

WHEN RECORDED, RETURN TO:

City of Everett
802 E. Mukilteo Blvd., Bldg. 100
Everett, WA 98203
Attn: Real Property Manager

| | |
|---|--|
| Document Title | Transit Platform Use Agreement and Easement |
| Reference Number of Related Document | N/A |
| Grantor | Brixton Everett, LLC, a Delaware limited liability company |
| Grantee | City of Everett, a municipal corporation of the State of Washington |
| Abbreviated Legal Description | Section 18 Township 28 Range 05 Quarter SE LOT 2A, 5, AND 10 OF AMENDED BINDING SITE PLAN FOR EVERETT MALL RECORDED UNDER 201302085004 Legal Description on Page 1. |
| Tax Parcel Numbers | 28051800401800, 28051800402500; 28051800402400 |

TRANSIT PLATFORM USE AGREEMENT AND EASEMENT

This Transit Platform Use Agreement and Easement (this “**Agreement**”) is made as of this 5th day of May, 2025 by Brixton Everett, LLC, a Delaware limited liability company (“**Grantor**”) and the City of Everett, a municipal corporation of the State of Washington (the “**City**” or “**Grantee**”) (each a “**Party**” and together the “**Parties**”).

RECITALS

A. Grantor is the owner of certain property located in the City of Everett Washington, which includes the lots legally described as follows:

Lot 2A and Lot 5, Amended Binding Site Plan for Everett Mall, recorded under Auditor's File No. 201302085004, records of Snohomish County, Washington, being a revision of Binding Site Plan recorded under Auditor's File No. 8711030415 and related survey under 8711035001, and of Revised Binding Site Plan recorded under Auditor's File No. 8806200279 and related survey 8806205012.

Situate in Snohomish County, Washington.

For the purposes of this Agreement, this property is referred to as the “**Grantor Property**.”

B. The Grantor Property and other properties are the location of Everett Mall (now known as “Everett Place”), a portion of which Grantor is redeveloping. As of the date of this Agreement, the City has an existing transit platform at Everett Mall for its Everett Transit operations, which must be relocated to accommodate Grantor’s redevelopment. The City’s existing license and use of the Current Transit Platform is governed by that certain License and Memorandum of Agreement Regarding the South Everett Transit Center at Everett Mall dated as of March 8, 2005 as amended by Amendment No. 1 dated August 29, 2005 (the “***Current Transit Platform License***”). The Current Transit Platform is located as shown on Exhibit A of the Current Transit Platform License.

C. The City is commencing construction in Spring 2025 of a new transit platform (such platform, the “***New Transit Platform***”) to be located on the Grantor Property in the approximate location shown on the attached Exhibit A attached hereto (the “***New Transit Platform Easement Area***”). The New Transit Platform Easement Area (including its adjacent parking spaces designated for Transit vehicle parking during service is approximately 49,030 square feet. The City’s investment in the New Transit Platform will be approximately \$2.5 million. The City and its engineers prepared a bid set of plans and specifications for the construction of the New Transit Platform. Grantor previously reviewed and approved these plans and specifications (the “***Approved Plans and Specifications***”). The City called for bids for the New Transit Platform and received bids on February 18, 2025.

D. The purpose of this Agreement is for Grantor to grant an easement to the City for the New Transit Platform and to set forth the Parties’ agreements as to the construction, maintenance, and long-term operation of New Transit Platform.

E. The Parties intend that upon the completion of installation of the New Transit Platform and relocation of its transit operations from the Current Transit Platform to the New Transit Platform, the Current Transit Platform License will automatically terminate and be of no further force or effect and will be superseded in all respects by this Agreement.

