

**REAL ESTATE PURCHASE AND SALE AGREEMENT**  
**File # 20-075 / Agreement #1161**

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of this date 06/30/2021, (hereinafter the "Effective Date") between the City of Tacoma, a first class municipal corporation ("Seller") and CORNUS HOUSE LLC, a Washington limited liability company ("Buyer").

**RECITALS**

WHEREAS, Seller is the owner of certain real property, referenced as Parcel Number 202505-004-2 and, more particularly described in Section 1, below.

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer the real property on the terms and conditions set forth herein; and

WHEREAS Seller is conveying the real property as a negotiated disposition pursuant to the authority provided in Tacoma Municipal Code Section 1.06.280; and

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

**AGREEMENT**

1. Real Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, all of Seller's interest in the real property located in the City of Tacoma, County of Pierce and State of Washington, legally described in Exhibit "A" and generally depicted in Exhibit "B", (herein, the "Property").
2. Purchase Price. The total purchase price for the Property (the "Purchase Price") will be **TWO HUNDRED AND SEVENTY THOUSAND DOLLARS and XX/100 (\$270,000.00)**.
  - 2.1 Earnest Money: As consideration for this Agreement, Buyer has remitted to Seller cash payment, certified check or cashier's check to Seller in the amount of **TWENTY-SEVEN THOUSAND DOLLARS and 00/100 (\$27,000.00)** being 10%, at the time of Buyer's Submittal of its Proposal for acquisition of the Property (the "Earnest Money"). The Earnest Money shall be fully applicable to the Purchase Price at Closing. The Earnest Money is, however, non-refundable unless Seller is unable to obtain City Council approval as set forth in Section 6.1 and 7.2 below or unless Seller materially defaults.
3. Title to Property. The Seller shall convey to Buyer, all of Seller's right, title and interest in the Property, by duly executed and acknowledged quit claim deed (the "Deed"). The Seller shall convey title to Buyer by executing and delivering the Deed to Buyer at Closing.
4. Closing Agent. Stewart Title Guaranty Company, has been designated as the Closing Agent by mutual agreement of Seller and Buyer. Upon execution of this Agreement by Seller and Buyer, the Closing Agent shall sign a counterpart of this Agreement to signify its consent to the closing provisions of this Agreement, and escrow has been opened under File Number 21000200393, at Closing Agents office located at 1420 Fifth Avenue; Suite 440, Seattle, WA 98101.

5. Title Insurance. At Closing, Buyer is entitled to obtain, an Owner's Coverage Policy of Title Insurance also issued by Stewart Title Guaranty Company with the same File Number reference of 21000200393, in accordance with the following:

5.1 Title Report. Seller authorizes Buyer, its Lender, Listing Broker, Selling Broker or Closing Agent, at Seller's expense, to apply for and deliver to Buyer a (X) standard ( ) extended (standard, if not completed) coverage owner's policy of title insurance. If an extended coverage owner's policy is specified, Buyer shall pay the increased costs associated with that policy including the excess premium over that charged for a standard coverage policy, and the cost of any survey required by the title insurer. The title report shall be issued by Stewart Title Guaranty Company. If Seller previously received a preliminary commitment from a title insurer that Buyer declines to use, Buyer shall pay any cancellation fee owing to the original title insurer. Otherwise, the party applying for title insurance shall pay any title cancellation fee, in the event such a fee is assessed.

5.2 Permitted Exceptions. Buyer shall notify Seller of any objectionable matters in the title report or any supplemental report within the earlier of: (1) twenty (20) business days after mutual acceptance of this Agreement; or (2) the expiration of the Feasibility Period. This Agreement shall terminate and Buyer shall receive a refund of the earnest money, less any costs advanced or committed for Buyer, unless within five (5) business days of Buyer's notice of such objections (1) Seller agrees, in writing, to remove all objectionable provisions or (2) Buyer notifies Seller that Buyer waives any objections which Seller does not agree to remove. If any new title matters are disclosed in a supplemental title report, then the preceding termination, objection and waiver provisions shall apply to the new title matters except that Buyer's notice of objections must be delivered within five (5) business days of delivery of the supplemental report and Seller's response or Buyer's waiver must be delivered within two (2) business days of Buyer's notice of objections. The closing date shall be extended to the extent necessary to permit time for these notices. Buyer shall not be required to object to any mortgage or deed of trust liens, or the statutory lien for real property taxes, and the same shall not be deemed to be Permitted Exceptions; provided, however, that the lien securing any financing which Buyer has agreed to assume shall be a Permitted Exception. Except for the foregoing, those provisions not objected to or for which Buyer waived its objections shall be referred to collectively as the "Permitted Exceptions." Seller shall cooperate with Buyer and the title company to clear objectionable title matters but shall not be required to incur any out-of-pocket expenses or liability other than payment of monetary encumbrances not assumed by Buyer and proration of real property taxes.

