appraisals. If the difference between the two (2) appraisals is greater than ten percent (10%) of the lower of the two (2) appraisals, then the two appraisers shall jointly select a third appraiser whose determination of fair market value shall be deemed to be binding on all parties. If the two (2) appraisers are unable jointly to select a third appraiser, either Lessor or Lessee may, upon written notice to the other, apply to the presiding judge of a court of competent jurisdiction in Seattle, Washington for the selection of the third appraiser who shall then participate in such appraisal proceeding, and who shall be selected from a list of names of Independent Appraisers submitted by the Lessor and Lessee. Each list of names of Independent Appraisers shall be submitted within ten (10) written days after the date on which the appraisal proceeding is invoked, or will be disregarded and the appraiser shall be selected from the list provided. The appraisals shall take into account the use restrictions and any other restriction recorded as of record against the Property. Lessor and Lessee shall pay the cost of any appraiser(s) selected by it pursuant to this paragraph. If the parties agree on the selection of an Independent Appraiser then the costs of such appraiser shall be paid by the parties on an equal basis. Likewise, if the parties are required to use a third appraiser, then the costs of such third appraiser shall be split between Lessee and Lessor.

23.3 "Independent Appraiser" Defined. For purposes of this Lease, the term "Independent Appraiser" means a firm that is generally qualified to render opinions as to the fair market value of assets such as the Interest, which satisfies the following criteria:



- (a) Such firm is not an affiliate of Lessor or Lessee;
- (b) Such firm (or a predecessor in interest to the assets and business of such firm) has been in business for at least five (5) years, and at least one of the principals of such firm has been in the active business of appraising substantially similar assets for at least ten (10) years;
- (c) Such firm has regularly rendered appraisals of substantially similar assets for at least five (5) years on behalf of a reasonable number of unrelated clients, so as to demonstrate reasonable market acceptance of the valuation opinions of such firm;
- (d) One or more of the principals or appraisers of such firm are members in good standing of an appropriate professional association or group that establishes and maintains professional standards for its members; and
- (e) Such firm renders an appraisal only after entering into a contract that specifies the compensation payable for such appraisal.

23.4 **Contract and Closing.** Upon determination of the Option Price, or upon Lessor's receipt of the Put Notice, Lessor and Lessee shall enter into a written contract for the purchase and sale or assignment of the Interest in accordance with the terms of this Lease, providing for a closing not sooner than sixty (60) days, nor later than one hundred twenty (120) days, after the Put Notice is received or the Option Price is determined, as applicable. In the absence of any such contract, this Lease shall be specifically enforceable upon the exercise of the Put or the Option, as applicable. Upon closing, Lessee shall deliver to Lessor, together with the deed to or assignment of the Interest, an ALTA Owner's Policy dated as of the close of escrow in the amount of the Put Price or the Option Price, as applicable, subject to the liens, encumbrances and other exceptions then affecting the title. Lessee shall be responsible for all closing costs including, but not limited to, transfer taxes, title policy premiums and recording costs. Each party shall pay its own legal fees in connection with the exercise of the Put or Option.

24. **Amendments.** The provisions hereof shall not be amended, revised or terminated prior to the expiration of the stated term hereof except by an instrument in writing duly executed by Lessor and Lessee (or its successors in title). If appropriate, the parties shall record an amendment to the Memorandum of Ground Lease Agreement incorporating the changes to this Lease effected by the amendment.

[Signatures appear on the following page.]



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
Version #1

IN WITNESS WHEREOF, the parties have executed this Lease the date set forth above.

LESSOR:

THE CITY OF SEATTLE

By: _____
Title:

LESSEE:

CH DEVELOPMENT ASSOCIATION, a Washington
nonprofit corporation

By: _____
Title:



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
Version #1

STATE OF WASHINGTON

SS.

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of The City of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this _____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

My appointment expires _____

STATE OF WASHINGTON

SS.

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of CH Development Association, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this _____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

My appointment expires _____



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
Version #1

EXHIBIT A
REAL PROPERTY DESCRIPTION

The Property is described as follows:

[Garage Unit of _____...]

[The definition of the Property will exclude ownership rights under the declaration (*i.e.*, the City will retain voting rights, *etc.*).]

[The Property shall include rights of ingress and egress onto the Property by motor vehicles and pedestrians.]



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
Version #1

EXHIBIT B
MEMORANDUM OF GROUND LEASE AGREEMENT

RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

Seattle City Attorney's Office
Attn. Jenifer C. Merkel
600 4th Avenue, 4th floor
P.O. Box 94769
Seattle, WA 98124-4769

MEMORANDUM OF GROUND LEASE AGREEMENT

Lessor: The City of Seattle
Lessee: CH Development Association
Legal Description: Official legal description on Exhibit A
Assessor's Tax Parcel ID#: .
Reference # (If applicable): Additional number on pg. N/A



MEMORANDUM OF GROUND LEASE AGREEMENT

THE CITY OF SEATTLE
AND
CH DEVELOPMENT ASSOCIATION

This Memorandum of Ground Lease Agreement is dated _____, 2012, by and between The City of Seattle, a municipal corporation of the State of Washington ("Lessor"), and CH Development Association, a Washington nonprofit corporation ("Lessee").

1. Lease Agreement. Pursuant to a Lease Agreement dated _____, 2012, Lessor has leased to Lessee and Lessee has leased from Lessor the property located in King County, Washington, and described on Exhibit A hereto (hereinafter referred to as the "Property").

2. Term. The term of the Lease commenced on _____, 2012, and ends on _____, 2077.

3. Covenants. The Lease contains various representations, covenants and agreements of Lessee regarding the use of the Property.

4. Purpose of Memorandum. This memorandum is prepared for the purpose of recordation to give notice of the Lease. This memorandum shall not constitute an amendment or modification of the Lease, and in the event of any conflict between the terms of this memorandum and the Lease, the terms of the Lease shall control.

LESSOR: THE CITY OF SEATTLE

By: _____
Title:

LESSEE: CH DEVELOPMENT ASSOCIATION, a Washington
nonprofit corporation

By: _____
Title:



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
Version #1

STATE OF WASHINGTON

SS.

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of The City of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this _____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

My appointment expires _____

STATE OF WASHINGTON

SS.

COUNTY OF KING

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of CH Development Association, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this _____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

My appointment expires _____



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
Version #1

**EXHIBIT A
TO
MEMORANDUM OF GROUND LEASE AGREEMENT
REAL PROPERTY DESCRIPTION**

The Property is described as follows:



EXHIBIT C DEFINITIONS

“Alteration” means any alteration, improvement or addition to the Garage which costs greater than \$100,000 in each instance.

“Building” has the meaning ascribed to such term in the Declaration.

“Commercial Unit” has the meaning ascribed to such term in the Declaration.

“Common Elements” has the meaning ascribed to such term in the Declaration.

“Condemnation Award” means the total condemnation proceeds actually paid by the condemnor as a result of the condemnation of all or any part of the Property or the Improvements, if any, less the actual costs and expenses, including attorneys’ fees, incurred by Lessee and/or Lessor in obtaining such award.

“Effective Date” means the date of this Lease set forth in the introductory paragraph above.

“Housing Unit” has the meaning ascribed to such term in the Declaration.

“Insurance Proceeds” means the total proceeds of casualty insurance actually paid or payable in respect of insurance on all or any part of the Property or the Improvements, if any, less the actual costs and expenses, including attorneys’ fees, incurred by Lessee and/or Lessor in collecting such proceeds.

“Lease” means this Ground Lease Agreement, which is dated _____, 2012, between Lessor and Lessee.

“Permitted Encumbrances” means, as of any particular time, the following liens and encumbrances against the Property: _____; and all other liens and encumbrances in favor of or approved in writing by Lessor. [*to be updated upon receipt of title report*]

“State” means the State of Washington.

“Transferee” means any person to whom Lessee sells, transfers to or disposes of its interest in the Garage or any portion thereof.



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 5
August 16, 2012
Version #1

EXHIBIT D
FORM OF LICENSE



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 6
August 16, 2012
Version #1

Attachment 6
FAS East Precinct Parking 12th Avenue Arts
Ordinance



SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the "*Sublease*") is entered into this ____ day of _____, 2012, between TWELFTH AVENUE ARTS MASTER TENANT LLC, a Washington limited liability company ("*Master Tenant*"), and THE CITY OF SEATTLE, a municipal corporation of the State of Washington ("*Subtenant*").

RECITALS

A. CH Development Association, a Washington nonprofit corporation ("*CHDA*"), is the tenant under that certain Ground Lease Agreement dated _____, 2012 (the "*Ground Lease*"), between CHDA as lessee and The City of Seattle as lessor ("*Lessor*"), concerning the premises legally described on the attached Exhibit A ("*Premises*").

B. CHDA subleased its interests in the Ground Lease to Twelfth Avenue Arts Associates, a Washington nonprofit corporation ("*QALICB*"), pursuant to that certain Ground Sublease Agreement dated _____, 2012 (the "*Ground Sublease*").

C. QALICB entered into a Master Lease Agreement with the Master Tenant dated _____, 2012 (the "*Master Lease*"), wherein QALICB subleased the Premises and certain other real property to the Master Tenant.