AGREEMENT

In consideration of the above recitals, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

- 1. Grant of Easement.** Grantor hereby grants to the City for the New Transit Platform a perpetual non-exclusive easement across, along, in, and upon the New Transit Platform Easement Area portion of the Grantor Property depicted on Exhibit A attached hereto, together with:

- A. the right of the City within the New Transit Platform Easement Area to construct, install, inspect, repair, operate, maintain, renew, and replace the New Transit Platform;
- B. the right of the City to reasonable ingress and egress solely across the Grantor Property portions of the Everett Place site from time to time for access to the New Transit Platform Easement Area for purposes of such construction, installation, inspection, repair, operation, maintenance, renewal, and replacement;
- C. the right of the City and the public to reasonable ingress and egress solely across the parking and roadway portions of the Grantor Property portions of the Everett Place site for public transit purposes to and from the New Transit Platform and S.E. Everett Mall Way along the Transit Preferred Path shown on Exhibit A, with Grantor at Grantor's cost providing necessary curb modifications as shown on Exhibit A and providing ongoing maintenance and repair of the Transit Preferred Path on Grantor's Property. If the Transit Preferred Path not on Grantor's Property becomes unusable by the City, as reasonably determined by the City, then Grantor at no cost to the City shall provide a new Transit Preferred Path reasonably acceptable to the City which traverses solely on property owned by Grantor (which may include the existing PUD Easement Area appurtenant to the Grantor Property), in which case the Parties shall amend this Agreement to include the new Transit Preferred Path;
- D. the right of the City to park public transit vehicles within five (5) parking spaces situated within the New Transit Platform Easement Area for Transit vehicle parking during service only but not for overnight parking or servicing of vehicles;
- E. the right of the City to temporarily stage or park buses in the New Transit Platform Easement Area, so long as the staging or parking does not disrupt parking lot traffic flow;
- F. the right of the City to create and enforce rules and regulations relating to public use by the public of the New Transit Platform Easement Area; and
- G. the right of the City to temporarily restrict and preclude use of the New Transit Platform Easement Area for maintenance as well as safety and emergencies.

The foregoing easement rights are collectively referred to in this Agreement as the "*Easement.*"

2. New Transit Platform Construction.

- A. Construction. The City will construct the New Transit Platform within the New Transit Platform Easement Area substantially in accordance with the Approved Plans and Specifications pursuant to a contract with a public works contractor that requires substantial completion no later than within six (6) months after the Effective Date of this Agreement. The City and Grantor will fully cooperate with each other to minimize interference with each other and all portions of the Grantor Property and all occupants thereof so that each other's contractors, operations and projects are not unreasonably disrupted or delayed. Grantor will also coordinate as necessary with all businesses using the parking on Grantor's Property to minimize impacts and interference with the City's construction of the New Transit Platform. In no event shall the City perform any construction staging or construction in any areas of the Grantor Property or any other portions of the Everett Place site other than within the construction staging area contained in the Approved Plans and Specifications. The City shall comply with all laws applicable to the City's construction activities related to comparable construction work including, without limitation, delineating construction staging areas, installing construction safety fencing and screening and safety signage.
- B. Uninterrupted Transit Operations. Until such time as the City gives written notice to Grantor that the New Transit Platform is substantially completed and ready for public and transit use, Grantor and its contractors and agents will not interfere with public and transit access to the Current Transit Platform and will not interfere with the operation of the Current Transit Platform. After such notice, the Current Transit Platform License and all rights of the City thereunder shall terminate and Grantor may proceed with the closing and demolition of the Current Transit Platform, at Grantor's cost.
- C. Grantor Contribution. Within twelve (12) months after the City completes the installation of the New Transit Platform, Grantor will pay the City \$200,000 as a contribution toward the City's costs in constructing the New Transit Platform.
- D. Amendment for Legal Description. After completion of the New Transit Platform, the City at the City's cost may survey the as-built New Transit Platform in order to develop a legal description of the New Transit Platform Easement Area. Grantor and the City will execute and record an amendment to this Agreement containing such legal description of the New Transit Platform Easement Area as built.

3. **Operation and Maintenance of New Transit Platform.**

- A. **Operation and Maintenance of New Transit Platform.** The New Transit Platform shall be the property of the City. Except as provided in Section 3.B below, the City will operate and maintain, repair and replace the New Transit Platform and all elements thereof in good and clean condition and comparable to the balance of improvements in the Everett Place project at the City's cost in a manner consistent with the City's transit system and in accordance with applicable law. Grantor shall have the right to clean and maintain the New Transit Platform and surrounding areas by removing debris, trash and other unwanted substances if the City fails to do so after ten (10) days' notice from Grantor, and the City shall reimburse Grantor within thirty (30) days of written invoice for any costs incurred by Grantor related to any such maintenance and clean-up.
- B. **Utilities.** The City will secure connections to the New Transit Platform at the City's cost for all water, sewer, electrical power, and data conduit. The City will pay for New Transit Platform separately metered water, sewer, and electrical usage directly to the providers of such services.