6. Conditions to Closing.

6.1 City Council Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Tacoma City Council prior to Closing. If Tacoma City Council approval is not obtained, this Agreement will terminate, and all documents and other funds will be returned to the Buyer, and neither party will have any further rights, obligations, or remedies under this Agreement, except as otherwise provided herein. Nothing in this Paragraph 6.1 will obligate the Buyer to obtain City Council approval beyond the ordinary course of City procedure.

6.2 Condition of Title. Seller hereby agrees from and after the Effective Date, until the Closing or the termination of this Agreement, that it (a) will take no action that will adversely affect title to the Property; (b) will not lease, rent, mortgage, encumber, or permit the encumbrance of all or any portion of the Property without Buyer's prior written consent, except as specifically requested by Buyer; and (c) will not enter into any written or oral contracts or agreements with respect to the Property.

7. Closing.

7.1 Deposit with Closing Agent and Escrow Instructions. Following the Effective Date of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with Closing Agent.

7.2 Closing. The Closing hereunder shall occur at the offices of the Closing Agent on or before ONE HUNDRED TWENTY (120) calendar days from the full execution of this Agreement, as City Council agenda permits. Closing will be initiated by Buyer, when Buyer notifies Seller with written notification of its Intent to Close. Closing will occur on the date upon which the Closing Agent has been delivered the following from the Buyer and Seller:

7.2.1 Delivery by Seller. Upon Seller's receipt of Buyer's written notice of Intent to Close, Seller will prepare the following:

- (a) The Deed, duly executed and acknowledged by Seller, in recordable form, and ready for recordation at closing together with a duly executed real estate excise tax affidavit;
- (b) Any resolutions, authorizations, certificates, or other corporate and/or partnership documents or agreements relating to Seller, reasonably required by Buyer or a title company or the Closing Agent in connection with this transaction; and
- (c) Any other documents, instruments, data, records, correspondence, or agreements called for hereunder which have not previously been delivered.

7.2.2 Delivery by Buyer. Within five business days from Seller's receipt of Buyer's written notice of Intent to Close, Buyer will deliver the following with the Escrow Agent:

- (a) Buyer shall deposit with the Closing Agent the Purchase Price and any Closing Costs which are the responsibility of the Buyer hereunder; and
- (b) Any other documents, instruments, data, records, correspondence, or agreements called for hereunder which have not previously been delivered.

7.2.3 Other Instruments. Seller and Buyer shall each deposit such other instruments as are reasonably required by the Closing Agent or otherwise required to close the escrow and to consummate the purchase of the Property in accordance with the terms hereof.

7.3 Prorations. All expenses of the Property, including, but not limited to, water and utility charges, surface water fees and charges, and other expenses normal to the ownership, use, operation, and maintenance of the Property shall be prorated as of 12:01 a.m. on the date of Closing. It is acknowledged that any expense amount which cannot be ascertained with certainty as of Closing shall be prorated on the basis of the parties' reasonable estimate of such amount and shall be the subject of a final proration forty five (45) days after Closing or as soon thereafter as the precise amounts can be ascertained. A statement setting forth such agreed upon prorations signed by Seller and Buyer shall be delivered to Closing Agent.

7.4 Costs and Expenses.

7.4.1 Seller shall pay as follows:

Seller shall pay for the premium for the owner's standard coverage policy of title insurance. Buyer shall pay the premium for any extended title insurance and the cost of any endorsements if desired by the Buyer.

7.4.2 Buyer shall pay as follows:

- (a) Recording costs,
- (b) Cost of any new surveys if required,
- (c) Cost of escrow and closing fees for the sale including but not limited to: extended coverage title insurance and any desired endorsements, recording fees, escrow fees/costs, broker/finder fees, lender and underwriting fees and costs, excise and other taxes, land segregation or development costs that may be required by Pierce County, as well as any other applicable costs imposed.
- (d) Buyer shall pay its broker's/agent's commission, if Buyer uses the services of a real estate broker or agent, and any excise tax and excise fees due in connection with this transaction.

