

RESOLUTION R-5475

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE CROSS KIRKLAND CORRIDOR IMPROVEMENT AND USE AGREEMENT ADJACENT TO PHASE III CAMPUS AND AMENDED AND RESTATED CROSS KIRKLAND CORRIDOR MAINTENANCE AGREEMENT BETWEEN THE CITY OF KIRKLAND AND SRMKCCA, LLC.

1           WHEREAS, the City is the owner of the Cross Kirkland  
2 Corridor ("CKC"); and

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4           WHEREAS, SRMKCCA, LLC ("SRMKCCA") owns real  
5 property located immediately adjacent to and on the east side of  
6 the CKC ("Phase III Property"); and

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8           WHEREAS, SRMKCCA is developing a new office building  
9 ("Phase III Building") on the Phase III Property as part of an  
10 overall Development of its campus ("Development"); and

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12           WHEREAS, the Development already includes Phase I and  
13 Phase II Buildings on Phase I and Phase II Properties owned,  
14 respectively, by SRMKJVD, LLC ("Phase I Owner") and SRMKII,  
15 LLC ("Phase II Owner"); and

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17           WHEREAS, the Phase I and Phase II Owners have  
18 previously constructed various public improvements within the  
19 CKC in connection with the Development, which improvements  
20 have been well received by the City, community, and the  
21 Development tenant; and

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23           WHEREAS, the Phase III Owner has agreed to construct  
24 certain additional public improvements within the CKC in  
25 connection with the Development and its Phase III Building,  
26 including a restroom, vegetable garden, fruit trees, pickle ball  
27 court, garden shed, spray park for children, amphitheater, and  
28 utility infrastructure; and

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30           WHEREAS, the Phase III Owner also proposes to operate  
31 a small restaurant within the CKC, but outside its trail portion, as  
32 an accessory use to the Development campus through a railroad  
33 caboose owned by the Phase III Owner and operated by a lessee  
34 chosen by the Phase III Owner and first approved by the City;  
35 and

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37           WHEREAS, the expansion of the Development through the  
38 Phase III Building will result in the creation of additional jobs and  
39 economic development that will benefit the City; and

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WHEREAS, the installation and maintenance of the public improvements within the CKC and operation of the caboose restaurant by the Phase III Owner represent important further step towards development of the CKC as an important multi-use public amenity; and

WHEREAS, the City therefore wishes to have the Phase III Owner proceed with the construction of such public improvements and the operation of such caboose restaurant within the CKC as part of the overall Development and the construction of the Phase III Building; and

WHEREAS, the parties acknowledge that the CKC permitting and use agreement and the lease terms and conditions approvals associated with such caboose restaurant will be addressed in separate agreements; and

WHEREAS, the parties now wish to enter into that certain Cross Kirkland Corridor Improvement and Use Agreement Adjacent to Phase III Campus, attached hereto as Exhibit A; and

WHEREAS, the parties also wish to provide for the ongoing maintenance of the Phase III Property public improvements within the CKC by amending and restating the present Cross Kirkland Corridor Maintenance Agreement (with the Phase I and Phase II Owners related to the Phase I and Phase II Buildings and their associated public improvements) to now include the Phase III Owner and the public improvements in the CKC associated with the Phase III Property; and

WHEREAS, the parties also now wish to enter into that certain Amended and Restated Cross Kirkland Corridor Maintenance Agreement, attached hereto as Exhibit B; and

WHEREAS, the Phase I and Phase II Owners have agreed to enter into such amended and restated maintenance agreement with the understanding it will supersede and replace as null and void the present Cross Kirkland Corridor Maintenance Agreement Between the City of Kirkland, SRMKJVD and SRMKII dated April 4, 2016.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland an agreement substantially similar to that attached as Exhibit A, which is entitled "Cross Kirkland Corridor Improvement and Use Agreement

90 Adjacent to Phase III Campus between the City of Kirkland,  
91 SRMKCCA, LLC."

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93 Section 2. The City Manager is hereby authorized and  
94 directed to execute on behalf of the City of Kirkland an agreement  
95 substantially similar to that attached as Exhibit B, which is entitled  
96 "Amended and Restated Cross Kirkland Corridor Maintenance  
97 Agreement" between the City of Kirkland, SRMKJVD, LLC, SRMKII,  
98 LLC, and SRMKCCA, LLC."  
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100 Passed by majority vote of the Kirkland City Council in open  
101 meeting this 4 day of May, 2021.

102 Signed in authentication thereof this 4 day of May, 2021.  
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Penny Sweet, Mayor

Attest:

  
Kathi Anderson, City Clerk

*After recording, return to:*

Brent Carson  
 Van Ness Feldman LLP  
 719 Second Avenue, Suite 1150  
 Seattle, Washington 98104-1728

**WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)**

<p><b>DOCUMENT TITLE(S)</b> (or transactions contained therein):</p> <p>CROSS KIRKLAND CORRIDOR IMPROVEMENT AND USE AGREEMENT          ADJACENT TO PHASE III CAMPUS</p>
<p><b>REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:</b></p> <p>n/a  <input type="checkbox"/> Additional reference #s on page _____ of document(s)</p>
<p><b>GRANTOR(S)</b> (Last name first, then first name and initials)</p> <p>City of Kirkland, a non-charter, optional code Washington municipal corporation</p> <p><input type="checkbox"/> Additional names on page _____ of document</p>
<p><b>GRANTEE(S)</b> (Last name first, then first name and initials)</p> <p>SRMKCCA, LLC, a Washington limited liability company  <input type="checkbox"/> Additional names on page _____ of document</p>
<p><b>LEGAL DESCRIPTION</b> (abbreviated: i.e., lot, block, plat or section, township, range)</p> <p>Section 8, Township 25 North, Range 5 East, WM, King County, Washington</p> <p><input checked="" type="checkbox"/> Additional legal is on pages 14-18 of document</p>
<p><b>ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBERS</b></p> <p>788260-0220; 082505-9059</p> <p><input type="checkbox"/> Assessor Tax # not yet assigned</p>

**CROSS KIRKLAND CORRIDOR IMPROVEMENT AND USE AGREEMENT  
ADJACENT TO PHASE III**

THIS CROSS KIRKLAND CORRIDOR IMPROVEMENT AND USE AGREEMENT ADJACENT TO PHASE III CAMPUS (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), by and among the CITY OF KIRKLAND (“City”), a non-charter, optional code Washington municipal corporation and SRMKCCA, LLC, a Washington limited liability company (“SRMKCCA”).

**I. RECITALS**

A. In 2013, the City and SRMKII, LLC (the “Phase II Owner”) and SRMKJVD, LLC (the “Phase I Owner”) (collectively the Phase II Owner and the Phase I Owner are referred to hereinafter as the “Phase I and II Owners”) entered to the Cross Kirkland Corridor Improvement and Use Agreement recorded with the King County Auditor under Recording No. 20131023001103 (the “Phase II Agreement”). Among its terms, the Phase II Agreement authorized The Phase I and II Owners to construct several public improvements within the City-owned Cross Kirkland Corridor (“CKC”) adjacent to the Phase I Building and the Phase II of the development of the campus, and to construct three crossings of the CKC to provide access between the Phase I and Phase II Buildings. The public improvements constructed by the Phase I and II Owners under the Phase II Agreement have been well received by the City, community members and other public users, and occupants of the Phase I and Phase II Buildings.