D. Master Tenant desires to sublease to Subtenant, and Subtenant desires to sublease from Master Tenant, the Premises. Copies of the Ground Lease, the Ground Sublease and the Master Lease, along with all amendments thereto, are attached hereto as Exhibit B.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Master Tenant and Subtenant hereby agree as follows:

1. BASIC SUBLEASE PROVISIONS.

- a. **Premises.** Master Tenant subleases to Subtenant and Subtenant subleases from Master Tenant the Premises, which consists of the entire Garage.
- b. **Sublease Commencement Date.** The Sublease shall commence on such date Subtenant occupies the Premises following completion of the Improvements (as defined in the Ground Lease) (the "*Sublease Commencement Date*").
- c. **Sublease Termination Date.** The Sublease shall terminate on _____, 2052.
- d. **Rent.** Commencing on the Sublease Commencement Date, Subtenant shall pay to Master Tenant total monthly rent of \$14,583.33 per month, subject to abatement as described herein. The amount of monthly rent shall increase by \$416.67 on the first business day of each January, commencing in January 2016. Rent shall be



payable at Master Tenant's address shown below, or such other place designated in writing by Master Tenant.

e. Notice and Payment Addresses:

Master Tenant: Twelfth Avenue Arts Master Tenant LLC
c/o Capitol Hill Housing Improvement Program
1406 10th Avenue, Suite 101
Seattle, WA 98122
Attn. David Dologite

Subtenant: The City of Seattle
Seattle Municipal Tower
700 5th Avenue, Suite 4350
P.O. Box 94669
Seattle, WA 98124-4669
Attn. Director, Finance and Administrative Services

2. PREMISES.

a. Lease of Premises. Master Tenant subleases to Subtenant, and Subtenant subleases from Master Tenant the Premises upon the terms specified in this Sublease.

b. Acceptance of Premises. Except as specified elsewhere in this Sublease, Master Tenant makes no representations or warranties to Subtenant regarding the Premises, including the structural condition of the Premises and the condition of all mechanical, electrical, and other systems on the Premises.

3. TERM. The term of this Sublease shall commence on the Sublease Commencement Date provided in Section 1(b) above and shall terminate on _____, 2052 (the "**Term**"). Upon the Sublease Commencement Date, Master Tenant and Subtenant shall execute a certificate setting forth the actual Sublease Commencement Date in the form attached hereto as Exhibit C.

4. RENT. Subtenant shall pay Master Tenant without demand, deduction or offset, in lawful money of the United States, the monthly rental stated in Section 1(d) in advance on or before the first day of each month during the Term beginning on the Sublease Commencement Date. Payments for any partial month at the beginning or end of the Term shall be prorated. All payments due to Master Tenant under this Sublease, including late fees and interest, shall be rent, and upon failure of Subtenant to pay any such costs, charges or expenses, Master Tenant shall have the same rights and remedies as otherwise provided in this Sublease for the failure of Subtenant to pay rent. Notwithstanding the foregoing, Subtenant's obligation to pay rent in any month after the first month in which rent is due hereunder will be reduced by an amount equal to any shortfall in the amount of rent Subtenant actually receives for the immediately preceding month pursuant to Section 5.1 of the Ground Lease. By way of example, if Lessor



receives \$7,000.00 as rent under Section 5.1 of the Ground Lease during March 2015, then Subtenant's rent under this Section 4 for April 2015 will be \$13,250.00 (*i.e.* \$14,583.33 minus \$1,333.33). In the event that, at the end of the Term, the Subtenant would have received a rent abatement under this Section for the following month (*i.e.* had this Sublease continued to be in effect), the Master Tenant shall pay Subtenant the amount of such foregone abatement as a refund of overpaid rent.

5. **LEASE DOCUMENTS.** Master Tenant represents and warrants to Subtenant that: (a) Master Tenant has delivered to Subtenant a full and complete copy of the Ground Lease, the Ground Sublease and the Master Lease (collectively, the "**Lease Documents**"); and (b) the Lease Documents are in full force and effect and have not been further assigned, supplemented or modified. Master Tenant covenants and agrees to timely pay monthly rent and additional charges under the Master Lease (so long as Subtenant timely pays the monthly rent and additional charges due under this Sublease). Subtenant represents and warrants to Master Tenant that it has read, and is familiar with, the terms of the Lease Documents. Master Tenant and Subtenant shall not, by their omission or act, do nor permit anything to be done that would cause a default under the Lease Documents.
6. **RESTRICTED USES.** Subtenant shall not use nor permit the use of any portion of the Premises: (i) as a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises; (ii) for the rental to others of residential rental property as defined in Section 168(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "**Code**"), to the extent such rental would cause any building or structure in or constituting the Premises to be "residential rental property" as defined in Section 168(e)(2)(A)(i) of the Code; (iii) for any trade or business the principal activity of which is farming within the meaning of Section 2032A(e)(5)(A) of the Code; (iv) as an adult bookstore or facility selling or displaying pornographic books, literature, videotapes or other medium (materials shall be considered "adult" or "pornographic" for such purposes if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality); or (v) for any other trade, business or activity described and prohibited to be carried on in Section 1397C(d)(5) of the Code and Section 45D of the Code. This Section 6 shall have no further force an effect as of the day immediately following the seventh anniversary hereof.
7. **ADDITIONAL CHARGES.** Subtenant shall pay all costs of operating the Premises; provided, however, Subtenant shall have no obligation to pay any leasehold excise tax assessed against the Property or as a result of the rent payable hereunder, it being understood that Subtenant is not assuming those obligations of Master Tenant under the Master Lease. Subtenant shall pay to Master Tenant (or directly to the applicable party, as applicable) the share payable with respect to the Premises for [any costs] relating to any reciprocal easement agreement between the Premises, the Commercial Unit and the Housing Unit.



8. **ALTERATIONS.** Subtenant may not make alterations, additions or improvements to the Premises ("**Alterations**"), without the prior written consent of Master Tenant and Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Subtenant shall perform all work within the Premises at Subtenant's expense in compliance with all applicable laws and shall complete all Alterations in accordance with plans and specifications reasonably approved by Master Tenant and Lessor, using contractors approved by Master Tenant and Lessor, and in a manner so as to not unreasonably interfere with other tenants. Master Tenant shall cooperate with and reasonably assist in obtaining any consent from Lessor required for such alterations. Subtenant shall pay, when due, all claims for labor or materials furnished to or for Subtenant at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's liens against the Premises or any interest therein. Subtenant shall be deemed the owner of all Alterations.

9. **REPAIRS AND MAINTENANCE.** Subtenant shall be responsible for any repairs and replacements, whether structural or nonstructural, ordinary or extraordinary, necessary to maintain the Premises, unless such repairs and replacements arise out of or are related to the negligence or misconduct of the Master Tenant or its officers, employees and agents. Subtenant will permit no waste, damage, or injury to the Premises. Subtenant shall keep the Premises in good and safe condition, in compliance with all applicable laws, codes and regulations, and in good order and repair, ordinary wear and tear and damage by fire, casualty or condemnation which Subtenant is not required to restore elsewhere hereunder excepted, and Subtenant shall conform to and comply with the Condominium Documents and all valid ordinances, regulations and laws affecting the Premises or any improvements thereon or the use thereof.

10. **ACCESS AND RIGHT OF ENTRY.** Subtenant acknowledges the Premises is a unit within a multi-level condominium, which is governed by that certain "Condominium Declaration for 12th Avenue Arts, a condominium" dated _____, 2012 and filed with the King County Recorder under Recorder's No. _____ (the "**Declaration**"), and hereby agrees to permit the condominium association and its agents or employees to enter the Premises, following notice in accordance with Article 9 of the Declaration and in compliance with Seattle Police Department access and security policies and procedures, to effect repairs, improvements, replacements, maintenance or sanitation work deemed by the board of directors of the condominium to be necessary in the performance of its duties, to do necessary work that the owner of a condominium unit has failed to perform, or to prevent damage to the common elements of the condominium or to the other condominium units.

11. **INSURANCE.** Subtenant shall procure and maintain, at its own cost and expense, such liability insurance as is required to be carried by QALICB under the first paragraph of Section 13 of the Ground Lease, naming Master Tenant and Lessor as additional insureds. Subtenant shall furnish to Master Tenant a certificate of Subtenant's insurance required hereunder not later than ten (10) days prior to Subtenant's taking possession of the Premises. Notwithstanding the foregoing, Subtenant shall have the right to self-insure.



