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PIERCE COUNTY, WASHINGTON

*When Recorded Return To:*

City of Tacoma,  
Public Works Department  
Real Property Services  
747 Market Street, Room 737  
Tacoma WA 98402-3701

*Document Title:* STREET OCCUPANCY PERMIT  
*Permit Number:* SOP250  
*Grantor:* CITY OF TACOMA  
*Grantee:* 2358 – 2372 SOUTH YAKIMA AVENUE, LLC  
*Abbrev. Legal:* NE QUARTER OF SECTION 8, TOWNSHIP 20 NORTH, RANGE 03  
EAST, W.M.  
*Parcel Number:* PORTION OF PARCELS 032008-100-8,  
202416-001-0, 202416-002-2, 202416-003-2, 202416-006-1 &  
202416-007-1

**STREET OCCUPANCY PERMIT**

**2358 – 2372 SOUTH YAKIMA AVENUE, LLC –Soil Nails**

THIS PERMIT, made and entered into this 20<sup>th</sup> day of January, 2009, by and between the **CITY OF TACOMA**, hereinafter called the "City", and **2358-2372 SOUTH YAKIMA AVENUE, LLC its successors or assigns**, hereinafter called the "Permittee."

**WITNESSETH:**

**WHEREAS** the City, under Chapter 9.08, Tacoma Municipal Code, may grant the use of street right of way to owners and occupants of abutting real property, and

**WHEREAS** the Permittee owns or occupies the real property commonly known as 2358-2372 South Yakima Avenue, more particularly described as follows:

Parcel A:

Commencing at the Northeasterly corner of Block 2417, Map of P.H. Lewis' Addition to the City of Tacoma, according to the Plat thereof recorded in Book 1 of Plats at Page 38, in the Northeast Quarter of Section 8, Township 20 North, Range 3 East of the W.M.; thence on an extension Northeasterly of the Northerly line of said Block 2417, 40 feet to the True Point of Beginning; thence continuing on said extended line of said Block, 120 feet to the Westerly line of South Yakima Avenue; thence Northerly, along said Westerly line of South Yakima Avenue, a distance of 50 feet; thence Southwesterly on a line parallel to the Northeasterly extension of the Northerly line of said Block 2417, 120 feet; thence Southeasterly 50 feet to the True Point of Beginning.

For reference only, not for re-sale.

Parcel B:

Lots 1 thru 12, inclusive, Block 2416, Map of P.H. Lewis' Addition to the City of Tacoma, according to the Plat thereof recorded in Book 1 of Plats at Page 37, records of Pierce County Auditor, and Lots 19 thru 26, inclusive, Block 2316, Reeds Addition to New Tacoma, W.T., according to the Plat thereof recorded in Volume 1 of Plats at Page 58, records of Pierce County, Washington.

TOGETHER WITH that portion of the Northeast Quarter of Section 8, Township 20 North, Range 3 East of the W.M., which lies North of the North line of said Map of P.H. Lewis' Addition to the City of Tacoma, and South of the North line of Lot 1, Block 2416, in said Addition extended Eastward, and West of the West line of Yakima Avenue.

All situate in the City of Tacoma, County of Pierce, State of Washington.

**WHEREAS** the Permittee desires to occupy a portion of the abutting right of ways of South 25<sup>th</sup> Street and Yakima Court lying adjacent to and abutting the above described property, as depicted in Exhibit "A", attached hereto and by this reference incorporated herein;

**NOW THEREFORE**, in consideration of the covenants and agreements of the parties hereto hereinafter set forth, the City does hereby grant unto the Permittee a Street Occupancy Permit on that portion of South 25<sup>th</sup> Street and Yakima Court, above described, subject to and upon the following terms, covenants and conditions, to wit:

1. **USE, MAINTENANCE AND OPERATION OF THE PERMIT AREA.** The permit area is to be used for temporary soil nails that are to be abandoned in place, as depicted in Exhibit "A".
2. **CONDITIONS OF USE.**
  - a. **Plans Approval.** All work performed on or under the rights of way of South 25<sup>th</sup> Street and Yakima Court by the Permittee, its successors and assigns, shall be in accordance with detailed plans and specifications prepared by Permittee and approved by the Public Works Department.
  - b. **Labor and Materials.** All labor to be performed and material to be furnished in the operations of the Permittee hereunder shall be at the sole cost and expense of Permittee and the City shall not be chargeable with or liable for any part thereof. The Permittee shall protect and defend the City's property against liens of every character arising from Permittee's operations thereon.
  - c. **Utilities.** Permittee, its successors and assigns, will be responsible for establishing the location and protection of any and all utilities located within the permit area and is responsible for notifying private utility agencies of proposed soil nail locations and coordinating monitoring requirements. The soil nails shall never be allowed to prevent the under-grounding of public utilities.