B. SRMKCCA is the contract purchaser of that real property (the “Phase III Property”) legally described and shown in Exhibits A and B, attached hereto and incorporated herein by this reference, located immediately adjacent to and on the east side of the CKC. SRMKCCA is developing a new office building (the “Phase III Building”) on the Phase III Property at the former Kirkland Commerce Center site (the “Development”). SRMKCCA intends to develop the portion of the CKC adjacent to the Phase III Property (the “Adjacent CKC”) with public improvements, including a paved bicycle and pedestrian trail facility, other recreational amenities, and a small restaurant within a railroad caboose operated by a lessee chosen by SRMKCCA and approved by the City. While a “restaurant” under the City’s zoning code, the Parties recognize that the caboose use may be named or classified differently by other regulatory entities, e.g. WSLCB. Also included as part of this Agreement, is the Gateway Entry Park, which shall be developed by SRMKCCA and maintained in the same manner as the other Public Improvements. The Gateway Entry Park will be located within City right-of-way as shown in Exhibit C, attached hereto and incorporated herein by this reference.

C. The City owns the CKC. The CKC is legally described in Exhibit C attached hereto and incorporated herein by this reference.

D. SRMKCCA and the City share the goal of expanding the work done by the Phase I and II Owners within that portion of the CKC adjacent to the Phase I and Phase II Buildings onto the Adjacent CKC in a way that serves the needs of SRMKCCA its tenants in the Phase III Building and tenants of the Phase I and Phase II Buildings, while also preserving and enhancing the City's vision and interests in developing the CKC for new and additional public recreational and transportation uses.

E. The City Manager has been authorized by Resolution R-\_\_\_\_ to execute this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and the long-term benefit to the City and SRMKCCA, the parties hereby agree as follows:

## II. AGREEMENT

1. **CKC Improvements.** SRMKCCA shall construct a sixteen-foot (16') wide trail corridor with a paved public bicycle and pedestrian trail approximately eight hundred (800') feet in length through the Adjacent CKC. SRMKCCA shall construct a mutually agreed set of public improvements, including sport courts, play areas, an amphitheater, utility infrastructure and other public amenities on the Adjacent CKC. The utility infrastructure shall include, but not be limited to, buried and non-buried utilities; buried and non-buried facilities; and components such as water lines, sanitary sewer lines, storm water drainage lines, swales and infiltration devices. In addition, SRMKCCA shall design and install lighting improvements on the Adjacent CKC. The trail corridor, bicycle and pedestrian trail, sport courts, play areas, amphitheater, utility infrastructure, lighting and other public amenities are hereinafter collectively referred to as the "Public Improvements." The Public Improvements include those made to the Gateway Entry Park. SRMKCCA shall prepare a plan depicting all of the Public Improvements (the "Public Improvement Plan") for review and approval by the City. The design, installation and construction of the Public Improvements shall be consistent with the approved Public Improvement Plan, comply with all applicable City regulations and conform to City approved standards, guidelines and policies ("City Design Standards"). SRMKCCA shall obtain all required permits from the City for installation of the Public Improvements.

2. **Caboose Restaurant.** SRMKCCA proposes to locate a railroad caboose that it owns onto a portion of the Adjacent CKC to function as a restaurant, and to then lease the caboose for such use to a lessee approved by the City. The use of the caboose as a restaurant is permitted within this portion of the CKC under the City's zoning code as an accessory use to the main Development campus. The caboose will not be located within the trail portion of the CKC. SRMKCCA shall obtain a building permit from the City for all necessary improvements to the caboose prior to its relocation to the Adjacent CKC. SRMKCCA also shall enter into an agreement with the City for use of the caboose as a restaurant within the Adjacent CKC prior to such relocation.

3. **Railbanked Status of CKC.** The parties understand and acknowledge that the CKC is a railbanked rail corridor under federal law (16 U.S.C. 1247(d)) and subject to reactivation for freight rail use. In addition, the parties understand and acknowledge that the CKC is a potential transit corridor. SRMKCCA shall design and construct the Public Improvements to accommodate possible future use of the CKC for freight rail.

4. **Reservation of Transit Corridor.** The easternmost forty feet (40') of the Adjacent Corridor shall remain available for possible future transit use. This reservation shall not limit or prevent construction of the Public Improvements, but may result in their removal or modification by the City in the future as it deems necessary to accommodate such transit use as contemplated by Paragraph 3.

5. **Trail Use during Construction of Improvements.** The Adjacent CKC shall remain open to the public for trail use at all times; provided that, to the extent necessary, SRMKCCA may limit public access during construction and maintenance of the Public Improvements. If restriction of public access is required, SRMKCCA shall provide a detour route around the construction area approved in advance by the City in substantially the form as shown in Exhibit D.

6. **Public Access.** Upon completion of construction, all Public Improvements shall be open to the public subject to terms and conditions that may be established by the City.

7. **Maintenance of Public Improvements.** The parties to the Phase II Agreement entered into a Cross Kirkland Corridor Maintenance Agreement Between the City of Kirkland, SRMKII LLC and SRMKJVD LLC dated April 4, 2016 (the "Maintenance Agreement") to establish the responsibilities for maintenance of the public improvements constructed by the Phase I and II Owners pursuant to the Phase II Agreement. Concurrent with execution of this Agreement, the City, SRMKII LLC, SRMKJVD LLC and SRMKCCA, as the owners, respectively, of Phases I, II and III, shall execute an Amended and Restated Cross Kirkland Maintenance Agreement, in substantially the form shown in Exhibit E attached hereto and incorporated herein by this reference, to address the maintenance of the Public Improvements pursuant to the Phase II Agreement and this Agreement.

8. **City Authorizing New PSE Easement.** Puget Sound Energy, Inc. ("PSE") will be providing power to some of the Public Improvements to be constructed by SRMKCCA in the Adjacent CKC. SRMKCCA has provided PSE with the plans for the proposed Public Improvements and PSE has submitted to SRMKCCA a proposal for PSE providing electrical service needed for the Public Improvements. It is anticipated that PSE will request authorization from the City (in the form of an easement or other agreement mutual agreed upon by the City and PSE) before PSE constructs electrical utility lines and accessory electrical equipment within the Adjacent CKC to serve this purpose. The City agrees to grant such authorization to PSE on such terms and conditions as mutually agreed upon by the City and PSE.

**9. Indemnification.**

**9.1. Recreational Land Use.** The parties anticipate that public use of the Adjacent CKC will be subject to the Recreational Land Use Statute, RCW 4.24.200 and 4.24.210.

**9.2. Indemnification for Construction Activities.** SRMKCCA shall indemnify, defend and hold the City and its officers, agents and employees harmless from all costs, claims or liabilities of any nature, including attorney's fees, costs and expenses for or on account of injuries or damages sustained by any persons or property resulting from the Public Improvements construction activities of SRMKCCA, its agents, employees or contractors, or on account of any unpaid wages or other remuneration for services. If a suit arising out of or in any way relating to such construction activities is filed against the City or its officers, agents or employees, SRMKCCA shall appear and defend the same at its own cost and expense, and if judgment be rendered or settlement be made requiring payment by the City, SRMKCCA shall pay the same. Notwithstanding anything to the contrary in this Agreement, SRMKCCA shall not be responsible for, or indemnify or defend the City against any claims, causes of action, losses, damages, liabilities, costs or expenses caused by or resulting from the City Design Standards or the negligence of the City, its agents, contractors or employees, but only to the extent of such City negligence.