7.5 Recordation and Payment. Provided that Closing Agent has not received prior written notice from either party that an obligation of either party made hereunder has not been performed, or to the effect that any condition set forth herein has not been fulfilled, then upon fulfillment of Buyer and Seller's fulfillment of their respective obligations set forth in Section 7, or as soon thereafter is possible, Closing Agent will provide the Purchase Price and Escrow Sum to Seller and Record the Deed and Excise Tax Affidavit in the official records of Pierce County, Washington;

7.6 Delivery of Documents. At Closing, all statements and documents to be delivered to Buyer shall be delivered to:

CORNUS HOUSE LLC  
Attn: Benjamin Maritz  
1112 Federal Avenue E  
Seattle, WA 98333

At Closing, all statements and documents to be delivered to Seller shall be delivered to:

City of Tacoma  
Public Works – Real Property Services  
Attn: Jennifer Hines  
747 Market Street, Rm. 737  
Tacoma, WA 98402

8. Condition of the Property.

8.1 "As Is" Buyer acknowledges that the Property will be purchased under this Agreement in an "as is" "where is" condition. No warranties shall be given or implied.

8.2 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Property, with the exception of written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Property for Buyer's intended use.

9. Possession. Buyer is entitled to possession of the Property once the Deed is recorded with the Pierce County Auditor.

10. Events of Default. In the event Buyer fails, without legal excuse to complete the purchase of the Property, then the Earnest Money required pursuant section 2.1 shall be forfeited to Seller. In the event Seller fails, without legal excuse, to complete the sale of the Property, Buyer shall be entitled to termination of this Agreement and immediate return of its Earnest Money as its sole remedy.

11. Buyer's Indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable costs and attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of injuries or damages to persons, entities and/or property received or sustained, arising out of, in connection with or as a result of the acts or omissions of Buyer, or its agents or employees in exercising its rights or carrying out its responsibilities under this Agreement, except for claims caused by Seller's negligence and then only to the extent of such negligence. Prior to any obligation to indemnify hereunder, Seller agrees to provide written notice to Buyer of at least thirty (30) days (except in the case of emergency) and an opportunity to cure the liability and defend with counsel of Buyer's choosing.

12. Environmental Liability.

12.1 Disclaimer. Buyer has been allowed to make an inspection of the Property. BUYER ACCEPTS THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any above ground or underground structures or improvements, including tanks and transformers in, on, or under the Property; the condition of title to the Property, and the leases, easements, permits, orders, licensees, or other agreements, affecting the Property (collectively, the "Condition of the Property"). Buyer represents and warrants to Seller that Buyer has not relied and will not rely on, and the Seller is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by the Seller, or any agent representing or purporting to represent the Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were or were not revealed by Buyer inspection and indemnifies, holds harmless and hereby waives, releases and discharges forever the Seller and Seller's officers, employees, and agents

(collectively, "Indemnitees") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation, fines, penalties, judgments, and attorneys' fees) of any and every kind or character, known or unknown, which Buyer might have asserted or alleged against Indemnitees arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on, or under the Property (the "Buyer Losses"). Buyer Losses shall include without limitation (a) the cost of any investigation, removal, or Remedial Action (defined below) that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) losses for injury or death of any person, and (c) losses arising under any Environmental Law enacted after the date hereof. Except as may limited below, Buyer Losses specifically include losses sustained by Buyer as a result of any obligation of Buyer to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property. Notwithstanding the above, Buyer Losses waived, released, and discharged hereunder by Buyer shall not include losses as a result of releases or contamination caused by the acts of the Seller after the date hereof.

12.2 For purposes of this Agreement, "Hazardous Substances" shall include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," "pollutants," "contaminants," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; the Washington State Environmental Policy Act, RCW 90.48.010, et seq.; the Water Pollution Control Act, RCW 90.48.010, et seq.; the Hazardous Waste Management Act, RCW 70A.300; and the Model Toxics Control Act, RCW 70.305; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws and shall also include petroleum, oil, and petroleum by-products.

12.3 Survival of Terms. Each of the party's obligations under this Section 12 shall survive termination of this Agreement.

13. Loss by Fire, Other Casualty, or Condemnation. In the event that, prior to Closing, the Property is destroyed or materially damaged (as determined by Seller), Buyer shall have the right, exercisable by giving written notice of such decision to Seller within 15 business days after receiving written notice from Seller of such damage, destruction, or condemnation proceedings, to terminate this Agreement, and neither party hereto shall have any further rights under this Agreement. If Buyer elects to accept the Property in its then existing condition, all proceeds of insurance awards payable to Seller by reason of such damage, destruction, or condemnation shall be paid or assigned to Buyer.

14. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, or given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Seller: City of Tacoma  
Public Works – Real Property Services  
Attn: Jennifer Hines  
747 Market Street, Rm. 737  
Tacoma, WA 98402

*RJVA*

With a copy to: City of Tacoma, Legal Department  
747 Market Street, Rm 1120  
Tacoma, WA 98402  
Facsimile No. 253-591-5755

Buyer: CORNUS HOUSE LLC  
Attn: Benjamin Maritz  
1112 Federal Avenue E  
Seattle, WA 98333

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

15. Counterparts; Faxed Signatures. This Agreement may be executed in any number of counterparts by the parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

16. Brokers and Finders. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorneys' fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the closing of this transaction.

17. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. Continuation and Survival of Representations and Warranties. Any representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of Closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title for a period of 6 (six) months whereupon they shall terminate, unless otherwise stated. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

19. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Washington without recourse to any principles of Conflicts of Laws.

20. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

21. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

22. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

23. Non-merger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive, the closing of the transaction contemplated under the Agreement.

24. Assignment. Buyer shall not assign this Agreement without Seller's prior written consent.

25. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

26. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to effect the Agreement contemplated herein.


27. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.





IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

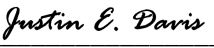
**SELLER:**


CITY OF TACOMA, a first class  
Municipal Corporation

  
\_\_\_\_\_  
Elizabeth A. Pauli  
City Manager


  
\_\_\_\_\_  
Kurtis D. Kingsolver, P.E.  
Public Works Director/City Engineer

  
\_\_\_\_\_  
Jeffrey A. Jenkins,  
Asst. Public Works Director

  
\_\_\_\_\_  
Justin E. Davis  
Division Manager  
Facilities Management

  
\_\_\_\_\_  
Andrew Cherullo  
Finance Director

Approved as to form:

  
\_\_\_\_\_  
Deputy City Attorney

JH

**BUYER:**

CORNUS HOUSE LLC, a  
Washington limited liability company

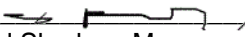
By: ARBOREAL MANAGERS (CORNUS) LLC, a  
Washington limited liability company, its Manager

  
\_\_\_\_\_  
Benjamin Maritz, Manager

**BUYER:**

CORNUS HOUSE LLC, a  
Washington limited liability company

By: ARBOREAL MANAGERS (CORNUS) LLC, a  
Washington limited liability company, its Manager

  
\_\_\_\_\_  
S. David Sharkey, Manager

**Exhibit "A"**

That portion of Lots 7 to 10, inclusive, Block 2505, The Tacoma Land Company's First Addition to Tacoma, W.T., according to the map thereof recorded July 7, 1884, in Pierce County, Washington, lying Northerly of the following described line:

Commencing at the Northeast corner of said Lot 7;

Thence South  $07^{\circ}21'29''$  East, along the East line of said Block 2505, a distance of 45.85 feet to True Point of Beginning and the beginning of a non-tangent curve from which the radius point bears South  $28^{\circ}21'17''$  East a distance of 1,171.28 feet;

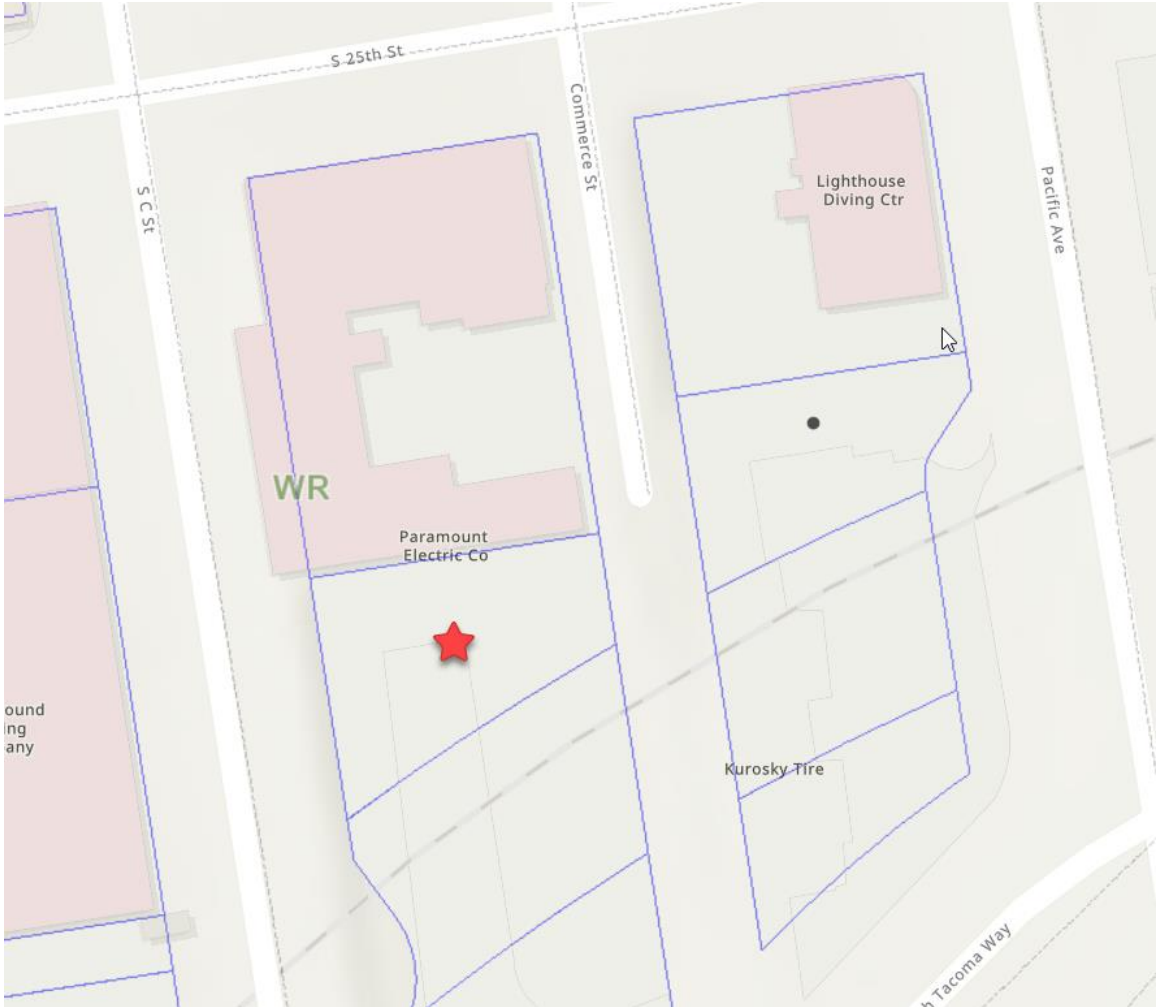
Thence Southwesterly, along the arc of said curve, through a central angle of  $6^{\circ}25'46''$  a distance of 131.44 feet to the West line of said Block 2505 and the Terminus of this described line.