All soil nails shall maintain a minimum horizontal separation of 10-feet from the existing public sanitary and/or storm sewer located within Yakima Court. The public sanitary sewer shall be TV inspected prior to and after the soil nails are installed. The TV inspection shall be performed by City maintenance crews through the work order process directed by the Public Works Construction Division. Any damage to the City's sanitary sewer main resulting from the installation of the soil nails shall be repaired at the developer's expense.

- d. **Removal, Relocation or Adjustment.** If the City of Tacoma directs the reasonable removal, relocation or adjustment of any or all of the soil nails from the permit area, such action will be taken by Permittee in a timely manner and at no cost to the City of Tacoma.

Public Works Construction Division has directed that the first row of soil nails placed in the west wall elevation between 211.0 to 211.5 feet be removed prior to the completion of the foundation wall.

- e. **Monitoring Program.** Based on the monitoring requirements established by specific City division(s), the Permittee shall submit a monitoring plan for review and approval by the City. Any utilities or existing right-of-way improvements that may be affected by differential settlements during or after wall construction must be monitored prior to, during and after construction. The monitoring program must be specifically designed by a geotechnical engineer in cooperation with the Public Works Department and other utility owners. Monitoring data shall be collected and reported to the City of Tacoma building inspector and division representative a minimum of once a week.

3. **SPECIAL CONDITIONS.**

- a. Drainage for soil nails shall not discharge into the proposed building footing drains.
- b. Soil nails shall maintain a minimum of 3 foot separation from the bottom of the nail to the top of the public utility that it is crossing, consistent with the crossing separation table provided by Permittee.
- c. Be Advised, in connection with off-site street improvements as required under Work Order #60000021240, additional storm drainage improvements may be required. To determine specific drainage requirements, contact City of Tacoma's Environmental Services Department.
- d. Permittee shall at all times keep minimum clearances from existing electrical services as per Tacoma Power Standards. Questions regard such standards shall be directed to Tacoma Power, New Services Department.

4. **TERM.** Subject to paragraph 11, the permit shall remain in effect until such time as the soil nails are removed from City right-of-way. Said term shall commence upon the above date.

5. **PERMIT FEE.** This occupancy is subsurface and subject to a one-time fee of \$700.00 per project location by City Council Resolution 27451. The annual renewal fee is set at \$120.00. The City of Tacoma reserves the right to adjust the fee rate to reflect an updated rate schedule as set by City Council Resolution or Ordinance.

6. **INDEMNIFICATION.** The Permittee, for and on behalf of themselves, their heirs, executors, administrators, successors, assigns, lessees, sub-lessees, tenants and sub-tenants, do, by these presents, hereby covenant and agree to forever hold and save the City of Tacoma free and harmless from any and all claims, actions or damages of every kind and description, including, but not limited to, additional costs for excavation for utilities in the right of way, which may accrue to, or be suffered by, any person by reason of the use or occupation of the above described public place, or of the construction, existence, maintenance or use of the soil nails.

7. **LIABILITY INSURANCE.** The Permittee shall maintain liability insurance policies that shall name the City as an additional insured and, as a minimum, provide coverage in substance and in amount as specified in Title 9.08 of the Official Code of the City of Tacoma (or any amendments thereto) pertaining to street occupancies. It is to be understood and agreed that the obligation of Permittee to hold harmless the City from claims for damages arising out of the use or operations related to the permit shall not be limited to the amount of insurance provided by the Permittee. The insurance policy shall further contain a clause obligating the issuing company to give notice to the Risk Manager of the City at least, but no less than, thirty (30) days before the cancellation of the policy. This requirement is waived for the owner of a personal dwelling; the State; the County, or other governmental body, board, or authority that is self-insured; provided further, however, that this waiver shall not be applicable to any contractor employed by any of them. This waiver does not waive liability, only the insurance requirement. Each governmental entity or authority shall file either an insurance certificate or a letter of self-insurance.

This Permit is conditioned upon Permittee's maintaining these minimal insurance requirements and said Permit shall not become effective until the City has approved Permittee's insurance. If the insurance lapses or terminates, this Permit is automatically cancelled and Permittee's rights hereunder are terminated. Evidence of self-insurance in sufficient amounts may be substituted by the Permittee for said certificates of insurance.

