

#3

Beverly Barnett  
SDOT Burkheimer Family Limited Liability Company Alley Vacation ORD  
May 28, 2013  
Version #3

**CITY OF SEATTLE**  
**ORDINANCE** \_\_\_\_\_  
COUNCIL BILL 117883

AN ORDINANCE vacating the south 240 feet of the alley adjacent to Lots 4-11 in Block 33, D.T. Denny's Home Addition to the City of Seattle, on the petition of the Burkheimer Family Limited Liability Company, a Washington limited liability company; and accepting a Property Use and Development Agreement as reflected in Clerk File 309868.

WHEREAS, Burkheimer Family Limited Liability Company (Petitioner) filed a petition to vacate the south 240 feet of the alley adjacent to Lots 4-11 in Block 33, D.T. Denny's Home Addition to the City of Seattle; and

WHEREAS, following a September 14, 2010 public hearing on the petition, the Seattle City Council (City Council) conditionally granted the petition subject to conditions that have now been met; and

WHEREAS, after the petition was filed, the development property was sold by the Petitioner to 100 Republican LLC, who in turn sold the property to Essex Queen Anne, LLC, the developer and current property owner (Developer); and

WHEREAS, a Property Use and Development Agreement recorded with the King County Recorder's Office commits the Developer and their successors to fulfill ongoing public-benefit obligations required as a result of the street vacation; and

WHEREAS, to appropriately compensate the City of Seattle for the vacated property, the Developer conveyed to the City a deed for alley purposes recorded under King County Recording Number 20110407000348 that permits the portion of the alley remaining after the vacation to connect to a public street; and

WHEREAS, the Deed for Alley Purposes was subsequently accepted by Ordinance 124141 that was passed on March 18, 2013; and

WHEREAS, consistent with Section 35.79.030 RCW and Seattle Municipal Code (SMC) Chapter 15.62, the Developer compensated the City for the full appraised value of the property by granting to the City the deed for alley purposes as allowed by SMC 15.62.090 B;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

1           **Section 1.** The real property described below is vacated:

2           The portion of the alley adjacent to Lots 4-11, Block 33, D. T. Denny's  
3           Home Addition to the City of Seattle, Volume 3 of Plats, page 115, King  
4           County, Washington.

5           **Section 2.** The Property Use and Development Agreement, King County Recording  
6           Number 20130425000988, attached as Attachment A, is accepted.

7           **Section 3.** This ordinance shall take effect and be in force 30 days after its approval by  
8           the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
9           shall take effect as provided by Seattle Municipal Code Section 1.04.020.

1 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2013, and  
2 signed by me in open session in authentication of its passage this  
3 \_\_\_\_ day of \_\_\_\_\_, 2013.

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 President \_\_\_\_\_ of the City Council

7  
8 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2013.

9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 Michael McGinn, Mayor

12  
13 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2013.

14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 Monica Martinez Simmons, City Clerk

17 (Seal)

18  
19 Attachment:  
20 Attachment A: Property Use and Development Agreement

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28



20130425000988

MCCULLOUGH HIL AG-RER 81.00  
PAGE-001 OF 010  
04/25/2013 13:31  
KING COUNTY, WA

**AFTER RECORDING RETURN DOCUMENT TO:**

Courtney A. Kaylor  
McCullough Hill Leary, PS  
701 Fifth Avenue, Suite 7220  
Seattle, WA 98104

**PROPERTY USE AND DEVELOPMENT AGREEMENT**

Grantors:	1) <u>ESSEX QUEEN ANNE, LLC, a</u>	2) _____
	<u>Washington Limited Liability</u>	_____
	<u>Company</u>	_____
	<input type="checkbox"/> Additional on page _____	_____
Grantee:	1) <u>The City of Seattle</u>	2) _____
	<input type="checkbox"/> Additional on page _____	_____
Legal Description (abbreviated):	<u>Lots 3-11, Block 33, D.T. Denny's Home Addition to the City of</u>	
	<u>Seattle, King County, WA</u>	
	<input type="checkbox"/> Additional on: <u>EXHIBIT A</u>	_____
Assessor's Tax Parcel ID #:	<u>198820-0190; 198820-0225</u>	
Reference Nos. of Documents Released or Assigned:	<u>N/A</u>	

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT ("AGREEMENT") is executed this 22 day of April, 2013, in favor of the CITY OF SEATTLE, a municipal corporation of the State of Washington (the "City") by ESSEX QUEEN ANNE, LLC, a Washington limited liability company, owner of the within described property (the "Owner").