4. **Grantor Use of Grantor Property.** Grantor is prohibited from using of any portion of the New Transit Platform Easement Area or Grantor Property in a manner that interferes with or obstructs or endangers the usefulness or public use of the New Transit Platform or the Easement. Grantor reserves all other rights to use the New Transit Platform Easement Area and all other portions of the Grantor Property.

5. **Pre-Approval of Construction and Other Activities.**

- A. **Grantor Work.** Prior to any Grantor construction or any other activity that may be reasonably anticipated to affect the City's use of the New Transit Platform Easement Area or public or transit access to the New Transit Platform Easement Area, Grantor shall notify the City in writing and shall provide the City with a copy of the proposed activity's plans and specifications relevant to the New Transit Platform Easement Area for City review at least thirty (30) days prior to the start of the proposed activity.
- B. **City Work.** Prior to any City construction or any other activity related to the New Transit Platform Easement Area that may be reasonably anticipated to affect Grantor's use of Grantor Property, the City shall notify Grantor in writing and shall provide Grantor with a copy of the plans and specifications for the proposed activity for Grantor review at least thirty (30) days prior to the start of the proposed activity.

- C. Approval. A Party shall not start its proposed construction or other activity unless and until it has received the other Party's written approval therefor. This written review and approval will not be unreasonably withheld, conditioned or delayed. Review and approval under this Section 5 is only approval under this Agreement, is not replacement for required permits, and is not a representation or certification that the plans and specifications or the proposed activity complies with any applicable law, building code or other governmental rule or regulation.
6. Relocation. Grantor may, with no less than one-year prior written notice to the City, require the City to relocate the New Transit Platform to a new location on Grantor's Property. For such relocation to occur, (A) the location of the replacement New Transit Platform must be reasonably acceptable to the City; (B) Grantor must design, permit, and construct the replacement New Transit Platform at Grantor's sole cost; (C) the replacement New Transit Platform must be at least the size and quality of the existing New Transit Platform and must be constructed in accordance with plans and specifications approved in writing by the City Transit Director, which approval will not be unreasonably withheld; (D) the existing New Transit Platform must remain operational until the replacement New Transit Platform is constructed in accordance with the approved plans and specifications and is ready for public use; (E) demolition of the existing New Transit Platform shall be at Grantor's cost; and (F) upon completion of the replacement New Transit Platform in accordance with the approved plans and specifications, (i) Grantor will dedicate the replacement New Transit Platform to the City at no cost to the City, and (ii) Grantor will obtain a survey for a legal description of the area of the replacement New Transit Platform and the Parties will amend this Agreement to replace Exhibit A hereto with a new depiction of the New Transit Platform Easement Area and the new legal description for the New Transit Platform Easement Area as built.
7. Indemnity. Each Party (an "*Indemnifying Party*") releases, indemnifies and promises to defend and save harmless the other Party, its officers, employees and agents (an "*Indemnified Party*") from and against any and all liability, loss, damage, expense (including reasonable attorney's fees and costs), actions and claims for property damage or personal injury or death of person to the extent arising from the negligence or willful misconduct related to this Agreement by the Indemnifying Party or its officers, contractors, employees or agents or arising from breach of this Agreement by the Indemnifying Party or its officers, contractors, employees or agents. Each Party, as respects to the other Party only, specifically and expressly waives any immunity under Industrial Insurance. Title 51. RCW. and acknowledges that this waiver has been mutually negotiated by the Parties.