8. **TAXES.** The Permittee agrees to pay any and all taxes levied or imposed upon or with respect to the permit area, or any interest therein, including but not limited to leasehold excise taxes as may be payable under RCW Chapter 82.29 as existing or as amended.

9. **NONWAIVER OF DEFAULTS.** The Waiver by the City of any breach by Permittee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same nor may any condition of this agreement be waived, except by the written consent of the City, and forbearance or indulgence by the City in covenant or condition to be performed by the Permittee to which the same may apply, and until complete performance

by the Permittee of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this permit or by law, despite said forbearance or indulgence.

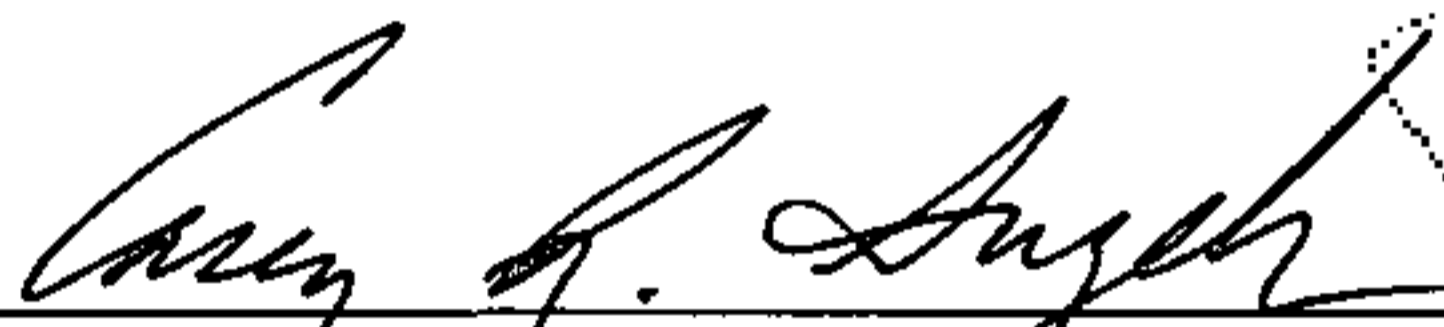
10. **COVENANT RUNNING WITH THE LAND.** The Permittee agrees that this permit and indemnity agreement is and shall be deemed to be a covenant attaching to and running with the above described real estate,

11. **RIGHT TO TERMINATE.** This permit is wholly of a temporary nature and vests no permanent right whatsoever. Notwithstanding any other provision herein to the contrary, the City reserves and shall have the right to terminate this permit at any time upon thirty (30) days written notice to the Permittee, if the City determines that such termination is necessary to allow for such public or municipal uses of the permit area as may be in the best interests of the City of Tacoma or the general public. This permit may be terminated without such notice if the permitted use becomes dangerous, or any structures related to the use become insecure or unsafe, or if such structures are not constructed, maintained or used in accordance with this agreement or Chapter 9.08 of the Municipal Code of Tacoma.

**IN WITNESS WHEREOF** the parties hereto have executed this document as of the day and year first written above.

**ACCEPTED** subject to said Terms and Conditions:

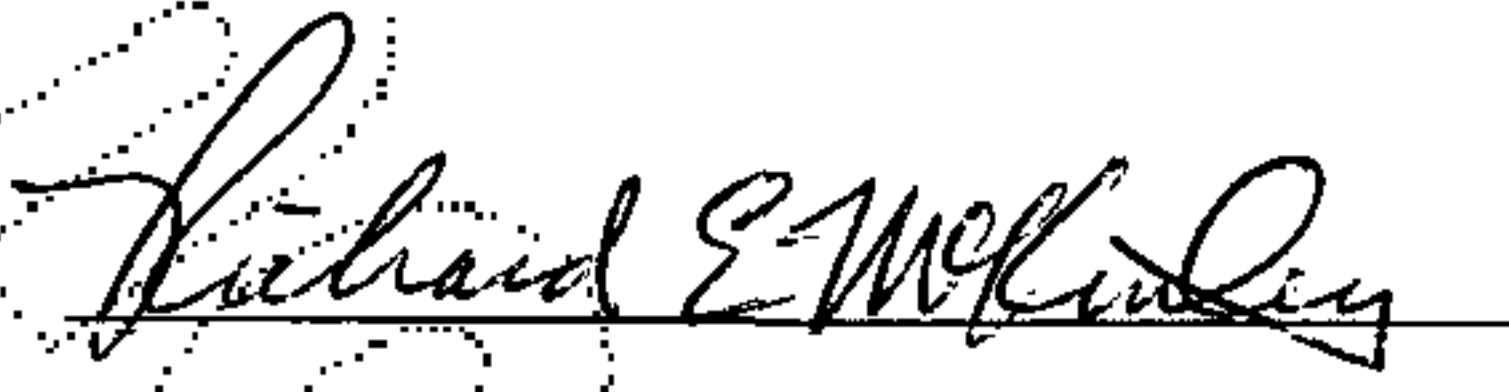
**Metropolitan Real Estate Development, LLC, Managing Member of 2358-2372 SOUTH YAKIMA AVENUE, LLC**