**RECITALS**

WHEREAS, the Owner is vested in fee simple title and has a substantial beneficial interest in the real property located in King County, Washington, described as follows (the "Property"):

Lots 3 through 11, Block 33, D.T. Denny's Home Addition to the City of Seattle, according to the plat thereof recorded in Volume 3 of Plats, Page 115, in King County, Washington.

and

WHEREAS, the Owner has developed the Property with a new mixed-use building (the "Development"); and

WHEREAS, in connection with the Development, a petition was filed in 2009 (Clerk File No. 309868) pursuant to RCW Ch. 35.79 and Seattle Municipal Code Chapter 15.62 by the Owner's predecessor in interest to vacate a portion of the alley in Block 33, D.T. Denny's Home Addition to the City of Seattle; and

WHEREAS, the Seattle City Council granted preliminary approval of the vacation subject to conditions, including the condition that a pedestrian plaza of approximately 2,080 square feet ("Plaza Area") that is depicted on Exhibit A and legally described on Exhibit B, shall be developed at the corner of Warren Avenue North and Republican Street; and

WHEREAS, the Owner now seeks final vacation of a portion of the alley in Block 33, D.T. Denny's Home Addition to the City of Seattle;

NOW, THEREFORE, the Owner covenants, bargains, and agrees on behalf of itself, its successors, and assigns as follows:

Section 1. The Plaza Area shall not be developed with buildings at grade level, and shall be developed with a plaza including features designed to welcome and engage the public that may include art, special paving treatment, street furniture or seat walls, way finding signage, or pedestrian level lighting. The Plaza Area shall be open to the public to pass through or use during daylight hours regardless of whether the public's use is associated with the Development. Public use of the Plaza Area is, however, subject to the conditions contained in this Agreement.

The Owner shall provide signage in the Plaza Area that is visible to the public and indicates the Plaza Area is open for public use subject to the terms of this Agreement.

The Plaza Area does not include: below-grade or subsurface areas, areas that are occupied by the subsurface parking garage for the Development, or portions of structures that may extend over the ground surface of the Plaza Area; provided the portions of structures located over the Plaza Area do not restrict the public's use of the Plaza Area.

The Owner reserves the right to use the Plaza Area for any purposes not inconsistent with the terms of this Agreement. The areas identified as "Restricted Public Use Areas" on Exhibit A may be dedicated from time to time by the Owner, through leases or other written instrument to building tenants, as areas for outdoor

seating for eating or drinking establishments located in the Development. In such cases, access to these areas shall be limited to use by patrons of the eating or drinking establishments.

Section 2. The Plaza Area currently has and shall continue to include the following public amenities: (a) private art; (b) landscaped planters; (c) concrete seatwalls, (d) pedestrian level lighting and (e) special paving. The Owner shall keep all amenities in good repair at all times. Amenities initially installed include: (a) one private art piece by Austin J. Smith; (b) two landscaped planters with a total area of approximately 200 square feet; (c) two concrete seatwalls, each approximately 14 feet 6 inches in length; (d) concrete pedestal pavers; (e) pedestrian-level lighting including LED lighting beneath the seatwall bench and uplighting of the art piece.

After initially installing these amenities, the amount or types of amenities may be modified by the Owner after receiving the written consent of the Director of the Department of Transportation; provided, the quality of the amenities shall not be diminished and the modified amenities shall be designed to continue to activate the Plaza Area with public uses and pedestrian activity.

Section 3. The Owner shall have the right to temporarily close or obstruct the Plaza Area for: (1) construction; (2) maintenance and repair; (3) temporary use for private functions directly related to the Development or the Owners; (4) the maintenance of security for the Development or persons using the Development; or (5) other circumstances beyond the Owner's control.

Section 4. The Owner may adopt reasonable rules and regulations regarding the use of and access to the Plaza Area as are necessary to ensure the security of the users of the Plaza Area and the Development. The rules and regulations shall be consistent with the terms of this Agreement and shall be posted in several visible locations in the Plaza Area.

Section 5. The Owner and the City through its Parks Department, Department of Neighborhoods, or other City department, may coordinate programming of community and public events or other public functions in the Plaza Area. Any such events shall be coordinated between the City and Owner not less than six months in advance.

