

After recording return to:

GRANTOR:

GRANTEE:

LEGAL:

ASSESSOR'S PARCEL NUMBERS:

Prior to signatures, this document shall be reviewed by the City Attorney as to form.

TRAIL EASEMENT AGREEMENT

THIS TRAIL EASEMENT AGREEMENT (this "**Easement Agreement**") is made as of _____, 2025 (the "**Effective Date**"), by and between Benaroya Capital Company, L.L.C. a Washington limited liability company ("**Developer**"), the South Hill Business and Technology Center Owner's Association, a Washington nonprofit organization ("**Association**") and The City of Puyallup, a Washington municipal corporation (the "**City**").

RECITALS

A. Developer is owner of the real property described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"), for which Developer is seeking a binding site plan approval from the City (City File No. PLBSP20230028) (the "**BSP**"). The Property is subject to those certain Covenants, Conditions and Restrictions and Reservation of Easements dated January 12, 2023 and recorded at file no. 202301120145, records of Pierce County, Washington (the "**CC&Rs**"). The CC&Rs are administered by the Association.

B. In connection with approval of the BSP, the City will require Developer to provide a public trail easement across a portion of the Property.

AGREEMENT

For in and in consideration of good and valuable consideration, receipt of which is acknowledged, the City and Developer agree as follows:

1. Trail Easement.

1.1. Grant of Trail Easement. Developer hereby grants, dedicates and conveys to the City, its successors and assigns, as a covenant running with the land, a non-exclusive easement (the “**Trail Easement**”) for the purposes described below, subject to the terms and conditions set forth herein, on, over, across and above the surface of that portion of the Property legally described on Exhibit B (the “**Easement Area**”).

1.2. Purposes. Subject to the conditions set forth herein, the Trail Easement is granted solely for pedestrian access.

1.3. Limitations on Public Access. Prior to completion of the Easement Area Improvements by the Developer as set forth in Section 2 below, access to the Easement Area shall be limited to Developer, and its agents, employees, consultants and contractors. Further, following completion of the Easement Area Improvements, the right of the general public to use Easement Area shall be limited as reasonably required for the safe exercise of Developer’s repair, reconstruction or redevelopment rights as provided in Subsection 1.5 below. After the Easement Area Improvements are completed by the Developer, and except when the Easement Area may be closed to public use as provided herein, the Easement Area will open to the general public during daylight hours, without charge, during reasonable and predictable hours, for a minimum of ten (10) hours each day of the year between October and April and twelve (12) hours each day of the year between May and September (“Public Access Hours”).

1.4. Use of the Easement Area. Use of the Easement Area by the general public during Public Access Hours shall at all times be limited to pedestrian passage, without right to access to any of the property bordering the Easement Area, and shall be subject to such reasonable rules and regulations as may be adopted by the Developer or by the Association (the “Trail Regulations”). In addition, the following activities are prohibited in the Easement Area during Public Access Hours: camping; pets off-leash; smoking; carrying handguns or weapons; violation of any law or regulation, including Trail Regulations; posting of signs or notices; possession of alcoholic beverages; urinating or defecating; use of amplified sound; maintaining a fire; damage or vandalism to any Easement Area Improvements or the Project; abusive or harassing behavior; creating excessive noise; driving a vehicle; possession of illegal drugs; sexual activities or misconduct; assault or fighting; and any other activity which may result in injury to persons or damage to property, or which unreasonably interferes with the enjoyment of the Easement Area by others or which obstructs access to the Easement Area or the Property (individually, “Prohibited Activity”, and collectively, the “Prohibited Activities”). Developer, on behalf of itself and the Association, reserves the right

to take such action as Developer or the Association deems necessary or advisable under the circumstances to prevent, respond to or terminate any Prohibited Activity, including without limitation the eviction of individuals from the Easement Area or the temporary closure of the Easement Area.