**9.3. Indemnification for Use of Adjacent CKC.** SRMKCCA shall indemnify, defend and hold the City and its officers, agents and employees harmless from all costs, claims or liabilities of any nature, including attorney's fees, costs and expenses for or on account of injuries or damages sustained by any persons or property resulting from SRMKCCA maintained Public Improvements. If a suit arising out of or in any way relating to use of the SRMKCCA maintained Public Improvements is filed against the City or its officers, agents or employees, SRMKCCA shall appear and defend the same at its own cost and expense, and if judgment be rendered or settlement be made requiring payment by the City, SRMKCCA shall pay the same. Notwithstanding anything to the contrary in this Agreement, SRMKCCA shall not be responsible for, or indemnify or defend the City against any claims, causes of action, losses, damages, liabilities, costs or expenses caused by the City Design Standards or the negligence of the City, its agents, contractors or employees, but only to the extent of such City negligence.

The City shall indemnify, defend and hold SRMKCCA and its officers, agents and employees harmless from all costs, claims or liabilities of any nature, including attorney's fees, costs and expenses for or on account of injuries or damages sustained by any persons or property resulting from City Design Standards or the use of the City maintained Public Improvements. If a suit arising out of or in any way relating to the City Design Standards or use of City maintained Public Improvements is filed against SRMKCCA and its officers, agents or employees, the City shall appear and defend the same at its own cost and expense, and if judgment be rendered or settlement be made requiring payment by SRMKCCA, the City shall pay the same. Notwithstanding anything to the contrary in this Agreement, the City



shall not be responsible for, or indemnify or defend SRMKCCA against any claims, causes of action, losses, damages, liabilities, costs or expenses caused by or resulting from the negligence of SRMKCCA, its agents, contractors or employees, but only to the extent of such SRMKCCA negligence.

10. **Utility Relocation.** SRMKCCA shall pay all costs and obtain all required approvals for relocation of existing utilities in connection with SRMKCCA's construction and installation of the Public Improvements.

11. **Grading and Fill.** SRMKCCA may, with the prior approval of the City, place fill on the Adjacent CKC for the purpose of constructing the Public Improvements and for transitioning the final grade of the Phase III Property Development. SRMKCCA and the City anticipate that filling and grading activity will occur pursuant to a Land Surface Modification Permit issued by the City.

12. **Discharge of Stormwater.** SRMKCCA will be permitted to discharge stormwater from the Development into the City's storm drainage facilities. SRMKCCA and the City anticipate that connections to the City's storm drainage facilities will occur pursuant to a permit issued by the City's Public Works Department.

13. **Tie-Backs.** The City agrees that SRMKCCA may install temporary soil nails for the purpose of shoring on the east edge of the Adjacent CKC and the western property line of the Development.

14. **Default and Termination.** In the event SRMKCCA or the City fail to perform any obligation of this Agreement for a period of thirty (30) days after notice from the other, that party shall be in default; provided, however, that neither party will be default under this Agreement if it commences curing such default within such 30-day period and thereafter diligently prosecutes the cure to completion. In the event of default by either party, the other party shall be entitled to terminate or to specifically enforce the terms of this Agreement.

This Agreement shall automatically terminate and no longer be in force and effect on the later of the following two events: 1) thirty (30) years from the Effective Date; or 2) one (1) year after the Development and the Phase I, II and III Buildings cease to be used as an integrated campus with a significant national tenant occupying portions of both the Development and Phase I and Phase II Buildings.

15. **Dispute Resolution Process.** The parties shall use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations. If the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute through non-binding mediation before resorting to litigation. The fees for mediation will be borne equally by the parties.

**16. Modifications to Agreement.** This Agreement contains all terms, conditions and provisions agreed upon by the parties hereto, and shall not be modified except by written amendment executed by both parties. Amendments to this Agreement that materially modify the intent and policy of the Agreement must be approved by the City Council. Other amendments may be approved by the City Manager.

**17. Hazardous or Dangerous Waste.** In the event that SRMKCCA discovers Hazardous or Dangerous Waste on the CKC during construction of Public Improvements or Crossing Improvements, SRMKCCA shall notify the City. SRMKCCA and the City agree to share equally any increased marginal costs associated with the management, testing, treatment and disposal of such waste.

**18. General Provisions.**

**18.1 Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

**18.2 Recording.** A memorandum of this Agreement shall be recorded against the Development as a covenant running with the land and shall be binding on the parties, their heirs, successors and assigns.

**18.3 Agreement Binding on Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the City, SRMKCCA, and the Phase III Owner except as limited and conditioned in this Agreement.

**18.4 Severability.** If any provision of this Agreement is determined to be unenforceable or invalid in a final decree or judgment by a court of law, then the remainder of this Agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect. In that event, this Agreement shall thereafter be modified, as provided immediately hereafter, to implement the intent of the parties to the maximum extent allowable under law. The parties shall diligently seek to agree to modify the Agreement consistent with the final court determination, and no party shall undertake any actions inconsistent with the intent of this Agreement until the modification to this Agreement has been completed. If the parties do not mutually agree to modifications within forty-five (45) days after the final court determination, then either party may initiate the mediation process under Section 15 for determination of the modifications that will implement the intent of this Agreement and the final court decision.

**18.5 Authority.** Each party respectively represents and warrants that it has the power and authority, and is duly authorized, to enter into this Agreement on the terms and conditions herein stated, and to deliver and perform its obligations under this Agreement.

**18.6 Entire Agreement.** This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein and this Agreement supersedes all previous agreements, oral or written.

**18.7 Default and Remedies.** No party shall be in default under this Agreement unless it has failed to perform as required under this Agreement for a period of thirty (30) days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30) day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure. In any action to enforce or determine a party's rights under this Agreement, the prevailing party shall be entitled to attorney's fees and costs.

**18.8 No Third-Party Beneficiary.** This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

**18.9 Interpretation.** This Agreement has been reviewed and revised by legal counsel for all parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Agreement.

**18.10 Notice.** All communications, notices, and demands of any kind that a party under this Agreement requires or desires to give to any other party shall be in writing and either (i) delivered personally, (ii) sent by facsimile transmission with an additional copy mailed first class, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the City:

City Manager  
City of Kirkland  
123 5th Ave.  
Kirkland WA, 98033

If to SRMKCCA, LLC:

SRMKCCA, LLC  
111 N Post, Suite 200  
Spokane, WA 99201

Notice by hand delivery or facsimile shall be effective upon receipt, provided that notice by facsimile shall be accompanied by mailed notice as set forth herein and shall be evidenced by a machine-printed confirmation of successful transmission. If deposited in the mail, certified mail, return receipt requested, notice shall be deemed delivered forty-eight (48) hours after deposited. Any party at any time by notice to the other party may designate a different address or person to which such notice or communication shall be given.