12. **ASSIGNMENT AND SUBLETTING.** Subtenant shall not assign, sublet, encumber or otherwise transfer any interest in this Sublease or any part of the Premises (collectively referred to as a "**Transfer**"), without first obtaining the written consent of Master Tenant, which shall not be unreasonably withheld, conditioned or delayed. Master Tenant may condition its consent on obtaining any required consent from Lessor, Subtenant satisfying any conditions on the Transfer imposed by Lessor, and such other reasonable conditions that Master Tenant may impose. No Transfer shall relieve Subtenant of any liability under this Sublease notwithstanding Master Tenant's consent to such Transfer. Consent to any Transfer shall not operate as a waiver of the necessity for Master Tenant's consent to any subsequent Transfer. In connection with each request for consent to a Transfer, Subtenant shall pay the reasonable cost of processing same, including attorneys fees and any cost charged by Lessor for granting its consent under the Master Lease, upon demand of Master Tenant. In connection with any Transfer, Subtenant shall provide Lessor and Master Tenant with copies of all assignments, subleases and assumption instruments.
13. **HOLDOVER.** If Subtenant shall, without the prior written consent of Master Tenant, hold over after the expiration or termination of the Term, such tenancy shall be deemed to be on a month-to-month basis and may be terminated according to Washington law. Unless a different rate is agreed upon by Master Tenant, Subtenant agrees to pay to Master Tenant 150% the rate of rental last payable under this Sublease during such holdover tenancy. In addition, Subtenant shall be responsible for all damages incurred by Master Tenant in connection with Subtenant's holdover. All other terms of this Sublease shall remain in effect.
14. **NOTICES.** Any notice required or allowed by this Sublease shall be in writing and shall be (i) hand-delivered, effective upon receipt, or (ii) sent by United States Express Mail or by private overnight courier, effective upon receipt, or (iii) served by certified mail, postage prepaid, return receipt requested, deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three (3) business days after the date of mailing, whichever is earlier; addressed to the party intended to receive the same at the address set forth in Section 1(e) of this Sublease.
15. **RIGHT TO PERFORM.** If Subtenant shall fail to pay any sum of money required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue for ten (10) days after notice thereof by Master Tenant, Master Tenant may, but shall not be obligated so to do, and without waiving or releasing Subtenant from any obligations of Subtenant, make such payment or perform any such other act on Subtenant's part to be made or performed as provided in this Sublease.
16. **GENERAL.**
 - a. **Heirs and Assigns.** This Sublease shall apply to and be binding upon Master Tenant and Subtenant and their respective heirs, executors, administrators, successors and assigns.



- b. **Entire Agreement.** This Sublease contains all of the covenants and agreements between Master Tenant and Subtenant relating to Subtenant's sublease of the Premises from Master Tenant. No prior or contemporaneous agreements or understanding pertaining to the Sublease shall be valid or of any force or effect and the covenants and agreements of this Sublease shall not be altered, modified, or added to except in writing signed by Master Tenant and Subtenant.
 - c. **Severability.** Any provision of this Sublease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Sublease.
 - d. **Governing Law.** This Sublease shall be governed by and construed in accordance with the laws of the State of Washington.
 - e. **Authority of Parties.** Each party signing this Sublease represents and warrants to the other that it has the authority to enter into this Sublease, that the execution and delivery of this Sublease has been duly authorized, and that upon such execution and delivery this Sublease shall be binding upon and enforceable against the party on signing.
 - f. **No Merger.** The fee title to the Premises and the leasehold estate of Subtenant therein created by this Sublease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title by Lessee or by a third party, by purchase or otherwise.
 - g. **Counterparts.** This Sublease may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one document. Faxed and electronically scanned signatures shall have the same legal effect as original "ink" signatures.
17. **EXHIBITS AND RIDERS.** The following exhibits and riders are made a part of this Sublease:
- | | |
|-----------|-----------------------------------|
| Exhibit A | Legal Description of Premises |
| Exhibit B | Lease Documents |
| Exhibit C | Confirmation of Commencement Date |
18. **CAPITALIZED TERMS.** Undefined capitalized terms used herein shall have the same meaning as set forth in the Ground Lease.

[Signatures appear on the following page(s)]



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 6
August 16, 2012
Version #1

IN WITNESS WHEREOF, the parties hereto have executed this Sublease as of the day and date set forth below.

MASTER TENANT:

TWELFTH AVENUE ARTS MASTER TENANT
LLC, a Washington limited liability company

By: [name], its Managing Member

By: _____

Name:

Title

SUBTENANT:

THE CITY OF SEATTLE, a municipal corporation
of the State of Washington.

By: _____

Title:



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 6
August 16, 2012
Version #1

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the managing member of TWELFTH AVENUE ARTS MASTER TENANT LLC, a Washington limited liability company, the entity that executed the within instrument and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and on oath stated that he/she was authorized to execute the same.

Dated this ____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing
at _____
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of THE CITY OF SEATTLE, a municipal corporation of the State of Washington to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing
at _____
My appointment expires _____



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 6
August 16, 2012
Version #1

EXHIBIT A

Legal Description of Premises



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 6
August 16, 2012
Version #1

EXHIBIT B
Lease Documents



EXHIBIT C

CONFIRMATION OF COMMENCEMENT DATE

Master Tenant: Twelfth Avenue Arts Master Tenant LLC, a Washington limited liability company

Subtenant: The City of Seattle, a municipal corporation of the State of Washington

This Confirmation of Commencement Date ("**Confirmation**") is made by Master Tenant and Subtenant pursuant to that certain Sublease Agreement dated as of _____, 2012 (the "**Sublease**") between Master Tenant and Subtenant for certain premises located in Seattle, Washington and known as the Garage Unit of 12th Avenue Arts, a condominium (the "**Premises**"). This Confirmation is made pursuant to Section 3(b) of the Sublease. Master Tenant and Subtenant hereby agree that the Sublease Commencement Date is _____, 20___. This Confirmation is incorporated into the Sublease, and forms an integral part thereof. This Confirmation shall be construed and interpreted in accordance with the terms of the Sublease for all purposes.

MASTER TENANT: TWELFTH AVENUE ARTS MASTER TENANT LLC, a Washington limited liability company

By: [name], its Managing Member

By: _____
Name:
Title

SUBTENANT: THE CITY OF SEATTLE, a municipal corporation of the State of Washington

By: _____
Title:



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 7
August 16, 2012
Version #1

Attachment 7
FAS East Precinct Parking 12th Avenue Arts



COMPLETION GUARANTY

THIS COMPLETION GUARANTY ("Guaranty") made as of _____, 2012, by CAPITOL HILL HOUSING IMPROVEMENT PROGRAM, a Washington public corporation ("Guarantor") to and for the benefit of THE CITY OF SEATTLE, a Washington municipal corporation, its successors and assigns (the "City").

RECITALS

A. Guarantor is a public corporation created by the City to assist homeowners, property owners, residential tenants and residents of the Capitol Hill community in preserving, improving and restoring the quality of their homes, property and neighborhood, and to provide additional housing, cultural, social and economic opportunities and facilities primarily in the Capitol Hill community. Guarantor organized CH Development Association ("CHDA") and Twelfth Avenue Arts Associates (the "QALICB"), both of which are Washington nonprofit corporations, to support Guarantor's governmental activities. Guarantor is the sole member of CHDA and the QALICB. Guarantor also formed Twelfth Avenue Arts Master Tenant LLC (the "Master Tenant"), a Washington limited liability company of which Guarantor is the [managing member] [sole member].

B. Pursuant to that certain "Condominium Declaration for 12th Avenue Arts, a condominium," dated _____, 2012 and filed with the King County Recorder under Recorder's No. _____ (the "Declaration"), and the survey map and plans filed with the King County Recorder under Recorder's No. _____, the City created 12th Avenue Arts (the "Condominium"), a condominium consisting of a "Commercial Unit," a "Garage Unit" and a "Housing Unit" (as such terms are defined in the Declaration).

C. Guarantor formed Twelfth Avenue Arts Housing LLLP (the "Housing Partnership"), a Washington limited liability limited partnership, to acquire, construct, own and operate the Housing Unit as a multi-unit rental housing project for low-income persons. Guarantor is the Housing Partnership's sole general partner, and has been retained by the Housing Partnership to provide development services with respect to the construction of the Housing Unit. A portion of the development costs pertaining to the Housing Unit will be financed through a \$ _____ loan from the City, acting through the City's Office of Housing.

D. On the date hereof, and pursuant to a Real Property Purchase and Sale Agreement dated _____, 2012 (the "Purchase and Sale Agreement"), between CHDA and the City, the City sold the Housing Unit and the Commercial Unit to CHDA. CHDA subsequently sold the Housing Unit to the Housing Partnership and the Commercial Unit to the QALICB. The QALICB has leased the Commercial Unit to the Master Tenant, and the Master Tenant has subleased a portion of the Commercial Unit to Guarantor for use by Guarantor as community



space and Guarantor's main offices. A portion of the development costs pertaining to the Commercial Unit will be financed through a \$ _____ loan from the City, acting through the City's Office of Economic Development.

E. On the date hereof, the City leased the Garage Unit to CHDA pursuant to a Ground Lease Agreement dated _____, 2012 (the "Ground Lease"); CHDA subleased its interests in the Ground Lease to the QALICB pursuant to that certain Ground Sublease Agreement dated _____, 2012; the QALICB leased the Garage Unit to the Master Tenant pursuant to a Master Lease Agreement dated _____, 2012; and the Master Tenant subleased the Garage Unit to the City pursuant to a Sublease Agreement dated _____, 2012 (the "Sublease"). The Ground Lease requires, as part of the consideration for the Ground Lease, that CDHA construct, or cause to be constructed, improvements which shall be used for the parking of authorized City of Seattle vehicles.