1.5. Developer's Reserved Use of the Easement Area. Developer reserves for itself and its successors (a) the use of the airspace in and above the Easement Area for the purpose of crane swing and for other purposes associated with the construction and operation of buildings and uses on the Property, and, further reserves for itself, its successors and the Association (b) the use of the surface and subsurface of the Easement Area as required for the construction, maintenance, repair, reconstruction and redevelopment of the Property. Partial or complete temporary closure of the Easement Area by the Developer or such successors may be reasonably required for Developer or successors to complete any work permitted under this Subsection 1.5 or by the Association for maintenance and/or repair required under Subsection 1.6 below. Such period of closure shall be limited to the period reasonably necessary to complete the required work.

1.6. Maintenance and Repair. Following completion of the Easement Area Improvements (defined below), the Association shall assume from Developer and provide, as a Common Expense under the CC&Rs, all maintenance and repair services for the Easement Area Improvements. The Easement Area and Easement Area Improvements shall be maintained in a clean, attractive and safe condition, substantially similar to the condition of the original installation, with allowance for reasonable wear and tear prior to replacement of the Easement Area Improvements. All repairs to and replacement of the Easement Area Improvements shall be conducted promptly and with materials of like kind and quality to the original. Following amendment of the CC&Rs to assume the obligations contained in this Subsection 1.6, Developer shall be released from all such obligations under this Easement Agreement.

1.7 Developer's Use of the Easement Area. Developer, occupants of the Project, and their respective agents and guests, have the same rights to use the Easement Area as the general public during Public Access Hours and may also use the Easement Area during hours when it is not open to the general public as described in Subsection 1.3 above.

1.8 No Construction by City in the Easement Area. Nothing herein shall authorize the City to undertake any construction or modification of the Easement Area or install any fixtures, landscaping or improvements in the Easement Area.

2. Easement Area Improvements; Casualty.

2.1. Easement Area Improvements. As a condition to the next building permit for a new building on the Property, Developer will complete certain improvements to the Easement Area ("Easement Area Improvements") as

generally described on Exhibit C attached hereto, at Developer's cost. The Easement Area Improvements shall be completed prior to issuance of a certificate of occupancy for such new building.

2.2 Casualty. In the event of material damage or other casualty to the Property, such that a material portion of the Property is rendered unusable, and Developer determines in its sole discretion that it does not intend to restore or reconstruct the Property as originally developed, this Easement Agreement shall terminate immediately upon notice thereof from Developer to the City.

3. Project Permitting Issues

3.1. No Build Reservation. The City's building code establishes certain minimum standards for fire protection, including requirements for fire resistance of building walls and for protection or prohibition of unprotected openings such as windows and doors, and minimum distances which buildings must be set back from property lines and other structures regulated by City Code as an alternative option (the "Fire Protection Standards"). Developer hereby reserves, for the benefit of the Property, a non-exclusive perpetual no-build area over the Easement Area. The No-Build Area reservation shall benefit the Property and shall be appurtenant thereto.

4. No Impairment and/or Commitment of City's Regulatory Discretion. Nothing in this Easement Agreement shall be interpreted to limit the exercise by the City or any other governmental agencies of their regulatory powers with respect to any of the land use approvals referenced herein in accordance with applicable law.

5. Force Majeure. Neither party hereto shall have any liability to the other for its failure to fulfill any of its performance obligations hereunder that are materially delayed, hampered, interrupted or interfered with or otherwise become impossible or impracticable by reason of any act of God, fire, earthquake, flood, explosion, strike, labor disturbance, civil commotion, act of government, any order, regulations, ruling or action of any labor union or association of artists or employees affecting the parties or the industry in which it is or they are engaged, any shortage of failure or delays in the delivery of materials, supplies, labor or equipment or any other cause (other than financial or market conditions) beyond the control of the parties. The performance of this Easement Agreement shall be suspended during the continuation of such condition and shall resume forthwith after the termination of such condition.

6. Enforcement. The public right of pedestrian access established hereunder shall also be subject to the limitations of any applicable rules or regulations adopted by the City, now and in the future; provided such rules or regulations shall not modify any terms of this Easement Agreement. The obligations of Developer under this Easement Agreement shall be enforceable exclusively by the City, and the City shall have, in addition to all available remedies, rights of access to the Easement Area for purposes of enforcing the rights of the public granted herein.