Section 6. This Agreement shall be recorded in the records of King County. The Agreement shall be covenants that attach to and run with the Property, and shall be binding upon the Owner, its heirs, successors, and assigns.

Section 7. This Agreement may be amended or modified by agreement between the Owner and the City; provided an amended agreement shall be approved by the legislative authority of the City by ordinance. Nothing in the Agreement shall be construed as a surrender of the City's governmental or police powers.

Section 8. This Agreement is made for the benefit of the City and the public, and the City may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 9. Upon the effective date of the vacation ordinance, the Owner shall provide and thereafter maintain in full force and effect, commercial general liability insurance providing for a limit of not less than \$1,000,000 per occurrence for all damages arising out of bodily injuries or death. The insurance policies obtained shall be approved as to form by the City Risk Manager, and shall name the City as an additional insured.

Section 10. The Owner shall indemnify, hold harmless, and defend the City and its officers, agents and employees; from any and all claims, losses, liabilities, liens, costs, or expenses including attorney's fees, resulting from or arising out of public use of the Plaza Area. If any claim covered by this paragraph is asserted against the City, the Owner, upon notice from the City, shall defend the City at its sole cost and expense, and shall pay any final judgment rendered upon such claim.

Section 11. The Owner reserves the right to use the Plaza Area for any purpose that does not interfere with the public's use of the Plaza Area, including but not limited to the right to use the Plaza Area as described in this Agreement and the right to grant easements within the Plaza Area; provided the easements are consistent with the public's use of the Plaza Area.

Section 12. Notwithstanding the covenants contained in this Agreement, nothing in this Agreement shall constitute a public dedication of any portion of the Property.

Section 13. In the event any covenant or condition or any portion of this Agreement is judicially determined to be invalid or void, the invalidity or voidness shall in no way affect any other covenant, condition, or restriction contained in this Agreement.

Dated this 22 day of April, 2013.

ESSEX QUEEN ANNE, LLC,  
a Washington limited liability company

By: Essex Portfolio, L.P.,  
a California limited partnership,  
Its Member

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
Its General Partner

By:   
Print name: John [unclear]  
Title: SVP

STATE OF California

COUNTY OF Santa Clara } ss

*See Attached*

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that (s)he signed this instrument, on oath stated that (s)he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Essex Property Trust, Inc., a Maryland corporation, as General Partner of Essex Portfolio, L.P., a California limited partnership, as Member of ESSEX QUEEN ANNE, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
residing at \_\_\_\_\_  
Print name: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

State of California

County of Santa Clara }

On April 22, 2013 before me, ELISA M Taylor, Notary Public  
Date Here Insert Name and Title of the Office

personally appeared John Eddy  
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: Elisa M. Taylor  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another 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): \_\_\_\_\_

Individual

Partner —  Limited  General

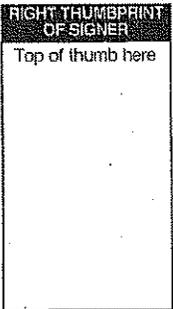
Attorney in Fact

Trustee

Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Individual

Partner —  Limited  General

Attorney in Fact

Trustee

Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

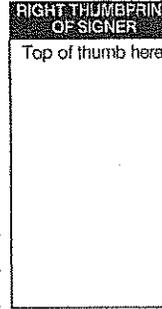
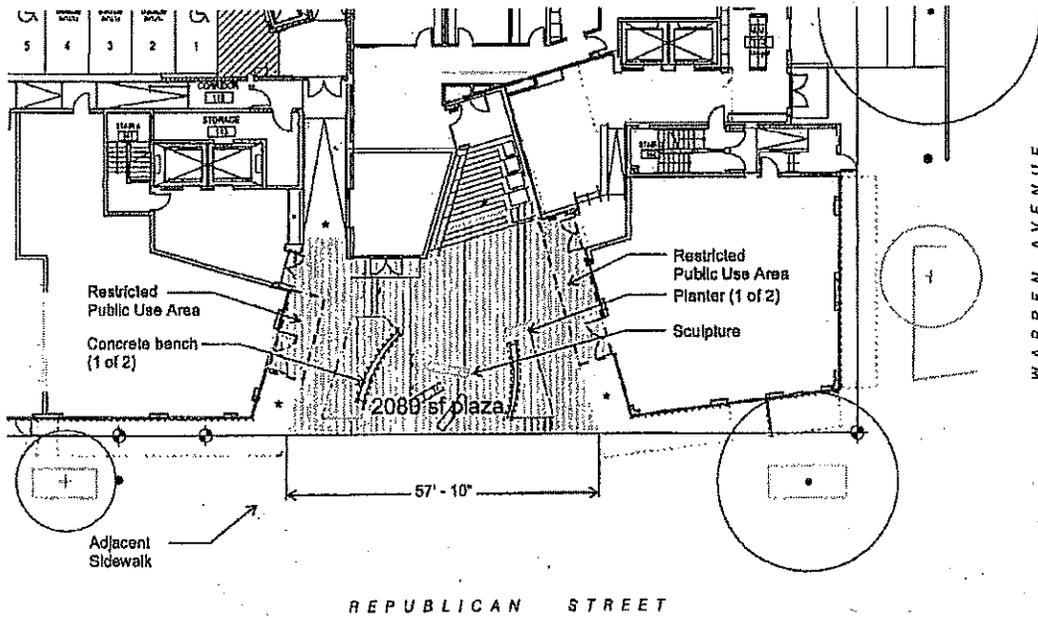