F. Guarantor has submitted to the City's Office of Housing, Office of Economic Development, and the Department of Finance and Administrative Services, plans and specifications dated _____, 2012 (the "Plans and Specifications") for the construction of the improvements that, when completed, will comprise the Housing Unit, the Commercial Unit and the Garage Unit.

G. On the date hereof, the QALICB borrowed money from KeyBank National Association, [Key CDC Subsidiary CDE], and NDC New Markets Investments _____, LLC, to finance its acquisition and construction of the Commercial Unit and the Garage Unit. Those loans are expected to satisfy requirements of the federal new markets tax credit program. RCW 35.21.735(8) provides that "[a]ll cities, towns, counties, public corporations, and port districts may create partnerships and limited liability companies and enter into agreements with public or private entities, including partnership agreements and limited liability company agreements, to implement within their boundaries the federal new markets tax credit program established by the community renewal tax relief act of 2000 (26 U.S.C. Sec. 45D) or its successor statute." The Condominium is located within the City's boundaries and Guarantor's area of operations.

H. Guarantor will derive material financial benefits from the transactions described in the foregoing Recitals. The City has relied on the statements and agreements contained herein in agreeing to transfer the Housing Unit, the Commercial Unit and the Garage Unit to CDHA, and to sublease the Garage Unit from the Master Tenant. The execution and delivery of this Guaranty by Guarantor is a condition precedent to the transfer of such Condominium units and the subleasing of the Garage Unit.

AGREEMENT

NOW, THEREFORE, intending to be legally bound, Guarantor, in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which



are acknowledged, hereby covenant and agree for the benefit of the City and its successors and assigns as follows:

1. Guarantor, absolutely, unconditionally, and irrevocably guarantees:

(a) the full, complete and punctual completion of the construction, installation, and equipping of the improvements described in the Plans and Specifications (collectively, the "Construction"), including without limitation, all additions, alterations, and improvements thereto or replacements thereof and all appurtenant fixtures, machinery, and equipment installed therein, free of any claim for mechanics', materialmen's or any other liens, and in accordance with (1) all applicable laws, and (2) the Plans and Specifications. Without limiting the foregoing, Guarantor's obligations under this subsection (a), include the following:

(i) To perform, complete and pay for (or cause to be performed, completed and paid for) the Construction and to pay all costs of said Construction (including any and all cost overruns) and all other costs associated therewith (including, without limitation, the costs of any architects' and engineers' fees), if Guarantor, CHDA, the Housing Partnership, the QALICB, the Maters Tenant or any other party responsible therefor shall fail to perform, complete or pay for such work;

(ii) If any mechanics' or materialmen's liens should be filed, or should attach, with respect to Garage Unit, to immediately cause the removal of such lien, or post security against the consequences of the possible foreclosure thereof;

(iii) If any chattel mortgages, conditional vendor's liens or any liens, encumbrances or security interests whatsoever should be filed, or should attach, with respect to the personal property, fixtures, attachments and equipment delivered upon the Garage Unit, attached to the Garage Unit or used in connection with the construction of the Garage Unit, to immediately cause the removal of such lien(s) or post security against the consequences of their possible foreclosure and procure a title policy insuring the City against the consequences of the foreclosure or enforcement of such lien(s); and

(iv) To protect, indemnify, defend and hold the City and its officials and employees harmless from and against any and all actual or potential claims, liabilities, damages (direct or indirect), losses, fines, penalties, judgments, awards, costs and expenses (including, without limitation, reasonable attorney fees and costs and expenses of investigation) which arise out of or relate in any way to the Construction or the financing by the Housing Partnership or the QALICB of the improvements comprising the Housing Unit, the Commercial Unit or the Garage Unit.

(b) the full and prompt payment of any Enforcement Costs (as hereinafter defined in Section 5 hereof).



All obligations described in subsections (a) and (b) of this Section 1 are referred to herein as the "Obligations."

2. Guarantor does hereby (a) waive notice of acceptance of this Guaranty by the City and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (b) agree to refrain from asserting, until after repayment in full of any amounts due to the City hereunder, any defense, right of set-off or other claim which Guarantor may have against the City, CHDA, the Housing Partnership, the QALICB or the Master Tenant, (c) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability, and (d) waive any failure by the City to inform Guarantor of any facts the City may now or hereafter know about the Construction, it being understood and agreed that the City has no duty so to inform and that Guarantor is fully responsible for being and remaining informed by CHDA, the Housing Partnership, the QALICB and the Master Tenant of all circumstances bearing on the risk of nonperformance of the Obligations. No modification or waiver of any of the provisions of this Guaranty shall be binding upon the City except as expressly set forth in a writing duly signed and delivered by the City.

3. Guarantor further agrees that Guarantor's liability as guarantor shall not be impaired or affected by the City's failure or election not to pursue any other remedies it may have against Guarantor, CHDA, the Housing Partnership, the QALICB or the Master Tenant, or by any change to or modification of the Purchase and Sale Agreement, the Declaration, the Ground Lease or the Sublease, it being the intent hereof that Guarantor shall remain liable for the performance of the Obligations notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Guarantor further understands and agrees that the City may at any time enter into agreements with CHDA, the Housing Partnership, the QALICB or the Master Tenant to amend and modify the Purchase and Sale Agreement, the Declaration, the Ground Lease or the Sublease, and may waive or release any provision or provisions of the Purchase and Sale Agreement, the Declaration, the Ground Lease or the Sublease, and, with reference to such instruments, may make and enter into any such agreement or agreements as the City may deem proper and desirable, without in any manner impairing or affecting this Guaranty or any of the City's rights hereunder or Guarantor's Obligations.

4. This is an absolute, present and continuing guaranty of performance and completion and not of collection. Guarantor agrees that this Guaranty may be enforced by the City without the necessity at any time of resorting to or exhausting any other remedy it may have, and Guarantor hereby waives any right to require the City to join any party other than Guarantor in any action brought hereunder or to commence any action against or obtain any judgment against any other party or to pursue any other remedy or enforce any other right. Guarantor further agrees that nothing contained herein or otherwise shall prevent the City from pursuing concurrently or successively all rights and remedies available to it at law and/or in equity, and the exercise of any of its rights or the completion of any of its remedies shall not constitute a discharge of Guarantor's obligations hereunder, it being the purpose and intent of Guarantor that the obligations of Guarantor hereunder shall be absolute, independent and



unconditional under any and all circumstances whatsoever. None of Guarantor's Obligations under this Guaranty or any remedy for the enforcement thereof shall be impaired, modified, changed or released in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of any party other than Guarantor, or by reason of the bankruptcy of a party other than Guarantor, or by reason of any creditor or bankruptcy proceeding instituted by or against a party other than Guarantor.

5. If: (a) this Guaranty is placed in the hands of an attorney for collection or is collected through any legal proceeding; (b) an attorney is retained to represent the City in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; (c) an attorney is retained to provide advice or other representation with respect to this Guaranty; or (d) an attorney is retained to represent the City in any proceedings whatsoever in connection with this Guaranty and the City prevails in any such proceedings, then Guarantor shall pay to the City upon demand all attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "Enforcement Costs"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the other documents described in the Recitals hereto.

6. In order to further induce the City to enter into the various transactions described in the Recitals hereto, Guarantor makes the following representations and warranties to the City set forth in this Section. Guarantor acknowledges that but for the truth and accuracy of the matters covered by the following representations and warranties, the City would not have agreed to enter into the various transactions described in the Recitals hereto.

(a) Guarantor is a public corporation duly created and validly existing under chapter 35.21 RCW with full power and authority to execute this Guaranty and perform its obligations hereunder.

(b) This Guaranty was duly and validly authorized, executed and delivered by Guarantor, and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

(c) The execution and delivery by Guarantor of this Guaranty and the consummation of the transactions described herein, do not conflict with or result in a breach of any of the terms, provisions or condition of any agreement or instrument to which Guarantor may be bound, or of any order, law, rule or regulation of any court, governmental body or administrative agency having jurisdiction over Guarantor.

(d) Any and all balance sheets, net worth statements, financial statements and other financial data with respect to Guarantor which have heretofore been given to the City by Guarantor fairly and accurately present the financial condition of Guarantor as of the respective dates thereof.



(e) The execution, delivery, and performance by Guarantor of this Guaranty does not and will not contravene or conflict with (i) any Laws, order, rule, regulation, writ, injunction or decree now in effect of any Government Authority, or court having jurisdiction over Guarantor, (ii) any contractual restriction binding on or affecting Guarantor or Guarantor's property or assets which may adversely affect Guarantor's ability to fulfill its obligations under this Guaranty, or (iii) the organizational or other documents of Guarantor.

(f) This Guaranty creates legal, valid, and binding obligations of Guarantor enforceable in accordance with its terms.

(g) Except as disclosed in writing to the City, there is no action, proceeding, or investigation pending or, to the knowledge of Guarantor, threatened or affecting Guarantor, which may adversely affect Guarantor's ability to fulfill his obligations under this Guaranty. There are no judgments or orders for the payment of money rendered against Guarantor for an amount in excess of \$100,000 which have been undischarged for a period of ten or more consecutive days and the enforcement of which is not stayed by reason of a pending appeal or otherwise. Guarantor is not in default under any agreements which may adversely affect Guarantor's ability to fulfill its obligations under this Guaranty.