8. **Annual Easement Fee.** The City will pay an easement fee of one dollar (\$1.00) per year, payable within thirty (30) days after receiving an invoice from Grantor. The City's first payment will be within thirty (30) days after the recording of this Agreement, with the City paying twenty-five dollars (\$25.00) to prepay the annual easement fee payments for twenty-five (25) years.
9. **Insurance and Liens.**
- A. **Insurance.** Each Party shall maintain an insurance program appropriate for its operations and properties and liabilities. Grantor acknowledges that, as of the date of this Agreement, the City is a member of the Washington Transit Insurance Pool and maintains a self-insurance program in accordance with applicable law. City contractors using the Easement will be required to maintain insurance as set forth in the City's standard construction contract documents. Insurance requirements for the New Transit Platform contractor are as set forth in the Approved Plans and Specifications.
- B. Neither Party shall permit any lien or claim of preconstruction, construction, mechanics, laborers or materialmen to be filed against the property of the other Party, or any part thereof, for any work, labor or materials furnished, alleged to have been furnished or to be furnished. Notwithstanding the foregoing, if any such lien is so filed, within thirty (30) days after the date of the filing or recording of any such lien, the Party to which such lien is related shall cause the same to be paid and discharged of record, or, if the such Party contests the amount allegedly due or the right of the lien or to make its lien claim, such Party shall cause a bond for at least one-hundred-twenty-five percent (125%) of the amount of the disputed lien claim to be issued in favor of the other Party.
10. **Title.** The Grantor represents and warrants to the City that Grantor is lawfully seized and possessed of the Grantor Property; Grantor has a good and lawful right and power to execute this Agreement and to grant the Easement hereunder; and that Grantor will forever warrant and defend the title to the New Transit Platform Easement Area and the City's quiet possession thereof against any and all claims and demands of all persons whomsoever, so long as Grantor remains legal owner of the property on which Easement is granted.
11. **Assignment; Binding Effect.** This Agreement and the Easement hereunder and the conditions herein contained shall be covenants running with the land and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns, including any subsequent owners of the Grantor Property. The City may not transfer or assign this Agreement or the Easement hereunder without the prior written consent of the Grantor, except the City may transfer and assign this

Agreement and the Easement hereunder to another public agency for transit platform purposes without such consent effective upon written notice to Grantor.

12. **Miscellaneous.**

- A. **Applicable Law and Choice of Forum.** This Agreement shall be construed under and governed by the laws of the State of Washington. The parties agree that Snohomish County, in the State of Washington, shall be the proper forum for any action.
- B. **Recordation.** The City shall record this Agreement in the Official Records of Snohomish County, Washington (the “**Official Records**”) immediately following execution by the Parties. The City shall pay all recording costs necessary to record this Agreement, if any.
- C. **Notices.** All notices, consents, approvals or other communications required under the provisions of this Agreement shall be in writing and shall be deemed properly given if hand delivered, sent by a nationally recognized overnight courier, or sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor in interest, at the address most recently provided in writing.

If to the City:

City of Everett
802 E. Mukilteo Blvd., Bldg. 100
Everett, WA 98203
Attn: Real Property Manager
E-mail: realproperty@everettwa.gov

City of Everett
3201 Smith Ave., Suite 200.
Everett, WA 98201
Attn: Transit Director

If to Grantor:

Brixton Everett, LLC
c/o Brixton Capital
120 S. Sierra Ave
Solana Beach, CA 92075
Attn: Kimberly Masayko
Tel: (858) 240-4206
E-mail: kmasayko@brixtoncapital.com

- D. **Enforceability; Waiver.** A Party’s failure to enforce any provision hereof shall not constitute waiver thereof in any future instance. If any provision hereof is held to be unenforceable to any extent, such provision shall be enforced to the

maximum extent permitted by law and the remaining provisions shall continue in full force and effect.

- E. Modification; Amendment. This Agreement shall not be modified, amended, canceled, or terminated except by written agreement of both Parties recorded in the Official Records of Snohomish County, Washington.
- F. Authority. City represents that it has all authority necessary to operate the Transit Center and has full authority to enter into this Agreement. Each person signing this Agreement individually and personally warrants and represents that he or she has actual and express authority to bind the entity for whom he or she signs.
- G. Dispute Resolution. Mediation is a condition precedent to any lawsuit, except that a Party may serve and file a lawsuit before mediation if necessary for statute of limitation purposes. The Parties will share equally the costs of the mediator.
- H. Federal and State Laws and Guidelines. The City agrees to comply with all applicable State and FTA grant requirements, if any.
- I. Construction. Each Party acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms. Each Party acknowledges that the Agreement should not be strictly construed against one Party or the other, but interpreted reasonably and fairly so as to give effect to the manifest intentions of the Parties.
- J. Force Majeure. Each Party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such Party, including but not limited to failures caused by natural disasters (earthquakes, hurricanes, floods), wars, riots or other major upheaval, or performance failures of parties outside the control of the contracting party (*e.g.*, disruptions in service attributable to the service providing company or labor actions by employees of a common carrier); provided that, in order to be excused from delay or failure to perform, such party must act diligently to remedy the cause or effect of such delay or failure to the extent the party is able. In the event of such delays, the timetables shall be extended by as many calendar days as the delay caused by forces outside the reasonable control of the Parties.
- K. Complete Agreement. This Agreement contains the complete and integrated understanding and Agreement between the Parties and supersedes any understanding, agreement or negotiation, whether oral or written, not set forth herein.

