



## Motion No. M2021-41

### Second Amendment to Condo Declaration with the University of Washington for U District Station Condominium as part of the Northgate Link Extension

Meeting:	Date:	Type of action:	Staff contact:
System Expansion Committee Board	07/08/2021 07/22/2021	Recommend to Board Final action	Ron Lewis, DECM Executive Director <b>Don Davis, Executive Project Director, Northgate Link Extension</b> <b>Kristin Hoffman, Light Rail Development Manager, Northgate Link</b>

#### Proposed action

Authorizes the chief executive officer to execute a second amendment to the Declaration of Covenants, Conditions, Restrictions and Reservations for U District Station Condominium with the University of Washington to accommodate the University's transit oriented development above U District Station as part of the Northgate Link Extension.

#### Key features summary

- In 2013 Sound Transit and the University of Washington created a 2-unit condominium at U District Station (UDS). Sound Transit owns the lower level "Transit Unit" where the station is built. The University owns the upper level "TOD Unit" and intends to construct a high rise office tower above the station.
- This action authorizes the CEO to execute an amendment to the Declaration of Covenants, Conditions, Restrictions, and Reservations for U District Station Condominium ("Condo Declaration") in preparation for construction of the University's TOD Project. The key amendments to the Condo Declaration are:
  - **Extension of Repurchase Option.** The Condo Declaration provides Sound Transit a one-time right to buy back the TOD Unit for fair market value if the University has not obtained permits within three years of Northgate Link opening. This Amendment would give the University three additional years to permit the TOD Project, by extending the date Sound Transit can exercise its repurchase option until the later of three years from Northgate Link opening or October 2, 2027.
  - **Sound Transit Oversight of TOD Construction.** The TOD Contractor and Sound Transit will coordinate during construction. The Amendment requires the TOD Unit contractor to submit its safety and security plans for Sound Transit's review and comment. Sound Transit has the right to participate in the contractor's weekly progress meetings with the University and may request access to the TOD Unit to observe and inspect the construction progress. Sound Transit may direct the suspension of the TOD work if Sound Transit reasonably determines the TOD construction poses a risk to the safety or security of the station or riders.

- **Waiver of Consequential Damages; Liquidated Damages.** Sound Transit and the University agree that neither party is liable to the other for any indirect, incidental, or consequential damages and neither party is required to cause their contractors or subcontractors to indemnify the other with respect to indirect, incidental, or consequential damages. In lieu of indirect, incidental, or consequential damages, the parties agree to pay a capped liquidated damages amount in the unlikely event construction of the TOD Project causes temporary closure of UDS or a problem at the station causes delay to the TOD construction. The liquidated damages provision will terminate for both parties when the TOD Unit has obtained its temporary certificate of occupancy.
- **Restoration of Structural Support.** The Condo Declaration provides each unit owner a right to perform repairs to the other unit at the other unit owner's expense if needed to protect and preserve the safety and functionality of the units. The unit owner must first provide notice to the other unit and allow that unit owner the opportunity to make the necessary repairs. This Amendment would impose on each unit owner an affirmative obligation to make needed repairs, in addition to the right of self-help already allowed by the Condo Declaration. In the event of a casualty or condemnation that damages any portion of the Transit Unit that provides structural support to the TOD Unit, Sound Transit agrees to repair and restore such portions of the Transit Unit necessary to provide the structural support to the TOD Unit agreed upon in the Declaration and described in the load limits map attached as an exhibit to the Declaration. The TOD Unit has a reciprocal obligation to restore TOD unit elements needed to protect the safety and functionality of the Transit Unit. In the event of damage, each unit owner agrees to remove glass and other debris to provide safe access to the station and the TOD unit.
- **Transfer of Rights and Obligations to Net Lessee.** Acknowledges that the University intends to ground lease the TOD Unit to a third party (a "Net Lessee") who will construct the TOD Project and lease most of the space back to the University. The Amendment allows for many of the rights and obligations of a unit owner to transfer to the Net Lessee during the term of the ground lease.
- **Condo Association Board of Directors.** Addresses when a net lessee or mortgagee may vote in lieu of a unit owner on matters before the condo association. Provides that only Sound Transit and the University as unit owners can vote to amend or terminate the condo declaration.