EXHIBIT A  
Drawing of Plaza Area



\* Indicates area adjacent to plaza that is for use of building owner only.

R.

1" = 30' - 0"  
2/28/2013

**EXHIBIT B**

**Legal Description of Plaza Area**

**SEE NEXT PAGE**

### Plaza Easement Legal Description

Commencing at the southeast corner of Lot 7, Block 33, D.T. Denny's Home Addition to the City of Seattle, according to the Plat thereof, recorded in Volume 3 of Plats, Page 115, Records of King County, Washington; thence N88°32'43"W along the south line of said Lot 7, said line also being the north margin of Republican Street, a distance of 47.56 feet to the True Point of Beginning;

thence continuing along said north margin N88°32'43"W a distance of 57.83 feet;

thence N17°33'05"E a distance of 10.53 feet;

thence N72°25'27"W a distance of 6.52 feet;

thence N 17°34'33"E a distance of 15.44 feet;

thence N72°25'27"W a distance of 2.42 feet;

thence N17°34'33"E a distance of 6.60 feet;

thence S72°28'18"E a distance of 2.10 feet;

thence N17°31'42"E a distance of 1.83 feet;

thence N01°27'17"E a distance of 1.04 feet;

thence S88°32'43"E a distance of 7.67 feet;

thence S01°27'17"W a distance of 3.92 feet;

thence S88°32'43"E a distance of 14.97 feet;

thence N17°31'42"E a distance of 5.06 feet;

thence N75°23'25"E a distance of 19.01 feet;