**18.11 Delays.** If either party is delayed in the performance of its obligations under this Agreement due to Force Majeure, then performance of those obligations shall be

excused for the period of delay. For purposes of this Agreement, economic downturns, loss in value of assets, inability to obtain or retain financing, do not constitute a force majeure event.

**18.12 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same Agreement, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

In Witness Whereof, the parties have caused this Agreement to be executed, effective on the day and year set forth on the first page hereof.

CITY OF KIRKLAND, a Washington municipal corporation

By: \_\_\_\_\_  
Kurt Triplett, City Manager

Date: \_\_\_\_\_

State of Washington )

) ss.

County of King )

I certify that I know or have satisfactory evidence that Kurt Triplett 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 City Manager of the City of Kirkland to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Notary Public  
My appointment expires \_\_\_\_\_

SRMKCCA, LLC, a Washington limited liability company

By: SRMKCCAJV, LLC, a Washington limited liability company

By: SRM Development, LLC a Washington limited liability company  
Its: Manager

By: \_\_\_\_\_  
Its: Authorized Member  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: Authorized Member  
Date: \_\_\_\_\_

State of Washington )  
County of Spokane ) ss.  
County of Spokane )

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 Authorized Member of SRM Development, LLC, the Manager of SRMKCCAJV, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Notary Public  
My appointment expires \_\_\_\_\_

**Exhibit A**

**Phase III Property Legal Description**

**LEGAL DESCRIPTION:**

**PARCEL A:**

LOTS 22 AND 23, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON;

EXCEPT THE SOUTH 175 FEET IN WIDTH OF SAID LOT 22.

**PARCEL B:**

THAT PORTION OF THE SOUTH 175 FEET IN WIDTH OF LOT 22, LYING EASTERLY OF THE NORTHERN PACIFIC RAILWAY CO.'S RIGHT-OF-WAY, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON.

**Exhibit B**

**Illustration of Phase III Property and Adjacent CKC**



**Exhibit C**  
**Cross Kirkland Corridor Legal Description**

City Of Kirkland  
Legal Description – Railroad Corridor

Triad Job Number 11-128  
November 22, 2011  
Revised December 06, 2011

That portion of Sections 5, 8, 17 and 20, Township 25 North, Range 5 East, W.M. and Sections 28, 32 and 33, Township 26 North, Range 5 East, W.M., in King County, Washington, lying within the eight (8) tracts of land described as follows:

Tract 1

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed upon, over and across the S½,NE¼ and the NW¼,SE¼ and the SW¼ of Section 28, the W½,NW¼ and the NW¼,SW¼ of Section 33, the SE¼ of Section 32, all in Township 26 North, Range 5 East, W.M., bounded on the East by a line that is parallel with and 42.00 feet west of, when measured at right angles to, the centerline of 132<sup>nd</sup> Avenue NE (aka Slater Avenue NE or 132<sup>nd</sup> Place NE) as surveyed under King County Survey No. 28-26-5-19 and bounded on the South by South line of said SE¼ of Section 32, **EXCEPTING THEREFROM**, that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260805, records of King County, Washington; **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 30, 1998 as Document No. 9807301468, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260791, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated January 6, 2000 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded February 11, 2000 as Document No. 20000211000454, records of King County, Washington;

Tract 2

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 3, 4, 5, 6, 11, 12, 13, 14, 18, 19, 23, 24, 25 and 26, the vacated alley between Blocks 13 and 14, and vacated Arlington Avenue between Blocks 14 and 19, as said Blocks and Streets are shown on plat of Lake Avenue Addition to Kirkland as recorded in Volume 6 of Plats, Page 86, Records of said King County, together with any right title and interest, if any to those portions of Victoria Avenue, Harrison Avenue, Moreton Avenue, Jefferson Avenue, and Washington Avenue and Maple Street and alleys within said Blocks which lie within said 100.0 feet wide Branch Line right of way, **EXCEPTING THEREFROM**, that portion of Lot 3; Block 5, Lake Avenue Addition to Kirkland, according to the official plat thereof in the office of the Auditor of King County, Washington lying between two lines drawn parallel with and distant, respectively, 34.0 feet and 50.0 feet Westerly of, as measured at right angles from The Burlington Northern and Santa Fe Railway Company's (formerly Northern Pacific Railway) Main Track centerline as now located and constructed upon, over, and across said Block 5;

Tract 3

That portion of that certain 100.0 foot wide Branch Line right of way in the City of Kirkland, Washington, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Blocks 220, 223, 224, 232, 233, 238, and 241 as said Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of Plats at Page 5, records of said King County, together with any right title and interest, if any to those portions of Massachusetts Avenue, Madison Avenue, Michigan Avenue, Olympia Avenue, Piccadilly Avenue, Cascade Avenue, Clarkson Avenue, Fir Street, and alleys within said Blocks which lie within said 100.0 foot wide Branch Line right of way;

Tract 4

That portion of Lots 1, 2, 4, 37, and all of Lots 3, 38, and 39, Block 227 as said Lots and Blocks are shown on the Supplementary Plat to Kirkland as filed in Volume 8 of Plats, at Page 5, records of said King County, which lie Northeasterly of a line parallel with and distant 50 feet Southwesterly from measured at right angles to said Railway Company's Main Track centerline as now located and constructed and Southwesterly of a line parallel with and distant 50 feet Northeasterly from, measured at right angle to said Railway Company's Main Track centerline as originally located and constructed;

Tract 5

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline; as now located and constructed upon, over and across the SE $\frac{1}{4}$ , SE $\frac{1}{4}$  of Section 5, NW $\frac{1}{4}$ , NE $\frac{1}{4}$  and the E $\frac{1}{2}$ , NW $\frac{1}{4}$  and the E $\frac{1}{2}$ , SW $\frac{1}{4}$  of Section 8, all in Township 25 North, Range 5 East, W. M., bounded on the North by the South right-of-way line of Clarkson Avenue, City of Kirkland, Washington, and bounded on the West by the West line of said E $\frac{1}{2}$ , SW $\frac{1}{4}$  of Section 8, **EXCEPTING THEREFROM**, that certain tract of land described in Special Warranty Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded May 22, 1998 as Document No. 9805260787, records of King County, Washington, **ALSO EXCEPTING THEREFROM**, that certain tract of land described in Correction Quitclaim Deed dated May 15, 1999 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded August 5, 1999 as Document No. 19990805001402, records of King County, Washington, **ALSO EXCEPTING THEREFROM** that certain tract of land described in Deed dated February 24, 1998 from The Burlington Northern and Santa Fe Railway Company to ANT, LLC recorded July 28, 1998 as Document No. 9807281544, records of King County, Washington,

Tract 6

That certain 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington, said 0.23 acre tract being described in said deed for reference as follows:

"Commencing at a point in the east line of Lot four (4), Section eight (8), Township twenty-five (25) North, Range five (5) east, W.M., that is 395 feet north of the southeast corner of said lot, and running thence west parallel with the south line of said Lot four (4) 67 feet, more or less, to a point that is 50 feet distant from, when measured at right angles to, the center line of the proposed Seattle Belt Line Branch of the Northern Pacific Railway Company as the same is now located, staked out and to be constructed across said Section eight (8); thence running northeasterly parallel with said railway center line 200 feet; thence westerly at right angles to said railway center line 30 feet; thence northeasterly parallel with said railway center line, and 80 feet distant therefrom, 130 feet, more or less, to the east line of said Lot four (4); thence south along said east line of said lot four (4) 322 feet, more or less, to the point of beginning; containing 0.23 acres, more or less.";