(h) All statements set forth in the Recitals are true and correct.

Guarantor hereby agrees to indemnify and hold the City free and harmless from and against all loss, cost, liability, damage, and expense, including attorney's fees and costs, which the City may sustain by reason of the inaccuracy or breach of any of the foregoing representations and warranties as of the date the foregoing representations and warranties are made and are remade.

7. Guarantor covenants and agrees that, until it is released from this Guaranty pursuant to Section 8 hereof, to deliver to the City the following financial information and statements:

(a) Upon receipt, Guarantor's annual state Audit Report;

(b) Within 180 days of each fiscal year end, Guarantor's internally-prepared annual financial statements; and

(c) Within 30 days of adoption, Guarantor's annual budget.

8. Guarantor shall be released from its obligations under this Guaranty only upon the delivery by the City to Guarantor of a written release of Guarantor from its obligations hereunder. Guarantor will not unreasonably withhold such written release if unconditional certificates of occupancy are delivered for each of the Housing Unit, the Commercial Unit and the Garage Unit, and each of such units have been constructed and equipped in accordance with the Plans and Specifications.



9. Any notice required or allowed hereunder shall be in writing and shall be (i) hand-delivered, effective upon receipt, or (ii) sent by United States Express Mail or by private overnight courier, effective upon receipt, or (iii) served by certified mail, postage prepaid, return receipt requested, deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three (3) business days after the date of mailing, whichever is earlier; addressed to the party intended to receive the same at the address set forth below:

If to the City: The City of Seattle
Seattle Municipal Tower
700 5th Avenue, Suite 4350
P.O. Box 94669
Seattle, WA 98124-4669
Attn. Director, Finance and Administrative Services

If to Guarantor: Capitol Hill Housing Improvement Program
1406 10th Avenue, Suite 101
Seattle, WA 98122
Attn. Executive Director

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

10. This Guaranty shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantor and shall not be discharged in whole or in part by the death or the dissolution of any principal in Guarantor.

11. This Guaranty was negotiated in the State of Washington, and delivered by Guarantor and accepted by the City in the State of Washington, which state the parties agree has a substantial relationship to the parties and the underlying transactions embodied hereby. In all respects, including, without limitation, matters of construction of the improvements and performance of this Guaranty and the Obligations arising hereunder, this Guaranty shall be governed by, and construed in accordance with, the internal laws of the State of Washington applicable to contracts made and to be performed in such state and any applicable laws of the United States of America.

12. TO THE GREATEST EXTENT PERMITTED BY LAW, GUARANTOR HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LESSOR. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTY (EACH, A "PROCEEDING"), LESSOR AND GUARANTOR IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF SEATTLE AND STATE OF WASHINGTON, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN



BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS GUARANTY SHALL PRECLUDE LESSOR FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. THE CITY AND GUARANTOR FURTHER AGREE AND CONSENT THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY WASHINGTON STATE OR UNITED STATES COURT SITTING IN THE CITY OF SEATTLE AND MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE APPLICABLE PARTY AT THE ADDRESS INDICATED BELOW, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF SUCH PARTY SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

13. Guarantor and the City (by its acceptance hereof) hereby waive any right to a trial by jury in any action or proceeding to enforce or defend any right under this Guaranty and agree that any such action or proceeding shall be tried before a court and not before a jury.

14. Guarantor acknowledges that Guarantor has had adequate opportunity to carefully read this Guaranty and to seek and receive legal advice from skilled legal counsel of Guarantor's choice in the area of financial transactions of the type contemplated herein prior to signing it. Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of the City's consideration for entering into the various transactions described in the Recitals hereto, the City has specifically bargained for the waiver and relinquishment by Guarantor of all such defenses. Given all of the above, Guarantor does hereby represent and confirm to the City that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of such possible defenses, (ii) the circumstances under which such defenses may arise, (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by the City, and that the City is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

15. The parties hereto intend and believe that each provision in this Guaranty comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 8
August 16, 2012
Version #1

Attachment 8

FAS East Precinct Parking 12th Avenue Arts



After recording return to:

Seattle City Attorney's Office
Attn. Jenifer C. Merkel
600 4th Avenue, 4th floor
P.O. Box 94769
Seattle, WA 98124-4769

Title: Pledge of Sublease Proceeds
Reference # N/A
Grantor(s) Twelfth Avenue Arts Master Tenant LLC
Grantee(s) The City of Seattle, Washington
Legal description: [to be inserted]
Tax Parcel ID#: _____



PLEDGE OF SUBLEASE PROCEEDS

THIS PLEDGE OF SUBLEASE PROCEEDS ("**Pledge**") is made and entered into as of this _____ day of _____, 2012, by and between TWELFTH AVENUE ARTS MASTER TENANT LLC, a Washington limited liability company ("**Pledgor**"), and the CITY OF SEATTLE, a municipal corporation of the State of Washington ("**City**").

RECITALS

A. City is the lessor under that certain Ground Lease Agreement dated _____, 2012 (the "**Ground Lease**"), between the City and Capitol Hill Development Association, a Washington nonprofit corporation ("**CHDA**") as lessee, concerning the premises legally described on the attached Exhibit A ("**Premises**").

B. Pursuant to that certain Ground Sublease dated _____, 2012 (the "**Ground Sublease**"), CHDA subleased the Premises to Twelfth Avenue Arts Association, a Washington nonprofit corporation ("**QALICB**").

C. QALICB entered into a Master Lease with Pledgor dated _____, 2012, wherein QALICB leased the Premises and other property to Pledgor ("**Lease**").

D. Pledgor and City entered into a Sublease dated _____, 2012, wherein Pledgor subleased the Premises to City, as subtenant.

AGREEMENT

NOW, THEREFORE, for good and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Pledge and Assignment. Pledgor absolutely and unconditionally assigns and pledges to the City all of Pledgor's right, title and interest in and to all rents now or hereafter owing under the Sublease (the "**Rents**"). This grant is made to secure the payment and performance of the Secured Obligations, as defined in Section 2 below. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Pledgor to the City of all of Pledgor's right, title and interest in and to the Rents and not an assignment in the nature of a pledge of the Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist under Section 19.1(a) of the Ground Lease, however, Pledgor shall have a license (which license shall terminate automatically and without notice upon the occurrence of such an Event of Default) to collect, but not prior to accrual, all Rents.

2. Secured Obligations. As used in this Pledge, the term "**Secured Obligations**" means CHDA's obligation to pay rent under the Ground Lease, and any renewal, extension or modification thereof, and full payment and performance of all obligations of the Pledgor to City, now existing or hereafter incurred, whether direct or indirect, arising from this Pledge.

3. Remedies. Following an Event of Default under Section 19.1(a) of the Ground Lease, Pledgor shall, at the direction of City, pay all rents collected under the Sublease directly to City immediately upon collection. Pledgor agrees to pay on demand all expenses reasonably incurred by City in obtaining performance of the Secured Obligations, including without limitation, all attorney's fees and costs due hereunder, all of which sums shall be secured hereby. Without limiting the generality of the foregoing, at the City's direction following such an Event of Default, Pledgor will enter into a deposit account control agreement, reasonably acceptable to Pledgor, in favor of the City with a bank specified by the City, and will cause all rent collected under the Sublease to be deposited into the deposit account described in such deposit account control agreement immediately upon collection in lieu of direct payment to the City of rents collected under the Sublease.

4. Cumulative Rights and Remedies. Each and every right, remedy, and power granted to City hereunder shall be cumulative and in addition to any other right, remedy, or power now or hereafter existing in equity, at law, by virtue of statute, or otherwise, and all of the foregoing may be exercised by City from time to time, concurrently, consecutively, independently, or simultaneously, and as often and in such order as Grantee may deem expedient.

5. Termination of Agreement. Upon payment and performance in full of all Secured Obligations, this Pledge shall terminate.

6. Unconditional Obligations. The obligations of Pledgor under this Pledge shall be absolute and unconditional, and shall remain in full force and effect without regard to any exercise or non-exercise of any right, remedy, or privilege under or in respect of this Pledge, or the granting of any postponements or extensions for time of payment or other indulgences to Pledgor, or any other person.

7. Successors, Assignments.

(a) This Pledge shall inure to the benefit of the heirs, legal representations, successors and assigns of City, and shall be binding upon the heirs, executors, administrators, legal representatives, successors in interest and assigns of Pledgor.

(b) City shall not assign its rights hereunder without the prior written consent of Pledgor, such consent not to be unreasonably withheld, conditioned or delayed.

(c) Pledgor represents and warrants that it has not made any prior assignment of or granted any security interest in the rents pledged hereunder, and agrees not to grant any such assignment or security interest unless such grant by its terms is unconditionally junior and subordinate to the pledge hereunder and the grantee covenants not to take any action to contest or restrict the exercise of the City's rights hereunder.

8. Amendments. Except as otherwise provided herein, no amendment, modification, or termination of any provision of this Security Agreement shall in any event be effective unless the same shall be in writing and signed by Pledgor and City.