7. Defaults.

7.1. **Remedies.** If either party fails to perform its obligations when due under this Easement Agreement, such party shall be in default. The non-defaulting party shall have the right to all remedies normally available at law or in equity for such a default provided, however that a party shall be limited to the recovery of actual damages, each party hereby waives any claim for consequential damages that one party may have against the other. By way of illustration only and not by way of limitation, consequential damages shall include lost profits, lost business opportunities, interference with business or contractual expectancies, loss of equity in property, or any speculative or remote damages. The parties further acknowledge that failure to comply with the terms of this Easement Agreement would cause irreparable damage and money damages may not be sufficient. Therefore, both parties agree that in addition to any other remedies at law or in equity available for breach of this Easement Agreement, the non-defaulting party may seek specific performance or injunctive relief to prevent such damage or further damage.

7.2. **Notice and Cure Period.** In the event of breach or default under this Easement Agreement, no party shall exercise any of its remedies provided herein without first providing the defaulting party with written notice of the default and the opportunity to cure the default. The applicable cure period following the effective date of the default notice for any monetary default shall be ten (10) days. The cure period for non-monetary defaults shall be thirty (30) days provided that if the nature of the default is such that it cannot be reasonably cured within thirty (30) days, the cure period shall be extended for the time reasonably required to cure the default, so long as the defaulting party commences to cure within thirty (30) days after receipt of the default notice and prosecutes the cure to completion with due diligence.

7.3. **No Termination Upon Breach.** Notwithstanding any other provision herein, it is expressly agreed that no breach of this Easement Agreement shall entitle any party to cancel, rescind or otherwise terminate this Easement Agreement; provided, however, that this provision shall not limit or otherwise affect any other right or remedy which such party may have hereunder by reason of any breach of this Easement Agreement.

8. Notices. Notices and other communications under this Easement Agreement shall be in writing and shall be effective when received by personal delivery to the other party, or received via a national overnight delivery service such as FedEx, or via electronic mail upon electronic mail reply confirming receipt, in each case to the address set forth below, directed to the attention of the person identified. Either party may change the address to which notices may be given by giving notice as above provided.

Developer:

The City:

9. Complete Agreement. This Easement Agreement (including the Exhibits hereto) is the entire agreement of the parties concerning use of the Easement Area, and supersedes all prior or contemporaneous writings or discussions relating to the easements and other obligations provided for herein. This Easement Agreement may not be modified except in writing signed by both parties.

10. Successors and Assigns. The terms and provisions of this Easement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, provided that the creation and enforcement of the Trail Regulations and ongoing maintenance and repair obligations set forth in Subsection 1.6 for the completed Easement Improvements shall be assumed by the Association.

11. Consent of the City. Where the consent of the City is required or allowed under this Easement Agreement, the authority to grant such consent shall be vested in the City Manager.

12. Record Notice. This Easement Agreement shall be recorded with the Pierce County Recorder.

13. Attorneys' Fees. In the event of litigation between the parties hereto, declaratory or otherwise, in connection with this Easement Agreement, the prevailing party shall recover its costs and attorneys' fees actually incurred in such litigation, including for appeals, which shall be determined and fixed by the court as part of the judgment.

14. Applicable Law. This Easement Agreement shall be construed and interpreted under the laws of the State of Washington. The parties agree that venue of any action between the parties relating to this Easement Agreement shall be in Pierce County, Washington.

15. Time of the Essence. Time is of the essence of this Easement Agreement and the performance of all obligations hereunder.

16. Warranty and Representation of Authority. The parties each represent to the other that the person or persons executing this Easement Agreement have authority to do so and to bind the parties hereunder. All consents, permissions and approvals related to entry into this Easement Agreement, and the obligations hereunder, have been obtained.

17. Severability. Invalidation of any of the provisions contained in this Easement Agreement, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions thereof or the application thereof to any other person and the same shall remain in full force and effect.

18. Captions and Capitalized Terms. The captions preceding the text of each section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Easement Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Easement Agreement.

19. Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

20. Recreational Use. The parties acknowledge that the use of the Easement Area by the public as permitted herein is intended for the recreational use of the public, shall not be subject to a fee, and shall be subject to RCW 4.24.210.