Tract 7

That certain strip of land described in deed dated March 3, 1904 from Seattle and Shanghai Investment Company to Northern Pacific Railroad Company recorded March 9, 1904 in Book 387, Page 243, records of King County, Washington, said strip being described in said deed for reference as follows:

"A strip of land Two Hundred twenty-five (225) feet in width across that certain parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H.A. Noble, dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41, reference thereto being had. Said strip of land hereby conveyed, having for its boundaries two lines that are parallel with and respectively distant One Hundred (100) feet easterly from, and One Hundred Twenty-Five (125) feet westerly from, when measured at right angles to, the center line of the Seattle Belt Line branch of the NORTHERN PACIFIC RAILWAY COMPANY, as the same is now constructed and located across said Tract "B", which said Tract "B" is located in Section 17, Township 25 North, Range 5 East, Willamette Meridian";

Tract 8

That portion of that certain 100.0 foot wide Branch Line right of way, being 50.0 feet on each side of said Main Track centerline, as now located and constructed, upon, over and across Government Lot 4 of Section 8, Government Lots 1, 2, and 3 and the E½,SW¼ of Section 17, and the NE¼,NW¼ and the NE¼ of Section 20, all in Township 25 North, Range 5 East, W.M., bounded on the North by the South line of that certain herein above described 0.23 acre tract of land described in deed dated July 15, 1903 from Samuel F. French to Northern Pacific Railway Company recorded August 8, 1903 in Book 361 of Deeds, Page 249, records of King County, Washington and the East line of said Government Lot 4 of Section 8, and bounded on the South by the westerly margin of 108<sup>th</sup> Avenue NE as described in the Quit Claim Deed from State of Washington to the City of Bellevue recorded under Recording Number 9303190367, records of said King County, together with such additional widths as may be necessary to catch the slope of the fill in N½ of said Government Lot 2, Section 17 as delineated in the 7th described parcel in deed dated June 20, 1903 from Kirkland Land and Improvement Company to Northern Pacific Railway Company recorded June 26, 1903 in Book 352, Page 582, records of King County, Washington. **EXCEPTING THEREFROM**, that portion of said 100.0 foot wide right of way lying within said hereinabove described parcel of land designated as Tract "B" in deed from the Kirkland Land and Improvement Company to H.A. Noble dated July 13, 1899 of record in the Auditor's office of King County, Washington in Volume 245 of Deeds, at page 41.

(Tracts 1 – 8 being a portion of the parcel of land conveyed by BNSF Railroad Company to the Port of Seattle by Quit Claim Deed recorded under Recording Number 20091218001535, records of said King County.)

**Exhibit D**  
**Detour Plan**

**Exhibit E**

**Amended and Restated Cross Kirkland Maintenance Agreement**

AMENDED AND RESTATED CROSS KIRKLAND CORRIDOR MAINTENANCE  
AGREEMENT

THIS AMENDED AND RESTATED CROSS KIRKLAND CORRIDOR MAINTENANCE AGREEMENT (“Restated Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and among the CITY OF KIRKLAND, a non-charter, optional code Washington municipal corporation (“City”), SRMKJVD, LLC, a Washington limited liability company (the “Phase I Owner”), SRMKII, LLC, a Washington limited liability company (the “Phase II Owner”), and SRMKCCA, LLC, a Washington limited liability company (the “Phase III Owner”). SRMKJVD, LLC, SRMKII, LLC, and SRMKCCA, LLC are collectively referred to as “SRM” in this Restated Agreement.

**I. RECITALS**

A. The Phase I Owner is the owner of that real property (the “Phase I Property”) legally described in **Exhibit A**, attached hereto and incorporated herein by this reference, located immediately adjacent to and on the east side of the Cross Kirkland Corridor (“CKC”). The Phase I Property is currently occupied by office buildings (the “Phase I Buildings”).

B. The Phase II Owner is the owner of that real property (the “Phase II Property”) legally described in **Exhibit B**, attached hereto and incorporated herein by this reference, located immediately adjacent to and on the west side of the CKC, across from the Phase I Property. The Phase II Property is currently occupied by office buildings (the “Phase II Buildings”).

C. The Phase III Owner is the owner of that real property (the “Phase III Property”) legally described in **Exhibit C**, attached hereto and incorporated herein by this reference, located immediately adjacent to and on the east side of the CKC north of the Phase II Property. The Phase III Owner is constructing new office buildings on the Phase III Property (the “Phase III Buildings”).

D. The City owns the CKC.

E. The Phase I Owner, the Phase II Owner and the City entered into a Cross Kirkland Corridor Improvement and Use Agreement (“Use Agreement”) which was recorded on October 23, 2013. The Use Agreement authorized the Phase I Owner and the Phase II Owner to use portions of the CKC for access between the Phase I Property and the Phase II Property. In exchange, the Phase II Owner agreed to install certain improvements on the CKC identified in the Use Agreement as “Public Improvements.” In addition, Use Agreement Section 9 provided that unless the parties agree otherwise, the Phase I Owner and the Phase II Owner shall maintain the Public Improvements on the CKC, except for the bicycle and pedestrian trail, which shall be maintained by the City.

F. In compliance with Use Agreement Section 9, the Phase I Owner, the Phase II Owner and the City entered into that Cross Kirkland Corridor Maintenance Agreement Between the City of Kirkland, SRMKII, LLC and SRMKJVD LLC dated April 4, 2016 (the “Maintenance

Agreement”), a memorandum of which was recorded under King Country Recording No. 20160509000364.

G. The Phase III Owner and City entered into the Cross Kirkland Corridor Improvement and Use Agreement Adjacent to Phase III Campus on \_\_\_\_\_, 2021 (the “Phase III Use Agreement”). The Phase III Use Agreement authorized the Phase III Owner to install certain additional public improvements on the CKC, identified in the Phase III Use Agreement as “Public Improvements.” Phase III Use Agreement Section 7 requires the execution of an amendment to the Maintenance Agreement to address the maintenance of all of the Public Improvements installed pursuant the Use Agreement and the Phase III Use Agreement. The City and the Phase I and Phase II owners wish to continue the legal relationships established by the Maintenance Agreement. Given the interrelatedness of Phases I through III, including common or related ownership interests, the four parties hereto wish to enter into this Restated Agreement, a legal effect of which will be to render the Maintenance Agreement null and void as thereby superseded. The Public Improvements referred to in both the Use Agreement and in the Phase III Use Agreement are hereinafter referred to in this Restated Agreement as the “Public Improvements.”

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereby agree as follows:

## II. AGREEMENT

1. **Allocation of Maintenance Responsibilities.** Unless otherwise provided in this Restated Agreement, the City shall maintain the bicycle and pedestrian trail on the CKC and SRM shall maintain all of the other Public Improvements in the CKC. A spreadsheet listing specific maintenance items and responsibilities and allocating responsibility for those items to either the City or SRM is attached hereto as **Exhibit D** and incorporated into this Restated Agreement by this reference. The parties shall perform, at their sole cost and expense, the maintenance responsibilities allocated to them in **Exhibit D**.