9. Severability of Provisions. Any provision of this Pledge that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such

prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

10. Waiver. No terms or rights in this Pledge shall be qualified or supplemented by any course of dealing or course of performance. No waiver or modification by City of any of the terms or conditions hereof shall be effective unless in writing, signed by the City. No waiver or indulgence by City as to any required performance by Pledgor shall constitute a waiver as to any subsequent required performance or other obligation of Pledgor hereunder.

11. Notice. No notice or communication under this Pledge will be effective unless in writing, delivered personally or mailed by registered or certified mail postage prepaid, to the addressee's address below, or to whatever other address the addressee hereafter notifies the sender referring to this paragraph if so notified. Notice is deemed given when personally delivered or, if mailed, three days after mailing.

If to Pledgor: Twelfth Avenue Arts Master Tenant
c/o Capitol Hill Housing
1406 10th Avenue, Suite 101
Seattle, WA 98122
Attention: David Dologite

With a copy to: Kantor Taylor Nelson Evatt & Decina PC
901 Fifth Avenue, Suite 4000
Seattle, WA 98164
Attention: Thomas Nelson

If to City: The City of Seattle
Seattle Municipal Tower
700 5th Avenue, Suite 4350
600 4th Avenue, 4th Floor
P.O. Box 94669
Seattle, WA 98124-4669
Attention: Director, Finance and Administrative Services

With a copy to: Foster Pepper PLLC
1111 Third Avenue
Suite 3400
Seattle, WA 98101
Attention: Jeff Nave

12. Attorneys' Fees. In the event that any dispute arises between the parties hereto relating to the interpretation, enforcement or performance of or under this Pledge, and such matter is referred to an attorney for resolution, the prevailing party shall be entitled to collect from the losing party any attorneys' fees and costs incurred by the prevailing party in connection therewith, together with any court costs and expenses in the event of litigation, through all levels of appeal.



13. Governing Law. This Pledge shall be governed by, and construed in accordance with, the laws of the State of Washington (excluding the laws applicable to conflicts or choice of law).

IN WITNESS WHEREOF, the parties hereto have executed this Pledge as of the day and year first above set forth.

PLEDGOR: TWELFTH AVENUE ARTS MASTER TENANT LLC,
a Washington limited liability company

By: _____
Name: _____
Its: _____

CITY: THE CITY OF SEATTLE,
a municipal corporation of the State of Washington

By: _____
Name: _____
Its: _____



STATE OF WASHINGTON)
)
) ss.
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the _____ of THE CITY OF SEATTLE, a Washington municipal corporation, the entity that executed the within instrument and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and on oath stated that he/she was authorized to execute the same.

Dated this ____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____
My appointment expires _____

STATE OF WASHINGTON)
)
) ss.
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be the [Manager][Managing Member] of TWELFTH AVENUE ARTS MASTER TENANT LLC, a Washington limited liability company, the entity that executed the within instrument and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and on oath stated that he/she was authorized to execute the same.

Dated this ____ day of _____, 2012.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____
My appointment expires _____



William Craven
FAS East Precinct Parking 12th Ave Arts ATT 8
August 16, 2012
Version #1

Exhibit A

Legal Description



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
FAS	Bill Craven / 733-9238	Jennifer Devore / 615-1328

Legislation Title: AN ORDINANCE relating to certain City-owned property located at 1620 12th Avenue East, commonly known as the East Precinct Parking Facility; authorizing the Director of Finance and Administrative Services to execute and record certain documents, including a Condominium Declaration, Survey Map and Plans, a Purchase and Sale Agreement, a Quit Claim Deed, a Ground Lease, a Sublease, and other agreements and documents in consideration of the development by Capitol Hill Housing Improvement Program of a six-story mixed-use facility with underground parking for the Seattle Police Department, commercial, retail and arts space, as well as affordable housing; and increasing appropriations in the 2012 Adopted Budget for certain activities of the Finance and Administrative Services Budget; all by a three-fourths vote of the City Council.

Summary of the Legislation:

City-owned property, commonly referred to as the “East Precinct Parking Facility,” is located on Capitol Hill at 1620 12th Avenue East. The site currently provides a total of 77 parking spaces for Seattle Police Department (SPD) vehicles and officers who park their personal vehicles there while on duty. The property, which was purchased in the mid-1980s to provide parking for the East Precinct, also includes two-10,000 gallon gasoline tanks that are used to fuel SPD fleet vehicles, a backup generator that provides power to the fueling station and other uses, and a vacuum and car wash area. In addition to the parking provided at this location, the Seattle Police Department leases 34 additional parking stalls nearby from a private parking lot operator.

The proposed legislation will authorize the Director of Finance and Administrative Services (FAS) to enter into, record, and administer various legal documents for the creation of a three-unit condominium on the East Precinct Parking Lot and the conveyance and lease of the airspace units to Capitol Hill Housing (CHH). A Letter of Intent (LOI) that laid out the basic terms and conditions of the property sale was negotiated and signed by both parties in May 2011 (see Exhibit A). In exchange for the conveyances, CHH will deliver to the City a parking garage built to critical facilities standards that will include a minimum of 111-parking stalls, a back-up generator, security system, and other ancillary items that are necessary to support the Seattle Police Department’s ongoing operations. Furthermore, CHH will construct a mixed-use commercial/arts/low-income housing development. CHH’s project is proposed to contain four retail/restaurant spaces, an arts/theater space all on the first floor, 17,000 square feet of office space to be located on the second floor, and 88 units of low-income housing on floors three through six. The City’s Office of Housing, through the 2009 Seattle Housing Levy fund, has awarded the housing portion of the project up to \$7.7 million for the development of the 88 units of affordable housing; including a mix of studios, one, and two bedroom units. A requirement to



receive the Office of Housing money, CHH is obliged to lease every apartment to individuals and families earning less than 60% of the median income. The project as of July 10, 2012 has an approximate construction budget of \$44 million, consisting of \$11 million for the construction of the garage; \$11 million for the office, commercial and art space; and approximately \$22 million for the construction of the housing units. During the time of construction, CHH will secure offsite parking for SPD's fleet vehicles and officers' personal vehicles.

FAS commissioned an appraisal of the subject property in February 2012, which valued the property, as if vacant, at \$7.3 million. While working with CHH and its architect team, it became clear that the ramping assumptions and first floor use assumptions arrived at during the Letter of Intent negotiations were flawed. The result is that the garage and some CHH uses need to be constructed deeper in the soil, requiring more excavation and more total square footage of construction. The City agreed to share in these costs so that the project could proceed, and those funds are appropriated via this proposed legislation.

In 2012, CHH has requested from the City additional funding to achieve the revised scope of work in the amount of \$268,750. An additional \$125,000 is necessary to pay for outside legal counsel retained by the City to provide expertise to handle the federal tax credit programs, federal loans, condominiums and to protect the interests of the City. It is anticipated that the construction of the parking garage will cost approximately \$11.0 million, with CHH contributing the difference between the City's contribution and the cost of construction.

Because CHH intends to use new market tax credits to partially finance the construction, Federal law requires CHH to own or control all three condominium units for a minimum of seven years; therefore, in addition to conveying the housing and commercial units to CHH, the City will also ground lease the garage unit to CHH. During that period of time, the City will have an exclusive lease of the parking garage, the use of which is restricted to Seattle Police Department parking. Upon expiration of the new market tax credits at the end of the seven-year period it is anticipated that the City will acquire the garage condominium unit for a nominal amount. As security for the construction of the garage unit, the City proposes that it will retain fee ownership of the ground, which it will lease to CHH through a 65-year Ground Lease, the term of which will commence the date the document is executed. Because of the project's various complexities, the Law Department has retained outside counsel to provide expertise in the areas of federal tax credit programs, federal loans, condominiums, and to assist in integrating the interests of the City, CHH, and CHH's private equity and commercial loan partners.

In 2014 the City will begin lease payments in the amount of \$75,000 a year until 2018 and the last payment, per the agreement, in 2019 will be for \$56,250. When the garage is completed in 2014, \$265,000 will be necessary for communications and security equipment to ensure that police communications equipment will in the underground levels of the garage and secure the garage with security cameras.

 X **This legislation has financial implications.**



Appropriations:

Fund Name and Number	Department	Budget Control Level*	2012 Appropriation	2013 Anticipated Appropriation
General Subfund (00100)	Finance General	Appropriation to General Subfunds and Special Funds BCL	\$393,750	0
Finance and Administrative Services Fund (50300)	Finance and Administrative Services	Facilities Services BCL	\$393,750	\$0
TOTAL			\$787,500	0

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

Appropriations Notes:

Additional appropriations will be necessary starting in 2014 and will be included in the 2013-2014 Proposed Budget.

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2012 Expenditures	2013 Anticipated Expenditures
Finance and Administrative Services Subfund (50300)	FAS	A3300	\$393,750	0
TOTAL			\$393,750	0

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

Spending/Cash Flow Notes:

Upon closing of the real estate transaction, the City of Seattle will transfer funds for the completion of the garage condominium unit to Capitol Hill Housing.