Exhibit List

Exhibit A: Developer Property Legal Description

Exhibit B: Easement Area Legal Description

Exhibit C: Easement Area Improvements

Verify-Exhibit D: Visual Depiction

DATED this _____ day of _____, 2025.

Benaroya Capital Company L.L.C.,
a Washington limited liability
company

By: _____
Its: _____

THE CITY OF PUYALLUP, a
Washington municipal corporation

By: _____
Its: _____

**South Hill Business and
Technology Center Owner's
Association**, a Washington
nonprofit organization

By: _____
Its: _____


STATE OF _____)
 : ss.
COUNTY OF _____)

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

Dated this ____ day of _____, ____.

[Signature of Notary]

[Print Name of Notary]
Notary Public in and for the State of _____,
residing at _____.
My commission expires: _____.

STATE OF WASHINGTON)
 : ss.
COUNTY OF KING)

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

Dated this ____ day of _____, ____.

[Signature of Notary]

[Print Name of Notary]
Notary Public in and for the State of
Washington, residing at _____.
My commission expires: _____.

STATE OF _____)

: SS.

I certify that I know or have satisfactory evidence that _____ 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 the _____ of _____, **LLC**, a _____ limited liability company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, ____.

[Signature of Notary]

[Print Name of Notary]

Notary Public in and for the State of _____, residing at _____.

My commission expires: _____.

EXHIBIT A

Developer Property Legal Description

LOTS 1 AND 3 OF THE CITY OF PUYALLUP BOUNDARY LINE REVISION NUMBER P-21-0138,
UNDER AUDITOR'S FILE NUMBER 202203225003, RECORDS OF PIERCE COUNTY, WASHINGTON.

EXHIBIT B**Easement Area Legal Description**

A FIVE-FOOT-WIDE STRIP OVER, UNDER AND ACROSS LOT 1 OF THE CITY OF PUYALLUP BOUNDARY LINE REVISION NUMBER P-21-0138, UNDER AUDITOR'S FILE NUMBER 202203225003, RECORDS OF PIERCE COUNTY, WASHINGTON, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1 ON THE NORTHELY MARGIN OF 39TH AVENUE SOUTHEAST;
 THENCE ALONG THE WEST LINE OF SAID LOT 1 NORTH 00°00'24" EAST, 1580.03 FEET TO THE CENTER OF AN EXISTING GATE BEING THE **POINT OF BEGINNING** OF THE CENTERLINE OF SAID FIVE-FOOT-WIDE STRIP, HAVING 2.50 FEET ON EACH SIDE;
 THENCE SOUTH 82°06'32" EAST, A DISTANCE OF 2.76 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 10.00 FEET AND A CENTRAL ANGLE OF 14°48'52";
 THENCE EASTERLY ALONG THE ARC A DISTANCE OF 2.59 FEET TO A POINT OF REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 35.00 FEET AND A CENTRAL ANGLE OF 23°25'26";
 THENCE EASTERLY ALONG THE ARC, A DISTANCE OF 14.31 FEET;
 THENCE NORTH 89°16'53" EAST, A DISTANCE OF 2.12 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 175.00 FEET AND A CENTRAL ANGLE OF 09°05'36";
 THENCE EASTERLY ALONG THE ARC A DISTANCE OF 27.77 FEET;
 THENCE NORTH 80°11'17" EAST, A DISTANCE OF 3.97 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 23°54'17";
 THENCE EASTERLY ALONG THE ARC A DISTANCE OF 20.86 FEET;
 THENCE ALONG A LINE NON-TANGENT TO SAID CURVE, SOUTH 00°12'59" WEST, A DISTANCE OF 568.06 FEET;
 THENCE SOUTH 01°46'17" EAST, A DISTANCE OF 64.89 FEET TO THE POINT OF CURVE OF A NONTANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES NORTH 87°59'29" EAST, A RADIAL DISTANCE OF 377.50 FEET;
 THENCE SOUTHEASTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 50°05'32", A DISTANCE OF 330.04 FEET;
 THENCE ALONG A LINE NON-TANGENT TO SAID CURVE, SOUTH 51°16'18" EAST, A DISTANCE OF 52.52 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 356.50 FEET AND A CENTRAL ANGLE OF 10°14'53";
 THENCE SOUTHEASTERLY ALONG THE ARC A DISTANCE OF 63.76 FEET;
 THENCE SOUTH 41°01'25" EAST, A DISTANCE OF 32.39 FEET;
 THENCE NORTH 53°06'49" EAST, A DISTANCE OF 33.21 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 5.50 FEET AND A CENTRAL ANGLE OF 85°47'46";
 THENCE EASTERLY ALONG THE ARC A DISTANCE OF 8.24 FEET TO A POINT OF COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 202.50 FEET AND A CENTRAL ANGLE OF 72°28'48";
 THENCE SOUTHERLY ALONG THE ARC, A DISTANCE OF 256.17 FEET;
 THENCE ALONG A LINE NON-TANGENT TO SAID CURVE, SOUTH 34°44'04" WEST, A DISTANCE OF 65.45 FEET;