2. **Indemnification.** SRM shall indemnify, defend and hold the City and its officers, agents and employees harmless from all costs, claims or liabilities of any nature, including reasonable attorney’s fees, costs and expenses for or on account of injuries or damages sustained by any persons or property resulting from the use of the SRM-maintained Public Improvements. If a suit arising out of or in any way relating to use of the SRM-maintained Public Improvements or the CKC crossings is filed against the City and its officers, agents or employees, SRM shall appear and defend the same at its own cost and expense, and if judgment be rendered or settlement be made requiring payment by the City, SRM shall pay the same. Notwithstanding anything to the contrary in this Restated Agreement, SRM shall not be responsible for, or indemnify or defend the City against any claims, causes of action, losses, damages, liabilities, costs or expenses caused by the negligence of the City, its agents, contractors or employees, to the extent of such negligence.

The City shall indemnify, defend and hold SRM and its respective officers, agents and employees harmless from all costs, claims or liabilities of any nature, including reasonable attorney’s fees, costs and expenses for or on account of injuries or damages sustained by any persons or property resulting from the use of the City-maintained Public Improvements. If a suit

arising out of or in any way relating to the City Design Standards or use of City-maintained Public Improvements is filed against SRM and its respective officers, agents or employees, the City shall appear and defend the same at its own cost and expense, and if judgment be rendered or settlement be made requiring payment by SRM, the City shall pay the same. Notwithstanding anything to the contrary in this Restated Agreement, the City shall not be responsible for, or indemnify or defend SRM against any claims, causes of action, losses, damages, liabilities, costs or expenses caused by or resulting from the negligence of SRM, its agents, contractors or employees, to the extent of such negligence.

**3. Default and Termination.** No party shall be in default under this Restated Agreement unless it has failed to perform as required under this Restated Agreement for a period of thirty (30) days after written notice of default from any other party. Each notice of default shall specify the nature of the alleged default and the manner in which the default may be cured satisfactorily. If the nature of the alleged default is such that it cannot be reasonably cured within the thirty (30)-day period, then commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure. In any action to enforce or determine a party's rights under this Restated Agreement, the substantially prevailing party shall be entitled to attorney's fees and costs.

This Restated Agreement shall automatically terminate and no longer be in force and effect on the earlier to occur of the following two events: 1) thirty (30) years from the Effective Date; or 2) one (1) year after the Phase I Buildings, Phase II Buildings and Phase III Buildings cease to be used as an integrated campus with a significant national tenant occupying portions of the Phase I Buildings, the Phase II Buildings and the Phase III Buildings.

**4. Dispute Resolution Process.** The parties shall use their best efforts to resolve disputes arising out of or related to this Restated Agreement using good faith negotiations. If the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute through non-binding mediation before resorting to litigation. The fees for mediation will be borne equally by the parties.

**5. Modifications to Restated Agreement.** This Restated Agreement contains all terms, conditions and provisions agreed upon by the parties hereto, and shall not be modified except by written amendment executed by both parties.

**6. Memorandum of Restated Agreement.** SRM shall record a memorandum of this Restated Amendment in the official records of King County, Washington, in a form substantially similar to the memorandum, attached hereto as **Exhibit E**.

**7. Replacement of Maintenance Agreement Terms.** All terms and conditions of the Maintenance Agreement are hereby revised and replaced by the terms and conditions of this Restated Agreement and such Maintenance Agreement shall be considered null and void.

**8. General Provisions.**

**8.1 Governing Law.** This Restated Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.



**8.2 Severability.** If any provision of this Restated Agreement is determined to be unenforceable or invalid in a final decree or judgment by a court of law, then the remainder of this Restated Agreement not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect. In that event, this Restated Agreement shall thereafter be modified, as provided immediately hereafter, to implement the intent of the parties to the maximum extent allowable under law. The parties shall diligently seek to agree to modify the Restated Agreement consistent with the final court determination, and no party shall undertake any actions inconsistent with the intent of this Restated Agreement until the modification to this Restated Agreement has been completed. If the parties do not mutually agree to modifications within forty-five (45) days after the final court determination, then either party may initiate the mediation process under Section 4 for determination of the modifications that will implement the intent of this Restated Agreement and the final court decision.

**8.3 Authority.** Each party respectively represents and warrants that it has the power and authority, and is duly authorized, to enter into this Restated Agreement on the terms and conditions herein stated, and to deliver and perform its obligations under this Restated Agreement.

**8.4 Entire Agreement.** This Restated Agreement represents the entire agreement of the parties with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein and this Restated Agreement supersedes all previous agreements, oral or written.

**8.5 No Third-Party Beneficiary.** This Restated Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Restated Agreement.

**8.6 Interpretation.** This Restated Agreement has been reviewed and revised by legal counsel for all parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this Restated Agreement.

**8.7 Notice.** All communications, notices, and demands of any kind that a party under this Restated Agreement requires or desires to give to any other party shall be in writing and either (i) delivered personally, or (ii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the City:

City Manager  
City of Kirkland  
123 5th Ave.  
Kirkland WA, 98033

If to Phase III Owner:

SRMKCCA, LLC  
111 N. Post, Suite 200  
Spokane, WA 99201

If to Phase II Owner:

SRMKII, LLC  
111 N. Post, Suite 200  
Spokane, WA 99201

If to Phase I Owner:

SRMKJVD, LLC  
111 N. Post, Suite 200  
Spokane, WA 99201

Notice by hand delivery shall be effective upon receipt. If deposited in the mail, certified mail, return receipt requested, notice shall be deemed delivered forty-eight (48) hours after deposited. Any party at any time by notice to the other party may designate a different address or person to which such notice or communication shall be given.

**8.8 Delays.** If either party is delayed in the performance of its obligations under this Restated Agreement due to force majeure, then performance of those obligations shall be excused for the period of delay. For purposes of this Restated Agreement, economic downturns, loss in value of assets, inability to obtain or retain financing, do not constitute a force majeure event.

**8.9 Counterparts.** This Restated Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same Restated Agreement, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Restated Agreement may be detached from any counterpart of this Restated Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Restated Agreement identical in form hereto but having attached to it one or more additional signature pages. The Effective Date of this Restated Agreement is the last date this Restated Agreement is signed by the last Party.

In Witness Whereof, the parties have caused this Agreement to be executed, effective on the day and year set forth on the first page hereof.