All situate in the Northwest Quarter of Section 09, Township 20 North, Range 03 East of the W.M.; within the City of Tacoma, County of Pierce, State of Washington.

*RJVA*

**Exhibit "B"**

General Map Depiction



**REAL ESTATE PURCHASE AND SALE AGREEMENT**  
**File # 20-075 / Agreement #1162**

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RECITALS

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WHEREAS Seller is conveying the real property as a negotiated disposition pursuant to the authority provided in Tacoma Municipal Code Section 1.06.280; and

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5. Title Insurance. At Closing, Buyer is entitled to obtain, an Owner's Coverage Policy of Title Insurance also issued by Stewart Title Guaranty Company with the same File Number reference of 21000200392, in accordance with the following:

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5.2 Permitted Exceptions. Buyer shall notify Seller of any objectionable matters in the title report or any supplemental report within the earlier of: (1) twenty (20) business days after mutual acceptance of this Agreement; or (2) the expiration of the Feasibility Period. This Agreement shall terminate and Buyer shall receive a refund of the earnest money, less any costs advanced or committed for Buyer, unless within five (5) business days of Buyer's notice of such objections (1) Seller agrees, in writing, to remove all objectionable provisions or (2) Buyer notifies Seller that Buyer waives any objections which Seller does not agree to remove. If any new title matters are disclosed in a supplemental title report, then the preceding termination, objection and waiver provisions shall apply to the new title matters except that Buyer's notice of objections must be delivered within five (5) business days of delivery of the supplemental report and Seller's response or Buyer's waiver must be delivered within two (2) business days of Buyer's notice of objections. The closing date shall be extended to the extent necessary to permit time for these notices. Buyer shall not be required to object to any mortgage or deed of trust liens, or the statutory lien for real property taxes, and the same shall not be deemed to be Permitted Exceptions; provided, however, that the lien securing any financing which Buyer has agreed to assume shall be a Permitted Exception. Except for the foregoing, those provisions not objected to or for which Buyer waived its objections shall be referred to collectively as the "Permitted Exceptions." Seller shall cooperate with Buyer and the title company to clear objectionable title matters but shall not be required to incur any out-of-pocket expenses or liability other than payment of monetary encumbrances not assumed by Buyer and proration of real property taxes.

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6.2 Condition of Title. Seller hereby agrees from and after the Effective Date, until the Closing or the termination of this Agreement, that it (a) will take no action that will adversely affect title to the Property; (b) will not lease, rent, mortgage, encumber, or permit the encumbrance of all or any portion of the Property without Buyer's prior written consent, except as specifically requested by Buyer; and (c) will not enter into any written or oral contracts or agreements with respect to the Property.