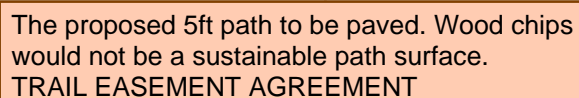
THENCE SOUTH 45°04'35" WEST, A DISTANCE OF 101.98 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 256.50 FEET AND A CENTRAL ANGLE OF 41°36'49";
THENCE SOUTHWESTERLY ALONG THE ARC A DISTANCE OF 186.29 FEET;
THENCE SOUTH 03°27'46" WEST, A DISTANCE OF 35.02 FEET TO SAID NORTHERLY MARGIN AND TERMINUS OF SAID CENTERLINE.

(CONTAINING 9,362± SF)

EXHIBIT C

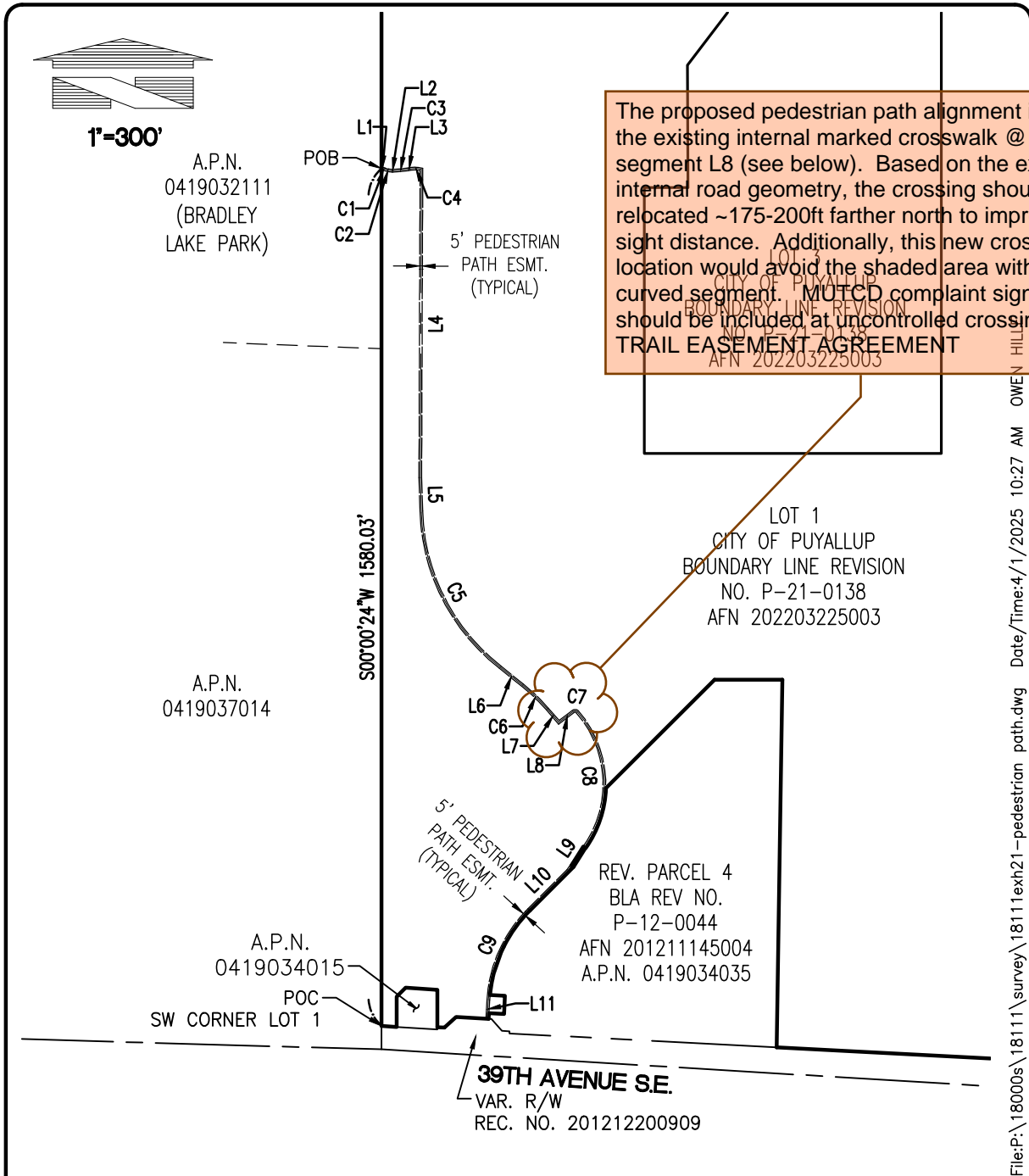
Easement Area Improvements

WHERE A CONCRETE SIDEWALK OR GRAVEL PATH DOES NOT EXIST, A 5-FOOT-WIDE WOOD CHIP SURFACE PEDESTRIAN PATH WILL BE CONSTRUCTED WITHIN THE DESIGNATED EASEMENT AREA.

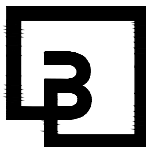


The proposed 5ft path to be paved. Wood chips would not be a sustainable path surface.
TRAIL EASEMENT AGREEMENT

Should this be Exhibit D (visual depiction)?



SCALE:
HORIZONTAL 1"=300' VERTICAL N/A



**Barghausen
Consulting Engineers, LLC.**
18215 72nd Avenue South
Kent, WA 98032
425.251.6222 barghausen.com

For:
**SOUTH HILL BUSINESS
& TECHNOLOGY CENTER**

Title:
**PEDESTRIAN PATH
EASEMENT**