By:   
Casey Ingels, Member of Metropolitan Real Estate Development, LLC

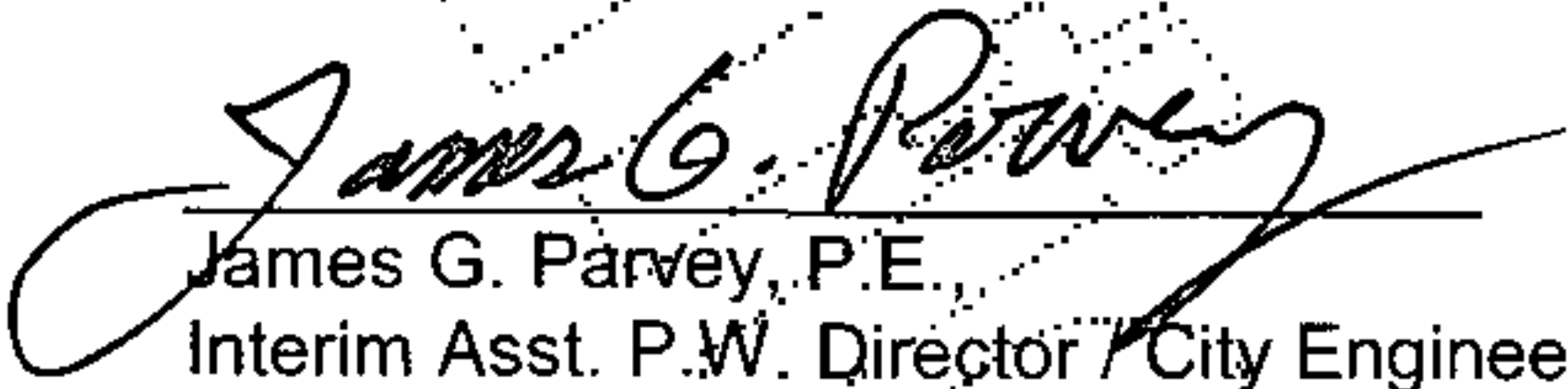
By:   
Gwendolyn Ingels, Member of Metropolitan Real Estate Development, LLC



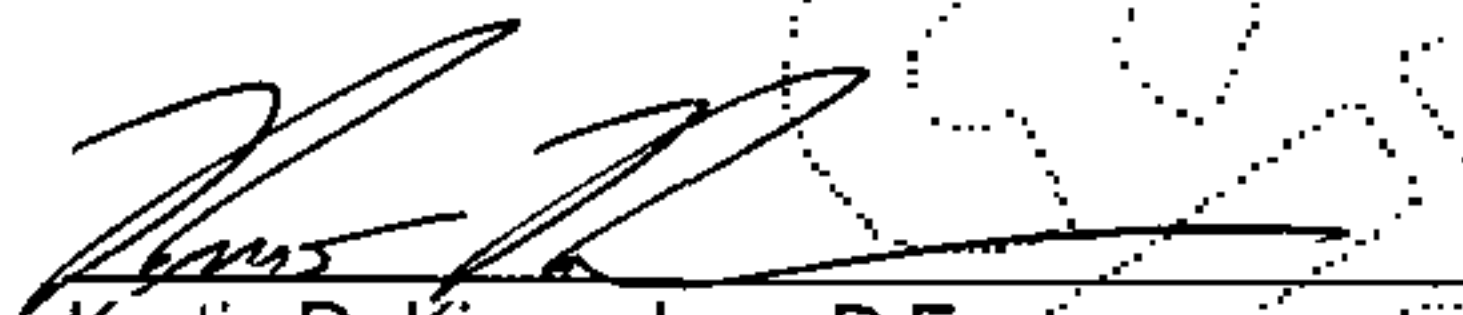
CITY OF TACOMA



Richard E. McKinley  
Public Works Director



James G. Parvey, P.E.  
Interim Asst. P.W. Director / City Engineer



Kurtis D. Kingsolver, P.E.  
Engineering Division Manager



Jeffrey A. Jenkins,  
Facilities Division Manager



Debbie L. Dahlstrom,  
Risk Manager

Approved as to form:



Assistant City Attorney

For reference only, not for re-sale.