CITY OF KIRKLAND, a Washington municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

SRMKIID, LLC, a Delaware limited liability company

By: SRMKII, LLC, a Washington limited liability company  
Its: Sole Member

By: SRM Development, LLC  
Its: Manager

By: \_\_\_\_\_  
Print name: James D. Rivard  
Its: Authorized Member

By: \_\_\_\_\_  
Print name: Ryan B. Leong  
Its: Authorized Member  
Date: \_\_\_\_\_

SRMKJVD, LLC, a Delaware limited liability company

By: SRM Development, LLC  
Its: Manager

By: \_\_\_\_\_  
Print name: James D. Rivard  
Its: Authorized Member

By: \_\_\_\_\_  
Print name: Ryan B. Leong  
Its: Authorized Member  
Date: \_\_\_\_\_

SRMKCCA, LLC, a Washington limited liability company

By: SRMKCCAJV, LLC, a Washington limited liability company

By: SRM Development, LLC a Washington limited liability company  
Its: Manager

By: \_\_\_\_\_  
Print name: James D. Rivard  
Its: Authorized Member  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print name: Ryan B. Leong  
Its: Authorized Member  
Date: \_\_\_\_\_

**EXHIBIT A  
LEGAL DESCRIPTION OF THE PHASE I PROPERTY**

**PARCEL A:**

THAT PORTION OF TRACTS 18, 19, AND 20, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 8, TOWNSHIP 25 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;  
THENCE NORTH 0°35'10" EAST ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION A DISTANCE OF 2,611.93 FEET TO A POINT 0.23 FEET EAST OF AN EXISTING PUNCH MARK IN A LEAD PLUG IN THE NORTHEASTERLY RIM OF A SEWER MANHOLE; THENCE CONTINUING NORTH 0°35'10" EAST 179.47 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING NORTH 0°35'10" EAST 300.00 FEET; THENCE NORTH 89°24' 50" WEST 180.00 FEET;  
THENCE SOUTH 0°35' 10" WEST 300.00 FEET;  
THENCE SOUTH 89°24'50" EAST 180.00 FEET TO THE TRUE POINT OF

BEGINNING; EXCEPT THE EAST 30.00 FEET THEREOF; ALSO

EXCEPT THAT PORTION THEREOF CONVEYED TO THE CITY OF KIRKLAND BY STATUTORY WARRANTY DEED RECORDED MARCH 30, 2007 UNDER RECORDING NUMBER 20070330002629.

**PARCEL B:**

TRACTS 18, 19, 20, AND 21, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION OF SAID TRACTS 18, 19, AND 20 INCLUDED WITHIN THE FOLLOWING DESCRIPTION:

BEGINNING AT THE SOUTH QUARTER CORNER OF SECTION 8, TOWNSHIP 25 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;  
THENCE NORTH 0°35' 10" EAST ALONG THE NORTH-SOUTH CENTERLINE OF SAID SECTION A DISTANCE OF 2,611.93 FEET TO A POINT 0.23 FEET EAST OF AN EXISTING PUNCH MARK IN A LEAD PLUG IN THE NORTHEASTERLY RIM

OF A SEWER MANHOLE; THENCE CONTINUING NORTH 0°35'10" EAST 179.47  
FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING NORTH 0°35'10" EAST  
300.00 FEET; THENCE NORTH 89°24'50" WEST  
180.00 FEET;  
THENCE SOUTH 0°35'10" WEST 300.00 FEET;  
THENCE SOUTH 89°24'50" EAST 180.00 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION OF SAID TRACT 18 LYING SOUTH OF A LINE  
DESCRIBED AS FOLLOWS:

**EXHIBIT B  
LEGAL DESCRIPTION OF THE PHASE II  
PROPERTY**

**PARCEL A:**

THAT PORTION OF LOT 12 LYING WEST OF NORTHERN PACIFIC RAILROAD COMPANY RIGHT-OF-WAY AND THAT PORTION OF LOTS 15 AND 16 LYING EAST OF ALINE WHICH IS THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 12 AS EXTENDED SOUTHERLY TO THE SOUTH LINE OF LOT 16 AND LYING WEST OF THE NORTHERN PACIFIC RAILROAD COMPANY RIGHT-OF-WAY, ALL IN SOUTH KIRKLAND ACREAGE, AS PER PLAT RECORDED IN VOLUME 11 OF PLATS, PAGE 94, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THE NORTH 15 FEET OF THE WESTERLY 325 FEET CONVEYED TO THE CITY OF KIRKLAND BY DEED RECORDED APRIL 23, 1971 UNDER RECORDING NUMBER 7104230470.

EXCEPT THAT PORTION CONVEYED TO THE CITY OF KIRKLAND BY DEED RECORDED OCTOBER 09, 2015 UNDER RECORDING NO. 20151009001448.

**PARCEL B:**

EASEMENTS GRANTED IN THE DOCUMENT CROSS KIRKLAND CORRIDOR IMPROVEMENT AND USE AGREEMENT RECORDED OCTOBER 23, 2013, UNDER RECORDING NUMBER 20131023001103, IN KING COUNTY, WASHINGTON.

**EXHIBIT C**  
**LEGAL DESCRIPTION OF THE PHASE III PROPERTY**

**LEGAL DESCRIPTION:**

**PARCEL A:**

**LOTS 22 AND 23, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON;**

**EXCEPT THE SOUTH 175 FEET IN WIDTH OF SAID LOT 22.**

**PARCEL B:**

**THAT PORTION OF THE SOUTH 175 FEET IN WIDTH OF LOT 22, LYING EASTERLY OF THE NORTHERN PACIFIC RAILWAY CO.'S RIGHT-OF-WAY, SOUTH KIRKLAND ACREAGE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 94, IN KING COUNTY, WASHINGTON.**



**EXHIBIT D**  
**RESPONSIBILITY FOR MAINTENANCE**  
[see attached]

**Maintenance Agreement for Improvements on CKC**

	SRM	City
<b>Storm System</b>		
Access Drive	X	
Inspection	X	
Repairs and maintenance	X	
Public Improvements	X	
Inspection		X
Repairs and maintenance	X	
Storm filter cartridge system	X	
Catch basin	X	
<b>Lights and power</b>		
Replacement parts	X	
Utility costs	X	
<b>Water and irrigation</b>		
Replacement parts	X	
Utility costs	X	
<b>Signage</b>		
Trail		X
Road crossing	X	
<b>Graffiti</b>		
Trail		
Public Improvements		X
	X	
<b>Trash</b>		
Replacement parts	X	
Waste Management costs	X	
<b>Trail</b>		
Primary Trail		X
Concrete panels		X
Daily/weekly maintenance		X
Sweeping		X
Power washing	X	X
Secondary Trail		
Brick pavers	X	
Daily/weekly maintenance	X	
Sweeping	X	
Litter pickup	X	
Power washing	X	

	SRM	City
<b>Vegetation</b>		
Grass	X	
Mowing	X	
Trail edging	X	
Leaves on trail	X	
Leaves on play equipment	X	
Weeding	X	
Flower Beds	X	
Vegetable Garden	X	
Fruit trees	X	
Pruning trees	X	
<b>Playground</b>		
Approval of equipment before installation	X	X
Inspections	X	
Reporting of inspections/monthly - to the City	X	
Replacement parts	X	
Replacement plan over time	X	
<b>Wireless Internet</b>		
No Plan to do this yet		
<b>Furnishings</b>		
	X	
Basketball court	X	
Adult fitness instruction area	X	
Sand Volleyball	X	
Play area structure	X	
Pickle ball court	X	
Garden Shed	X	
Spray park	X	
Amphitheater	X	
Caboose Maintenance	X	

**Maintenance of Public Improvements.** Unless otherwise agreed to by the City, SRM shall maintain all Public Improvements in the Adjacent CKC, except for the bicycle and pedestrian trail, which shall be maintained by the City (Use Agreement, Section 9).