7. Closing.

7.1 Deposit with Closing Agent and Escrow Instructions. Following the Effective Date of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with Closing Agent.

7.2 Closing. The Closing hereunder shall occur at the offices of the Closing Agent on or before ONE HUNDRED TWENTY (120) calendar days from the full execution of this Agreement, as City Council agenda permits. Closing will be initiated by Buyer, when Buyer notifies Seller with written notification of its Intent to Close. Closing will occur on the date upon which the Closing Agent has been delivered the following from the Buyer and Seller:

7.2.1 Delivery by Seller. Upon Seller's receipt of Buyer's written notice of Intent to Close, Seller will prepare the following:

- (a) The Deed, duly executed and acknowledged by Seller, in recordable form, and ready for recordation at closing together with a duly executed real estate excise tax affidavit;
- (b) Any resolutions, authorizations, certificates, or other corporate and/or partnership documents or agreements relating to Seller, reasonably required by Buyer or a title company or the Closing Agent in connection with this transaction; and
- (c) Any other documents, instruments, data, records, correspondence, or agreements called for hereunder which have not previously been delivered.

7.2.2 Delivery by Buyer. Within five business days from Seller's receipt of Buyer's written notice of Intent to Close, Buyer will deliver the following with the Escrow Agent:

- (a) Buyer shall deposit with the Closing Agent the Purchase Price and any Closing Costs which are the responsibility of the Buyer hereunder; and
- (b) Any other documents, instruments, data, records, correspondence, or agreements called for hereunder which have not previously been delivered.

7.2.3 Other Instruments. Seller and Buyer shall each deposit such other instruments as are reasonably required by the Closing Agent or otherwise required to close the escrow and to consummate the purchase of the Property in accordance with the terms hereof.

7.3 Prorations. All expenses of the Property, including, but not limited to, water and utility charges, surface water fees and charges, and other expenses normal to the ownership, use, operation, and maintenance of the Property shall be prorated as of 12:01 a.m. on the date of Closing. It is acknowledged that any expense amount which cannot be ascertained with certainty as of Closing shall be prorated on the basis of the parties' reasonable estimate of such amount and shall be the subject of a final proration forty five (45) days after Closing or as soon thereafter as the precise amounts can be ascertained. A statement setting forth such agreed upon prorations signed by Seller and Buyer shall be delivered to Closing Agent.

7.4 Costs and Expenses.

7.4.1 Seller shall pay as follows:

Seller shall pay for the premium for the owner's standard coverage policy of title insurance. Buyer shall pay the premium for any extended title insurance and the cost of any endorsements if desired by the Buyer.

7.4.2 Buyer shall pay as follows:

- (a) Recording costs,
- (b) Cost of any new surveys if required,
- (c) Cost of escrow and closing fees for the sale including but not limited to: extended coverage title insurance and any desired endorsements, recording fees, escrow fees/costs, broker/finder fees, lender and underwriting fees and costs, excise and other taxes, land segregation or development costs that may be required by Pierce County, as well as any other applicable costs imposed.
- (d) Buyer shall pay its broker's/agent's commission, if Buyer uses the services of a real estate broker or agent, and any excise tax and excise fees due in connection with this transaction.

7.5 Recordation and Payment. Provided that Closing Agent has not received prior written notice from either party that an obligation of either party made hereunder has not been performed, or to the effect that any condition set forth herein has not been fulfilled, then upon fulfillment of Buyer and Seller's fulfillment of their respective obligations set forth in Section 7, or as soon thereafter is possible, Closing Agent will provide the Purchase Price and Escrow Sum to Seller and Record the Deed and Excise Tax Affidavit in the official records of Pierce County, Washington;

7.6 Delivery of Documents. At Closing, all statements and documents to be delivered to Buyer shall be delivered to:

CORNUS HOUSE LLC  
Attn: Benjamin Maritz  
1112 Federal Avenue E  
Seattle, WA 98333

At Closing, all statements and documents to be delivered to Seller shall be delivered to:

City of Tacoma  
Public Works – Real Property Services  
Attn: Jennifer Hines  
747 Market Street, Rm. 737  
Tacoma, WA 98402



8. Condition of the Property.

8.1 "As Is" Buyer acknowledges that the Property will be purchased under this Agreement in an "as is" "where is" condition. No warranties shall be given or implied.

8.2 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Property, with the exception of written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Property for Buyer's intended use.

9. Possession. Buyer is entitled to possession of the Property once the Deed is recorded with the Pierce County Auditor.

10. Events of Default. In the event Buyer fails, without legal excuse to complete the purchase of the Property, then the Earnest Money required pursuant section 2.1 shall be forfeited to Seller. In the event Seller fails, without legal excuse, to complete the sale of the Property, Buyer shall be entitled to termination of this Agreement and immediate return of its Earnest Money as its sole remedy.