## Background

Northgate Link Extension is a 4.3 mile light rail extension with three new stations. Of the 4.3 miles, 3.5 miles are entirely underground with tunnels traveling northwest from the University of Washington Station under the University of Washington's main campus to an underground station in the U District (U District Station). The tunnels continue north under City of Seattle surface streets to an underground station in the Roosevelt neighborhood (Roosevelt Station). The tunnels proceed northward under surface streets and eventually underneath WSDOT right-of-way to the tunnel portal (Maple Leaf Portal) at 1<sup>st</sup> Ave NE and NE 94<sup>th</sup> Street. The track continues north first at grade and then elevated to the Northgate Station which is an elevated station. This last 0.8 miles of track is west of 1<sup>st</sup> Ave NE and east of Interstate 5.

In 2013, the Board approved a Property Exchange and Development Agreement for U District Station that conveyed certain property interests between Sound Transit and the University and established that Sound Transit would create a 2-unit condominium at U District Station (UDS). Sound Transit owns the lower level "Transit Unit" where the station is built. The University owns the "TOD Unit" above the station.

In 2015, the Board approved a Project Implementation Agreement that committed the University to reimburse Sound Transit's costs to design and construct the U District Station to accommodate the University's revised TOD concept for a building up to 240 feet above grade in accordance with design and development conditions including not-to-exceed structural loading criteria. The parties signed a First Amendment to the Condo Declaration to reflect the changes in the Project Implementation Agreement.

In 2020, the University selected a developer to build the TOD Unit. The University intends to enter into a long-term ground lease with the Developer, who will construct the office tower and then lease most of the office space back to the University. Earlier this year, Sound Transit administratively approved an agreement with the University to allow the University to make certain modifications to the ventilation plenums above the north and south headhouses in preparation for the TOD. Sound Transit and the University agreed to accomplish this work early in the development of the University's project because of the added expense and complexity of modifying the ventilation plenums after commencement of light rail operations.

Supporting TOD is important to Sound Transit as it increases ridership of our system. It also targets urban growth around transit facilities while leveraging transit investments to help produce regional and local benefits. To facilitate the development of the University's TOD project, Sound Transit and the University propose to execute an amendment to the Condo Declaration, the key features of which are described above.

The parties may record updated versions of certain exhibits to the Condo Declaration upon the completion of construction of the TOD Unit. The CEO may execute as necessary further amendments to the Condo Declaration that are within the authority delegated by the Board for real property agreements.

## **Fiscal information**

This action has no fiscal impact to the agency. Based on the second amendment of Declaration of Covenants, Conditions, Restrictions and Reservations for U District Station Condominium with the University of Washington, it includes Sound Transit's right to buy back the TOD unit for fair market value, if the University of Washington has not obtained permits within the later of three years after Northgate Link opening or October 2, 2027.

## **Disadvantaged and small business participation**

Not applicable to this action.

## **Public involvement**

The University will address as required any public involvement efforts related to the design and construction of its TOD project at U District Station.

## **Time constraints**

A one-month delay could delay the University of Washington advancing their project schedule for the TOD project.

## **Prior Board/Committee actions**

Resolution No. R2015-91: Authorized the chief executive officer to execute a Project Implementation Agreement with the University of Washington to reimburse Sound Transit in the amount of \$5,255,500 for design and construction of the U District Station to accommodate the University's revised transit-oriented development concept.

Motion No. M2012-93: Authorized the chief executive officer to execute a Property Exchange Agreement with the University of Washington for acquisition of property interests needed for Northgate Link Extension in exchange for airspace rights above U District Station to be developed for transit-oriented development.

Resolution No. R2012-20: Approved the chief executive officer's declaration of surplus real property acquired for the Northgate Link Extension project.

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**Environmental review** – KH 6/16/21

**Legal review** – JV 7/2/21



## Motion No. M2021-41

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute a second amendment to the Declaration of Covenants, Conditions, Restrictions and Reservations for U District Station Condominium with the University of Washington to accommodate the University's transit oriented development above U District Station as part of the Northgate Link Extension.

### Background

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- Condo Association Board of Directors. Addresses when a net lessee or mortgagee may vote in lieu of a unit owner on matters before the condo association. Provides that only Sound Transit and the University as unit owners can vote to amend or terminate the condo declaration.

**Motion**

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer is authorized to execute a second amendment to the Declaration of Covenants, Conditions, Restrictions and Reservations for U District Station Condominium with the University of Washington to accommodate the University’s transit oriented development above U District Station as part of the Northgate Link Extension.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on \_\_\_\_\_.

\_\_\_\_\_  
Kent Keel  
Board Chair

**Attest:**

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Kathryn Flores  
Board Administrator