- L. Relationship of Parties. The City and Grantor shall not be construed as joint venturers or general partners, and neither shall have the power to bind or obligate the other Party.
- M. No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the parties hereto. None of the rights or obligations of the Parties herein set forth is intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right whatsoever upon or for the benefit of any third party, except to the extent provided under the mortgage securing the Grantor Property or any other Grantor owned property within Everett Place. This Agreement does not create any legal duty by any of the Parties, except such duties between them as explicitly stated in the Agreement.
- N. Exhibits. The exhibits to this Agreement are incorporated into this Agreement. If at time of recording, the Snohomish County Auditor requires adjustments to the exhibits for format and readability, the Parties will make such adjustments as necessary for recording without need of formal amendment to this Agreement.
- O. Effective Date. When duly executed by both the City and Grantor, this Agreement shall be effective as of the date of last signature below (the “*Effective Date*”).

[Signatures on following pages.]

GRANTOR:

Brixton Everett, LLC,
a Delaware limited liability company

By: [Signature]
Name: Marc R. Bratten
Title: Authorized Signatory
Date: May 1, 2025

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

please see attached

On this day personally appeared before me _____, to me known to be the _____ of Brixton Everett, LLC, a Delaware limited liability company, the limited liability company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that s/he is authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said limited liability company.

GIVEN under my hand and official seal this _____ day of _____, 2025.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____.
My commission expires _____.

CALIFORNIA ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of San Diego)

On May 1, 2025, before me, Raeleine K. Nabors, Notary Public, personally appeared **Marc R. Brutten**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public Signature  (Notary Public Seal)

CITY:

City of Everett,
a Washington municipal corporation

By: _____

Cassie Franklin, Mayor

Date: May 5, 2025

ATTEST

Mariya Nishimura
Office of the City Clerk

Office of the City Attorney
APPROVED AS TO FORM
David C. Hall, City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this day personally appeared before me Cassie Franklin, to me known to be the Mayor of the City of Everett, the municipal corporation of the State of Washington that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument and that the seal affixed, if any, is the corporate seal of said municipal corporation.

GIVEN under my hand and official seal this 5th day of May, 2025.



Deb Williams
NOTARY PUBLIC in and for the
State of Washington, residing
at Everett, WA
My commission expires 10.27.27.

[illegible]

CONSENT OF LENDER

Western Alliance Bank, an Arizona corporation ("**Lender**"), is the beneficiary of that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated September 8, 2023 executed by BRIXTON EVERETT, LLC, a Delaware limited liability company, as grantor, recorded under Instrument No. 202309110148 in the official records of Snohomish County, Washington (the "**Deed of Trust**"), as a lien on the property described therein. For and on behalf of itself and its successors and assigns, Lender hereby consents to and approves the foregoing Transit Platform Use Agreement and Easement (the "**Agreement**") and consents to and approves an amendment to the Agreement as described in Section 2.D of the foregoing Agreement, and agrees that the lien of the Deed of Trust is subject and subordinate to such Agreement, as it may be so amended.

Dated as of the 1st day of May, 2025.

Western Alliance Bank,
an Arizona corporation

By: Kelly A. Blakeslee
Name: Kelly A. Blakeslee
Title: Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Washington _____)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Washington that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

please see attached.

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of

San Diego

On

May 1, 2025

Date

before me,

Alexandra Lynn Nieland, Notary Public

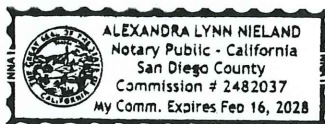
Here Insert Name and Title of the Officer

personally appeared

Kelly Anne Blakeslee

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Handwritten Signature]

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____