JOB NUMBER

18111

SHEET

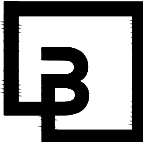
1 of 2

DESIGNED _____ DRAWN KMA _____ CHECKED _____ APPROVED _____ DATE 3/28/2025

Line Table		
Line #	Length	Direction
L1	2.76'	S82°06'32"E
L2	2.12'	N89°16'53"E
L3	3.97'	N80°11'17"E
L4	568.06'	S00°12'59"W
L5	64.89'	N01°46'17"W
L6	52.52'	N51°16'18"W
L7	32.39'	N41°01'25"W
L8	33.21'	N53°06'49"E
L9	65.45'	N34°44'04"E
L10	101.98'	S45°04'35"W
L11	35.02'	S03°27'46"W

Curve Table			
Curve #	Length	Delta	Radius
C1	2.59'	14°48'52"	10.00'
C2	14.31'	23°25'26"	35.00'
C3	27.77'	9°05'36"	175.00'
C4	20.86'	23°54'17"	50.00'
C5	330.04'	50°05'32"	377.50'
C6	63.76'	10°14'53"	356.50'
C7	8.24'	85°47'46"	5.50'
C8	256.17'	72°28'48"	202.50'
C9	186.29'	41°36'49"	256.50'

SCALE:
HORIZONTAL VERTICAL N/A



**Barghausen
Consulting Engineers, LLC.**
18215 72nd Avenue South
Kent, WA 98032
425.251.6222 barghausen.com

For:
**SOUTH HILL BUSINESS
& TECHNOLOGY CENTER**

Title:
**PEDESTRIAN PATH
EASEMENT**

JOB NUMBER
18111

SHEET
2 of 2

DESIGNED _____ DRAWN KMA _____ CHECKED _____ APPROVED _____ DATE 3/28/2025