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

Yes. Upon completion of the Parking Garage the City will pay \$75,000 a year (starting in 2014), which represents the amortized value of the tenant improvements that are required for the needs of the Seattle Police Department's use. Also, when the tax credit advantages terminate after seven years, the City will have the opportunity to buy the garage at a nominal amount of money (i.e., for \$1,000.)

b) What is the financial cost of not implementing the legislation?

There is no financial consequence should the City decide to not implement this legislation.

c) Does this legislation affect any departments besides the originating department?

Yes, this legislation affects the Seattle Police Department, Office of Housing, and Office of



Economic Development.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

The City could sell the Property through a competitive process. This option would present further risks and fewer options for the City. The City will continue to have a need for the parking that is provided at this site for as long as the East Precinct exists. As such, the value to a developer for the property is heavily diminished, and may not yield the necessary parking that the City requires. Therefore, the range of potential uses and buyers is narrowed.

e) Is a public hearing required for this legislation?

Yes, a public hearing is required for this legislation, as per City Council Resolution Number 31203 and 30862. FAS has complied with the necessary public notification process; the City Council on June 29, 2012 approved of FAS's proposed Public Involvement Plan. In late October 2011, FAS mailed approximately 2,500 neighborhood notices inviting input on the reuse and disposition of the Police Precinct Auxiliary Parking lot. The notice was sent to property owners and residents within 1,000 feet of the site, as well as all other neighbors whom expressed interest in the project; additionally local neighborhood groups, committees and organizations with a presence on Capitol Hill received the notice.

To date, FAS has received approximately a dozen responses; the overwhelming majority of those responses have been positive to the recommendation of FAS and/or parties that want to be kept informed of the project. Opinions expressed from the responses have been encouraging of the project and indicate that the development of a mixed-use housing project with secure underground parking will be much more beneficial to the community than the surface parking lot that exists now.

In addition to the City's notification, Capitol Hill Housing sent a notification to all property owners, and residences within 500 feet of the site project. The few responses that were received by Capitol Hill Housing all encouraged development of the site.

On October 19, 2011, Capitol Hill Housing its architect, SMR, presented the proposed project to the East Design Review Board. The meeting had in attendance approximately 25 community members; no one at this public hearing raised any objections to the proposed project.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

Yes, publication in the Daily Journal of Commerce is required for this project, as part of this legislation is related to the disposition of real property.

g) Does this legislation affect a piece of property?

Yes, the address of the property is 1620 12th Avenue East, Seattle. King County Assessor numbers 600300-0645, 600300-0660, 600300-0665, and 600300-0670. Exhibit B provides a map of the property.

h) Other Issues:



William Craven
FAS East Precinct Parking 12th AVE Arts FISC
August 16, 2012
Version #5

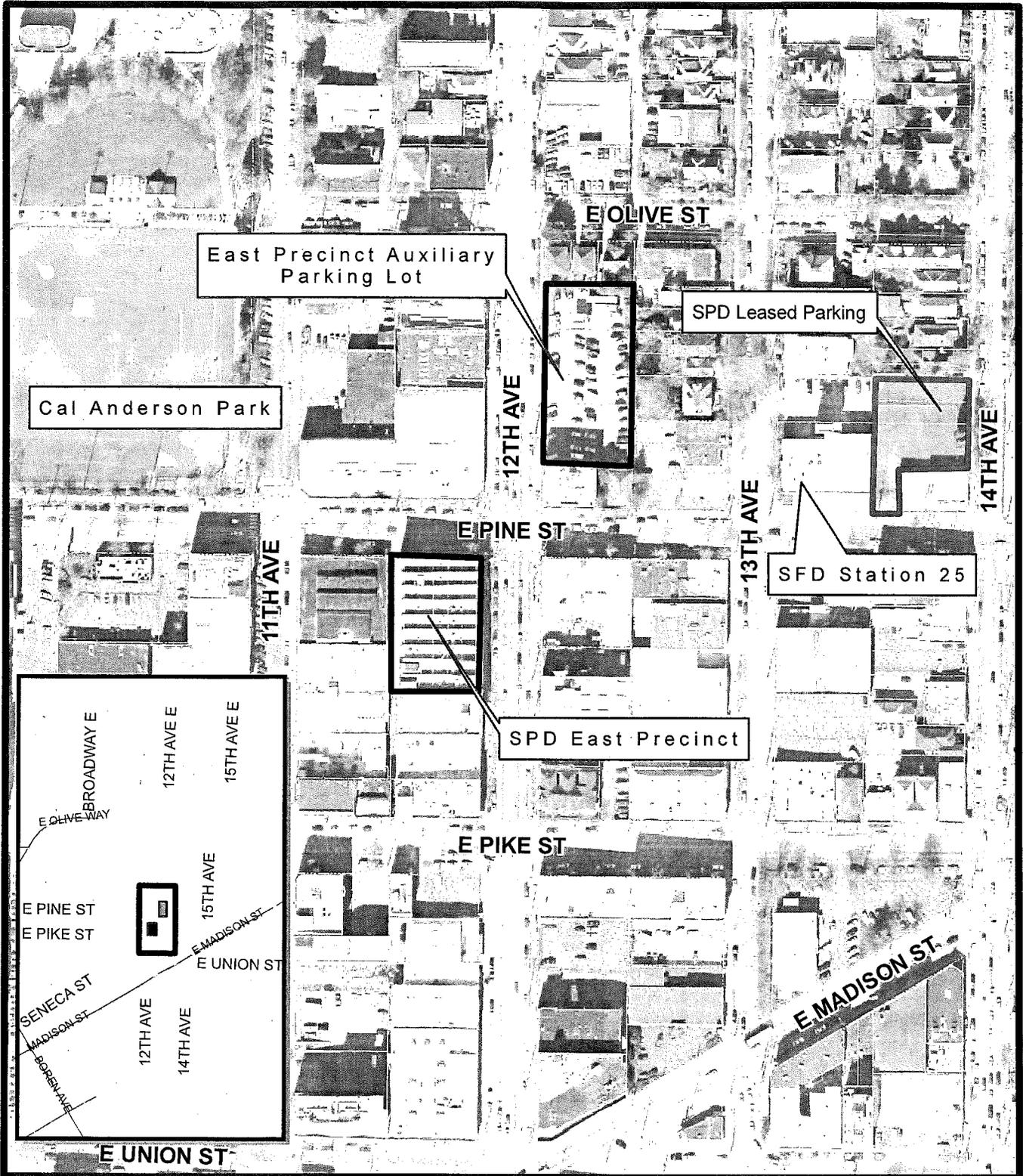
In addition to the City's funding of this project, the State of Washington has agreed to loan \$1.5 million through the Washington Department of Commerce that will be allocated towards the arts and community space provided CHH's building. The State of Washington Housing Trust Fund has granted a \$2 million loan for the housing portion of the development. Separate legislation from the Office of Economic Development proposes to provide the project with up to \$1.0 million in a Section 108 HUD Loan, which requires that a certain number of jobs be created in order to receive the funding.

List attachments to the fiscal note below:

Exhibit A: Map of Property

Exhibit B: Letter of Intent





City of Seattle

Exhibit A FAS - 12th AVE Arts (Fisc)

Produced by the City of Seattle
Department of Finance & Administrative Services
Facilities Operations Division

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No guarantee of any part implied,
including accuracy, completeness of fitness of use.



City of Seattle
Department of Finance and Administrative Services

May 19, 2011

Chris Persons
Executive Director
Capitol Hill Housing
1406 10th Ave # 101
Seattle, WA 98122-3848

LETTER OF INTENT

RE: Seattle Police Department East Precinct Parking Lot

On behalf of The City of Seattle ("Seller"), this Letter of Intent (LOI) sets forth the basic terms and conditions upon which Seller would be willing to enter into a Purchase and Sale Agreement with Capitol Hill Housing, a Washington public corporation ("Buyer") collectively referred to as "Parties" with regards to the below referenced property. The Parties agree to commence negotiations on a mutually acceptable Agreement of Purchase and Sale ("Agreement"); the basic proposed terms and conditions are as follows:

Property Description:

Portion of Lots 2, 3, 4 and 5 Block 22, Addition to the City of Seattle, as laid off by D.T. Denny, Guardian of the Estate of J.H. Nagle (commonly known as Nagle's Addition to the City of Seattle), according to the Plat thereof recorded in Volume 1 of Plats, page 153, King County, Washington

King County Assessor's Parcel Numbers:

600300-0645, 600300-0660, 600300-0665 & 600300-0670

Approximately 29,040 square feet (King County Assessor's Office)

Term

The effective term of this Letter of Intent shall be 365 days after the later of the signatures executing it. This term shall be known as the "Due Diligence Period". Buyer may terminate this Letter at any time by written notice to Seller.

Exclusive Right to Negotiate

Until the earliest to occur of (a) 365 days following acceptance of this letter of intent by Seller; or, (b) the execution of the Agreement; or, (c) the written termination of this letter of intent by Buyer, Seller will not negotiate for nor make or accept any offers to purchase or sell the Property or any part thereof from any other person.