EXHIBIT E  
FORM OF MEMORANDUM OF AMENDED AND RESTATED AGREEMENT

After recording, return to:

Brent Carson  
Van Ness Feldman LLP  
719 Second Avenue, Suite 1150  
Seattle, Washington 98104-1728

WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

DOCUMENT TITLE(S) (or transactions contained therein):  Memorandum of Amended and Restated Cross Kirkland Corridor Maintenance Agreement
REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:  20160509000364  <input type="checkbox"/> Additional reference #s on page _____ of document(s)
GRANTOR(S) (Last name first, then first name and initials)  City of Kirkland, a non-charter, optional code Washington municipal corporation  <input type="checkbox"/> Additional names on page _____ of document
GRANTEE(S) (Last name first, then first name and initials)  SRMKJVD, LLC, a Washington limited liability company SRMKII, LLC, a Washington limited liability company SRMKCCA, LLC, a Washington limited liability company  <input type="checkbox"/> Additional names on page _____ of document
LEGAL DESCRIPTION (abbreviated: i.e., lot, block, plat or section, township, range)  Ptn Tracts 18-21, South Kirkland Acreage, Vol. 11, P. 94; Ptn Lots 12, 15, 16, 22 and 23 South Kirkland Acreage, Vol. 11, P. 94  <input checked="" type="checkbox"/> Additional legal is on pages 14-18 of document
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBERS  788260-0220; 082505-9059; 788260-0175-04, 788260-0180-07, 788260-0120-00  <input type="checkbox"/> Assessor Tax # not yet assigned

MEMORANDUM OF AMENDED AND RESTATED CROSS  
KIRKLAND CORRIDOR MAINTENANCE AGREEMENT

This MEMORANDUM OF AMENDED AND RESTATED CROSS KIRKLAND CORRIDOR MAINTENANCE AGREEMENT (this "Memorandum") is made and entered into this \_ day of \_\_\_\_\_ 2021, by and among the CITY OF KIRKLAND, a non-charter, optional code Washington municipal corporation (the "City"), SRMKJVD, LLC, a Washington limited liability company (the "Phase I Owner"), SRMKII, LLC, a Washington limited liability company (the "Phase II Owner"). And SRMKCCA, LLC, a Washington limited liability company (the "Phase III Owner"). SRMKJVD, LLC, SRMKII, LLC and SRMKCCA, LLC are collectively referred to as "SRM" in this Memorandum.

1. The Maintenance Agreement. The City, SRMKJVD, LLC and SRMKII, LLC entered into that certain Maintenance Agreement dated April 5, 2016 (the "Maintenance Agreement"), pursuant to which the City, SRMKJVD, LLC and SRMKII, LLC delineated and clarified their respective maintenance responsibilities with respect to the Cross Kirkland Corridor ("CKC"), immediately adjacent to and between (a) the real property owned by the Phase I Owner as more particularly described in Exhibit A attached hereto, and (b) the real property owned by the Phase II Owner as more particularly described in Exhibit B attached hereto. The City owns the CKC. A Memorandum of the Maintenance Agreement was recorded

2. The Phase III Use Agreement. The City and SRMKCCA, LLC entered into a Phase III Cross Kirkland Corridor Improvement and Use Agreement Adjacent to Phase III Campus dated \_\_\_\_\_ (the "Phase III Agreement"). The Phase III Agreement authorized SRMKCCA to construction certain public improvements in the CKC adjacent to the real property owned by the Phase III Owner as more particularly described in Exhibit C attached hereto.

3. Amended and Restated Maintenance Agreement. The City and SRM entered into that Amended and Restated Cross Kirkland Corridor Maintenance Agreement to expand the terms of the Maintenance Agreement (the "Restated Agreement") to include all portions of the CKC adjacent to the Phase I Property, Phase II Property, and Phase III Property (collectively referred to herein as the "Property") and to further delineate and clarify their respective maintenance responsibilities with respect to the CKC. The Restated Agreement revised and replaced in full all terms and conditions of the Maintenance Agreement with the terms and conditions of the Restated Amendment.

4. Term of the Amended Maintenance Agreement. The Restated Agreement will automatically terminate and no longer be in force and effect on the earlier to occur of the following two events: (1) thirty (30) years from the date of the Restated Agreement; or (2) one (1) year after the Property ceases to be used as an integrated campus with a significant national tenant.

5. Purpose of Memorandum. This Memorandum is prepared for the purpose

of recordation to give notice of the Agreement. It does not constitute an amendment or modification of the Agreement.

6. Address for Notices. Except as otherwise expressly provided in the Agreement, all notices, requests, demands or other communications to or upon the respective parties hereto will be deemed to have been duly given or made when delivered as provided in the Agreement.

7. Counterparts. This Memorandum may be executed and delivered in several counterparts, each of which will be deemed an original but all of which when taken together will constitute one and the same instrument.

In Witness Whereof, the parties have caused this Memorandum to be executed, effective on the day and year set forth on the first page hereof.

CITY OF KIRKLAND, a Washington municipal corporation

By: Form - Do Not Sign  
Print name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date : \_\_\_\_\_

SRMKII, LLC, a Washington limited liability company

By: Stone Rivard McGonigle Development, L.L.C.  
Its: Manager

By: Form - Do Not Sign  
Print name: Bryan P. Stone  
Its: Authorized Member  
Date: \_\_\_\_\_

SRMKJVD, LLC, a Delaware limited liability company

By: Stone Rivard McGonigle Development, L.L.C.  
Its: Manager

By: Form - Do Not Sign  
Print name: Bryan P. Stone  
Its: Authorized Member  
Date: \_\_\_\_\_



SRMKCCA, LLC, a Washington limited liability company

By: SRMKCAJV, LLC, a Washington limited liability company

By: SRM Development, LLC a Washington limited liability company  
Its: Manager

By: Form - Do Not Sign  
Print name: \_\_\_\_\_  
Its: Authorized Member  
Date: \_\_\_\_\_

By: Form - Do Not Sign  
Print name: \_\_\_\_\_  
Its: Authorized Member  
Date: \_\_\_\_\_

[Acknowledgements follow]

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 Kirkland to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Form - Do Not Sign  
(Signature) Notary  
Public  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

I certify that I know or have satisfactory evidence that Bryan P. Stone is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as an Authorized Member of Stone Rivard McGonigle Development, L.L.C., the Manager of SRMKII, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Form - Do Not Sign  
(Signature) Notary  
Public  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

I certify that I know or have satisfactory evidence that Bryan P. Stone is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as an Authorized Member of Stone Rivard McGonigle Development, L.L.C., the Manager of SRMKJVD, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Form - Do Not Sign  
(Signature) Notary  
Public  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of Spokane )

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 an Authorized Member of SRM Development, LLC, the Manager of SRMKCCA, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Form - Do Not Sign  
(Signature) Notary  
Public  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON     )  
                                      ) ss.  
County of Spokane         )

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 an Authorized Member of SRMKCCAJV, LLC, the Manager of SRMKCCA, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

Form - Do Not Sign  
\_\_\_\_\_  
(Signature) Notary  
Public  
My appointment expires: \_\_\_\_\_