11. Buyer's Indemnification. Buyer agrees to assume all liability for and to defend, indemnify and save Seller harmless from all liability and expense (including reasonable costs and attorneys' fees) in connection with all claims, suits and actions of every name, kind and description brought against Seller or its agents or employees by any person or entity as a result of or on account of injuries or damages to persons, entities and/or property received or sustained, arising out of, in connection with or as a result of the acts or omissions of Buyer, or its agents or employees in exercising its rights or carrying out its responsibilities under this Agreement, except for claims caused by Seller's negligence and then only to the extent of such negligence. Prior to any obligation to indemnify hereunder, Seller agrees to provide written notice to Buyer of at least thirty (30) days (except in the case of emergency) and an opportunity to cure the liability and defend with counsel of Buyer's choosing.

12. Environmental Liability.

12.1 Disclaimer. Buyer has been allowed to make an inspection of the Property. In consideration for a reduction in the purchase price of \$125,000.00 by Seller, BUYER ACCEPTS THE PROPERTY IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance by the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any above ground or underground structures or improvements, including tanks and transformers in, on, or under the Property; the condition of title to the Property, and the leases, easements, permits, orders, licensees, or other agreements, affecting the Property (collectively, the "Condition of the Property"). Buyer represents and warrants to Seller that Buyer has not relied and will not rely on, and the Seller is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by the Seller, or any agent representing or purporting to represent the Seller, to whomever made or given, directly or indirectly, orally or in writing. Buyer assumes the risk that Hazardous Substances or other adverse matters may affect the Property that were or were not revealed by Buyer inspection and indemnifies, holds harmless and hereby waives, releases and

discharges forever the Seller and Seller's officers, employees, and agents (collectively, "Indemnitees") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation, fines, penalties, judgments, and attorneys' fees) of any and every kind or character, known or unknown, which Buyer might have asserted or alleged against Indemnitees arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on, or under the Property (the "Buyer Losses"). Buyer Losses shall include without limitation (a) the cost of any investigation, removal, or Remedial Action (defined below) that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) losses for injury or death of any person, and (c) losses arising under any Environmental Law enacted after the date hereof. Except as may be limited below, Buyer Losses specifically include losses sustained by Buyer as a result of any obligation of Buyer to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property. Notwithstanding the above, Buyer Losses waived, released, and discharged hereunder by Buyer shall not include losses as a result of releases or contamination caused by the acts of the Seller after the date hereof.

12.2 For purposes of this Agreement, "Hazardous Substances" shall include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," "pollutants," "contaminants," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; the Washington State Environmental Policy Act, RCW 90.48.010, et seq.; the Water Pollution Control Act, RCW 90.48.010, et seq.; the Hazardous Waste Management Act, RCW 70A.300; and the Model Toxics Control Act, RCW 70.305; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws and shall also include petroleum, oil, and petroleum by-products.

12.3 Survival of Terms. Each of the party's obligations under this Section 12 shall survive termination of this Agreement.

13. Loss by Fire, Other Casualty, or Condemnation. In the event that, prior to Closing, the Property is destroyed or materially damaged (as determined by Seller), Buyer shall have the right, exercisable by giving written notice of such decision to Seller within 15 business days after receiving written notice from Seller of such damage, destruction, or condemnation proceedings, to terminate this Agreement, and neither party hereto shall have any further rights under this Agreement. If Buyer elects to accept the Property in its then existing condition, all proceeds of insurance awards payable to Seller by reason of such damage, destruction, or condemnation shall be paid or assigned to Buyer.

14. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, or given by mail or via facsimile. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Seller: City of Tacoma  
Public Works – Real Property Services  
Attn: Jennifer Hines  
747 Market Street, Rm. 737 *RJVA*  
Tacoma, WA 98402

With a copy to: City of Tacoma, Legal Department  
747 Market Street, Rm 1120  
Tacoma, WA 98402  
Facsimile No. 253-591-5755

Buyer: CORNUS HOUSE LLC  
Attn: Benjamin Maritz  
1112 Federal Avenue E  
Seattle, WA 98333

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail, and if delivered by facsimile, the same day as verified.

15. Counterparts; Faxed Signatures. This Agreement may be executed in any number of counterparts by the parties hereto, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts. Facsimile transmitted signatures shall be fully binding and effective for all purposes.

16. Brokers and Finders. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorneys' fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the closing of this transaction.

17. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. Continuation and Survival of Representations and Warranties. Any representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of Closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title for a period of 6 (six) months whereupon they shall terminate, unless otherwise stated. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

19. Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Washington without recourse to any principles of Conflicts of Laws.