**Purchase Price /
Compensation to Seller**

At no cash cost to the Seller, Buyer to build an at- and/or below-grade structure on the Property containing the following at a minimum:

- 111 Total Parking Spaces, as follows:

Fred Podesta, Director
700 Fifth Avenue, 52nd Floor
P.O. Box 94689
Seattle, Washington 98124-4689

Tel (206) 684-5212
Fax (206) 684-7898
TDD (206) 615-0476
fred.podesta@seattle.gov

<http://www.seattle.gov/>



- 80 "medium" 8'x16' spaces;
- 10 "large" 8.5' x 19' spaces;
- 21 "large plus" 11' x 19' spaces;
- Storage, motorcycle, bicycle and segway storage in areas not suitable for cars;
- Clearance of 7.5' or better to accommodate passenger vans and large S.U.V. type patrol vehicles;
- Garage access to be secured with rollup doors and provide exclusive police access;
- Emergency Generator to operate garage electrical systems including, doors, lighting, cameras and access control;
- Built to essential facilities standard; and,
- Built in compliance with ADA Standards and all applicable building codes.

The Parties contemplate that as a result of this project, Seller will likely own a garage condominium unit within a complex that includes affordable housing, commercial and garage spaces (the "Project").

Due Diligence

Seller will furnish Buyer with information in Seller's possession or control relating to the condition of the Property, such as:

- Latest property tax bill and value renditions;
- Environmental Reports, soil tests, analyses, information, at or near the property;
- Any governmental permits or approvals for the Property;
- Surveys and or site plans;
- Existing title policy(ies);
- Any soil engineering reports on Property;
- Any physical property inspection reports related to the Property;
- Copies of any unrecorded easement, permit or other property rights; and
- Preliminary title report and copies of all exceptions document.

Buyer may request additional information from Seller and Seller will cooperate in furnishing such information to the extent reasonable.

Seller and Buyer will negotiate a separate access agreement to allow Buyer, Buyer's representative, and Buyer's consultant reasonable access to the Property and the right to conduct such inspections of the Property as Buyer deems necessary. Inspections and access include but are not limited to geotechnical studies, environmental studies, surveys and the like. Buyer, at its sole cost, shall obtain an updated ALTA/ACSM land title survey of the Property and shall provide a copy of the survey to the Seller upon receipt.

Buyer's Development Project The Buyer shall construct a mixed use building to include:

- At least 75 affordable rental housing units for households whose incomes do not exceed 80% of the area median income as defined by the Department of Housing and Urban Development.
- Commercial
- Arts Complex
- Community Meeting Space
- Parking Facility

This building and all associated improvements shall constitute the Project. Buyer is responsible for securing all financing, permits, contracts, approvals, instruments and services of any type necessary for the Project. Permit and grant processes, decisions and actions of Seller are in no way affected by this Letter of Intent, and Buyer shall diligently



pursue all permit and grant processes in the same manner as if Seller were a private person.

Nothing contained in this Letter of Intent shall be construed to commit the City to the issuance of any permit and Buyer acknowledges that it must follow the normal permitting process in obtaining any permit, the laws and regulations of the City of Seattle and other applicable authority shall apply.

Community Space

Seller shall have periodic use of community spaces in the Arts Complex portion of the building at no cost for Seattle Police Department community meetings. Seller shall have the option of exclusive use of community spaces in the event of an emergency in which East Precinct operations are disrupted. The community space to include a room that can accommodate a minimum of 50 people.

Closing

During the Due Diligence Period and at any point prior to Closing, Buyer may commence its submittal of applications required by the applicable governmental authorities in order to secure any approvals which it will need for its anticipated development on the property; there shall be no cost to the Seller for such submittals. Seller shall cooperate with Buyer's efforts to secure such approvals for the project; provided however, no such approvals shall be binding and irrevocable on the Property prior to Closing. All costs incurred by Buyer during the Due Diligence Period shall be solely the cost of the Buyer, and Buyer shall hold Seller harmless from all such costs.

At Closing, title to the Housing, Retail, Arts Complex and Community space shall be conveyed to the Buyer by statutory Warranty Deed; title to the Parking Facility shall be conveyed to Seller by statutory Warranty Deed.

The Parties agree that a sequence of transactions and agreements may be necessary in order to finance and construct the Project, and that such sequence shall be the subject of further negotiation. The intent of such sequence shall be (a) to secure the Seller's interest in continued parking facilities at the Property; and (b) to meet financing and construction site control requirements of Buyer.

Closing Costs

Buyer will pay for all costs associated with the sale of the Property, including but not limited to Title Policy and any endorsements thereto, the costs of recording all necessary and required documentation, any associated escrow fees, and real estate excise tax. Real Estate Taxes, if applicable, will be prorated as of the date of Closing.

Representations and Warranties

Seller will make customary representations and warranties expected of a seller of real estate similar to the property, including accuracy of documents and other factual matters submitted or required by the Agreement to be submitted to Buyer, the absence of pending litigation and violations of applicable laws and ordinances, and the absence of contamination of the Property with hazardous materials, authority to sell the Property and the like.

Insurance and Indemnification

Buyer, Buyer's agents and consultants performing work on the Property shall identify Seller as an additional insured. Buyer shall hold harmless, indemnify and defend Seller for any claim associated with the Project.

Ownership

Structure and land to be incorporated as a Condominium as per rules and regulations within the Revised Code of Washington § 64.34.

The Seller shall retain fee ownership of the parking facility along with its pro-rata share of



the associated land. Buyer shall retain fee ownership of the remainder of the property.

Temporary Parking

Seller to provide temporary parking for the East Precinct during construction to offset the parking on the Property lost during construction of the Project. Such temporary parking shall be located at a reasonable distance from the precinct building, and shall be situated to provide reasonable security for the vehicles therein.

Brokers

Buyer and Seller represent and warrant that they have used no broker, finder, or other person or entity entitled to a commission on account of this transaction.

City Council Approval

Buyer acknowledges that any final Agreement and associated Condominium Declaration shall be subject to receipt by Seller of approval from Seattle City Council (the "City Council Approval").

Buyer Financing

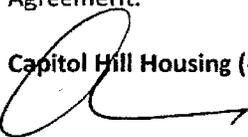
Buyer is solely responsible for securing financing for the Project, and evidence of the pursuit of such financing is a precondition to execution of an Agreement. Buyer is responsible for all funding applications, including funding applications to the City of Seattle Office of Housing (OH), the Office of Economic Development (OED) and Seattle Investment Fund LLC (regarding New Markets Tax Credits). Application submittals will follow all applicable funding application requirements of OH, OED and Seattle Investment Fund LLC. This Letter of Intent shall not be construed as acceptance of any funding application or award of any funding by the Seller.

Confidentiality

This document is not confidential. If used by Buyer as part of any funding proposal, it shall be included in its entirety.

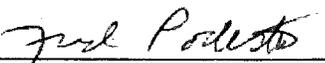
This Letter of Intent is not a Purchase and Sale Agreement. This Letter of Intent reflects the basic terms and conditions upon which the parties would be willing to enter into a Purchase and Sale Agreement with regard to the Purchase of the Property, and is intended solely as the basis for the preparation of such a Purchase and Sale agreement. Buyer may use this letter as evidence of Seller's interest in the Project, if said project is found to be financially and technically feasible. Neither party shall have any obligation to execute a Purchase and Sale agreement or continue to negotiate beyond the term of this Letter of Intent. Only a fully executed Purchase and Sale Agreement shall constitute a final and binding agreement between the parties. Only the Seattle City Council can authorize the execution of such an Agreement.

Capitol Hill Housing (Buyer)



Christopher Persons, Executive Director
Capitol Hill Housing 5/23/11

City of Seattle (Seller):



Fred Podesta, Director
Finance and Administrative Services Department
City of Seattle





City of Seattle
Office of the Mayor

August 21, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that will create a three-unit condominium on the property located at 1620 12th Avenue East, commonly referred to as the East Precinct Parking Facility, and convey and ground lease the units to Capitol Hill Housing (CHH) to develop a garage with a minimum of 111 stalls for the exclusive use of the Seattle Police Department (SPD), 88-units of affordable housing, 15,000 square feet of community commercial space for non-profit groups including Capitol Hill Housing, two performing arts spaces, and pedestrian-oriented retail. Transfer of the units is required in order for CHH to access new market tax credits for the project.

The subject site, which was purchased in the mid-1980's to provide parking for the East Precinct, currently has 77 parking stalls, a backup generator, and a car wash depot. A Letter of Intent (LOI) that laid out the basic terms and conditions of the property sale was negotiated and signed by both parties in May 2011. Subsequent to executing the LOI, City staff, CHH and the architect team concluded that a number of changes were necessary, including additional excavation for the garage.

The City's Office of Housing, using 2009 Seattle Housing Levy funds, has awarded the housing portion of the development a loan of up to \$7.7 million. As a requirement to receive the Office of Housing money, CHH is obliged to lease every apartment to individuals and families earning less than 60% of the median income. Companion legislation from the Office of Economic Development proposes to provide the commercial portion of the project with up to \$1.0 million in a Section 108 HUD Loan, which requires that a certain number of jobs be created in order to receive the funding.

This development meets the call for new mixed-use commercial space and affordable housing opportunities outlined in both the Capitol Hill and Pike/Pine Neighborhood Plans, while supporting SPD's long-term requirements for the East Precinct. Should you have questions, please contact Bill Craven at 733-9238.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