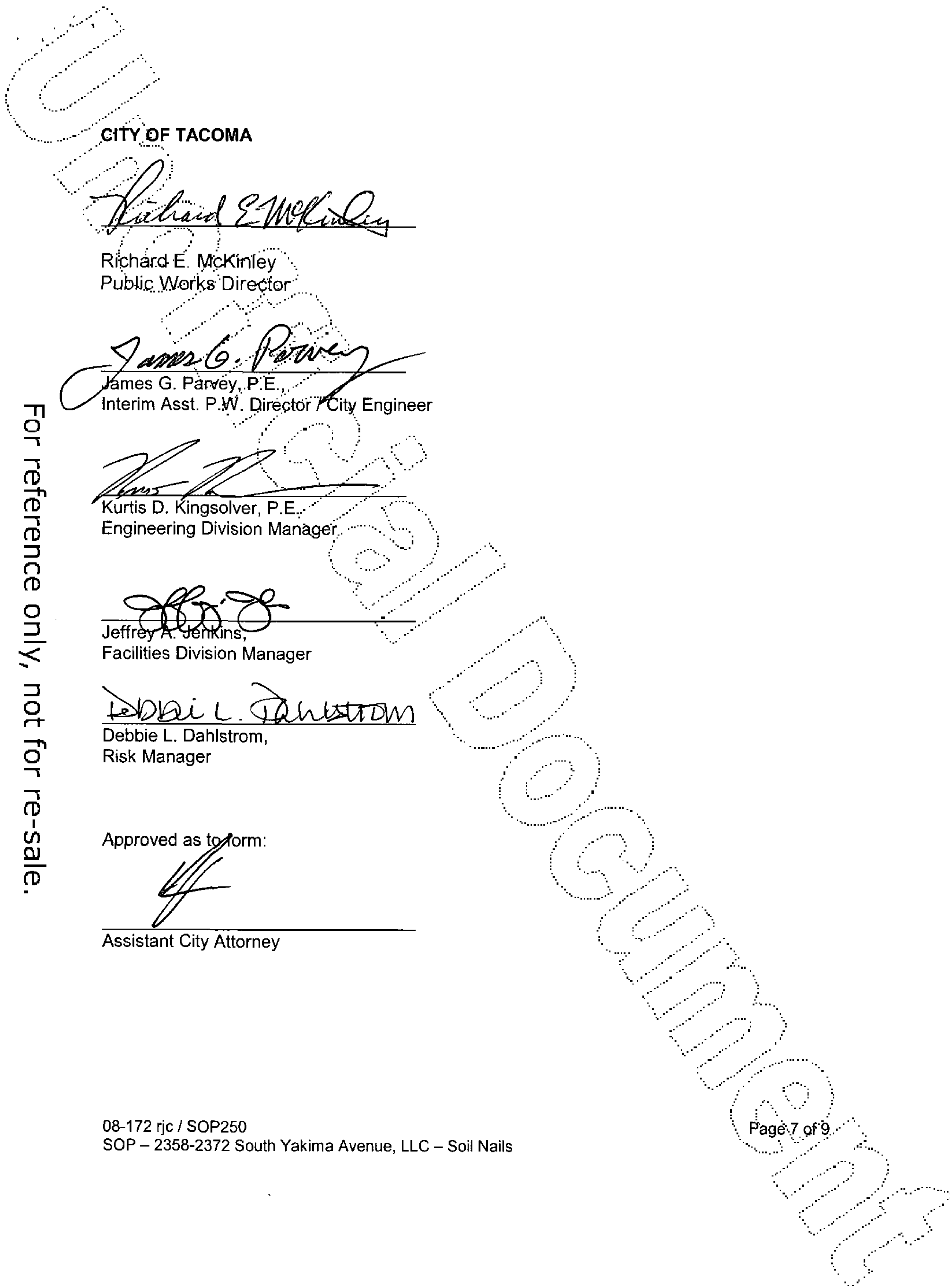


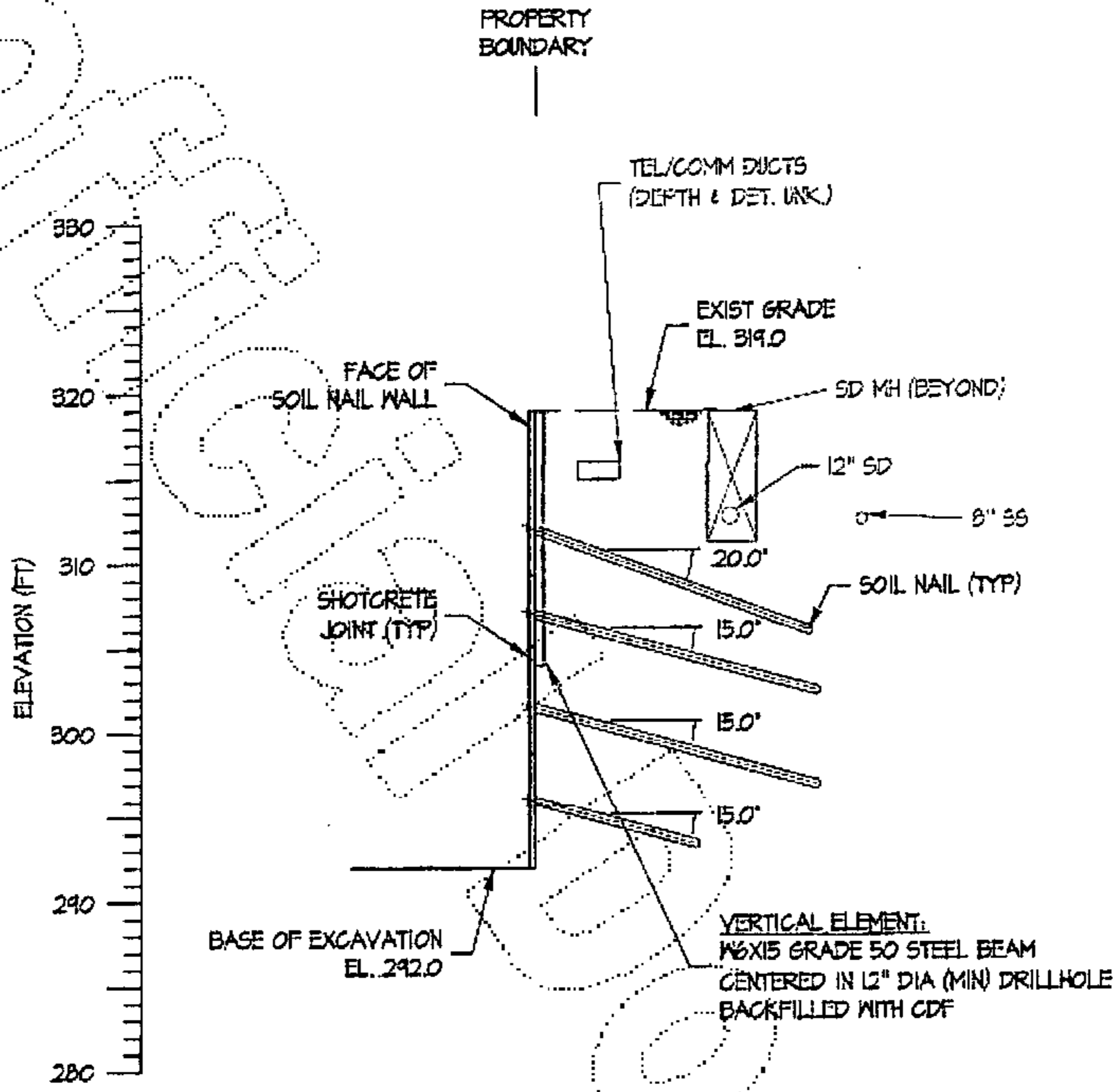
EXHIBIT A  
TO STREET OCCUPANCY PERMIT  
PAGE 1 – VICINITY with SITE DETAIL



For reference only, not for re-sale.



EXHIBIT A  
 TO STREET OCCUPANCY PERMIT  
 PAGE 2 – WEST SHORING WALL – CROSS SECTION



VERTICAL ELEMENT:  
 W6X15 GRADE 50 STEEL BEAM  
 CENTERED IN 12" DIA (MIN) DRILLHOLE  
 BACKFILLED WITH CDF



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