20. Attorney Fees. If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

21. Time of the Essence. Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

22. Waiver. Neither Seller's nor Buyer's waiver of the breach of any covenant under this Agreement will be construed as a waiver of the breach of any other covenants or as a waiver of a subsequent breach of the same covenant.

23. Non-merger. The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive, the closing of the transaction contemplated under the Agreement.

24. Assignment. Buyer shall not assign this Agreement without Seller's prior written consent.

25. Negotiation and Construction. This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.


26. Additional Acts. Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to effect the Agreement contemplated herein.


27. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.


IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

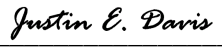
**SELLER:**


CITY OF TACOMA, a first class  
Municipal Corporation

  
\_\_\_\_\_  
Elizabeth A. Pauli  
City Manager

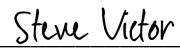
  
\_\_\_\_\_  
Kurtis D. Kingsolver, P.E.  
Public Works Director/City Engineer

  
\_\_\_\_\_  
Jeffrey A. Jenkins,  
Asst. Public Works Director

  
\_\_\_\_\_  
Justin E. Davis  
Division Manager  
Facilities Management

  
\_\_\_\_\_  
Andrew Cherullo  
Finance Director

Approved as to form:


  
\_\_\_\_\_  
Steve Victor  
Deputy City Attorney

JH

**BUYER:**

CORNUS HOUSE LLC, a  
Washington limited liability company

By: ARBOREAL MANAGERS (CORNUS) LLC, a  
Washington limited liability company, its Manager

  
\_\_\_\_\_

Benjamin Maritz, Manager

**BUYER:**

CORNUS HOUSE LLC, a  
Washington limited liability company

By: ARBOREAL MANAGERS (CORNUS) LLC, a  
Washington limited liability company, its Manager

  
\_\_\_\_\_

S. David Sharkey, Manager

**Exhibit "A"**

THAT PORTION OF LOTS 5, 6, 7 AND 8, BLOCK 2504 OF THE TACOMA LAND COMPANY'S FIRST ADDITION TO TACOMA, W.T., AS PER MAP THEREOF FILED FOR RECORD JULY 7TH, 1884, IN PIERCE COUNTY, WASHINGTON.

EXCEPT THE NORTHERLY 3 INCHES OF SAID LOT 5;

LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE;

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHERLY 3 INCHES OF SAID LOT 5;

THENCE SOUTH 07°20'04" EAST ALONG THE WEST LINE OF SAID BLOCK 2504 A DISTANCE OF 81.07 FEET TO THE TRUE POINT OF BEGINNING AND THE BEGINNING OF A NON-TANGENT CURVE FROM WHICH THE RADIUS POINT BEARS SOUTH 26°09'33" EAST A DISTANCE OF 1272.54 FEET;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 05°36'50" A DISTANCE OF 124.68 FEET TO THE EAST LINE OF SAID BLOCK 2504 AND THE END OF THIS LINE DESCRIPTION.

***EXCEPTING THEREFROM*** THAT PORTION CONVEYED TO THE CITY OF TACOMA BY DEED RECORDED UNDER AUDITOR'S FEE NUMBER 201403100133.

***ALSO EXCEPTING THEREFROM, TO BE RETAINED AS RIGHT OF WAY, ALL THAT PORTION DESCRIBED AS FOLLOWS:***

ALL THAT PORTION OF THE AFOREMENTIONED PARCEL 'A' LYING SOUTHEASTERLY OF THE FOLLOWING DESCRIBED LINE;

BEGINNING AT THE NORTHEAST CORNER OF THE NORTHERLY 3 INCHES OF SAID LOT 5, SAID POINT BEING A POINT OF TANGENCY WITH A 25.00 FOOT RADIUS CURVE TO THE RIGHT AND FROM WHICH THE CENTER BEARS SOUTH 82°40'30" WEST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE 41°45'36" AN ARC DISTANCE OF 18.22 FEET;

THENCE SOUTH 34°24'08" WEST A DISTANCE OF 24.18 FEET TO A POINT OF TANGENCY WITH A 30.00 FOOT RADIUS CURVE TO THE LEFT;

THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 40°56'49" A DISTANCE OF 21.44 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL 'A', SAID POINT BEING SOUTH 68°10'46" WEST ALONG A CHORD A DISTANCE OF 5.27 FEET FROM THE SOUTHEASTERLY CORNER OF SAID PARCEL 'A'.

ALL SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

(CONTAINING 195± SF OR APPROXIMATELY 0.004 AC)

*Rgva*

**Exhibit "B"**

General Map Depiction