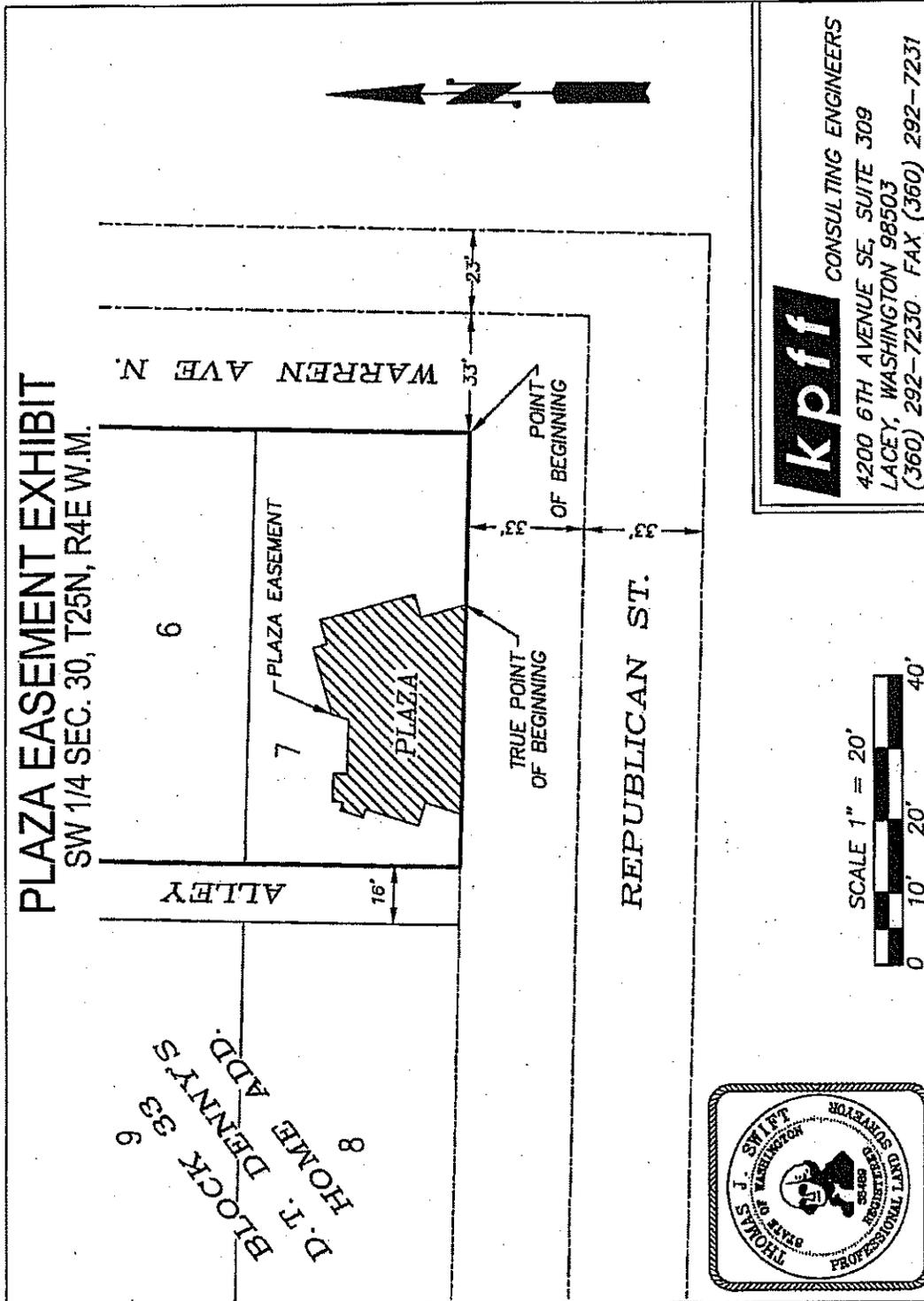
thence S14°36'08"E a distance of 3.75 feet;

thence N75°22'50"E a distance of 6.90 feet;

thence S14°33'31"E a distance of 27.23 feet;

thence S75°23'09"W a distance of 6.51 feet;

thence S14°36'51"E a distance of 13.04 feet more or less to the north margin of Republican Street and the True Point of Beginning



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Department of Transportation	Beverly Barnett/684-7564	Christie Parker/684-5211

**Legislation Title:**

AN ORDINANCE vacating the south 240 feet of the alley adjacent to Lots 4-11 in Block 33, D.T. Denny's Home Addition to the City of Seattle, on the petition of the Burkheimer Family Limited Liability Company, a Washington limited liability company; and accepting a Property Use and Development Agreement as reflected in Clerk File 309868.

**Summary of the Legislation:**

This Council Bill completes the vacation process for the alley in Block 33, D.T. Denny's Home Addition to the City of Seattle on the petition of the Burkheimer Family Limited Liability Company, a Washington limited liability company, and accepts a Property Use and Development Agreement for ongoing public-benefit obligations in connection with the alley vacation.

**Background:**

The Petitioner sought vacation of a portion of the alley in Block 33, D.T. Denny's Home Addition to the City of Seattle, bordered by First Avenue North, Mercer Street, Warren Avenue North, and Republican Street in the Uptown Urban Center neighborhood, a subarea of the Queen Anne neighborhood of Seattle, to facilitate a mixed-use project that includes residential housing, retail space, and underground parking.

After the petition was filed, the development property was sold by the Petitioner to 100 Republican LLC, who in turn sold the property to Essex Queen Anne, LLC, the developer and current property owner (Developer); and

To compensate the City for this alley vacation, the Developer dedicated a portion of the block to the City in-lieu of the vacation fee as allowed by SMC 15.62.090 B. The dedicated parcel allows the City to reconfigure a portion of the block to create a new alley connection to Warren Avenue North which creates a "T" or hammerhead configuration.

On September 20, 2010, the City Council voted to conditionally grant the petition to vacate the alley for its mixed-use project. The Developer subsequently constructed a 360,000 square foot, six-story mixed-use building with 275 multi-family units, 10 ground-level townhouses, 17,580 square feet of retail space, and 279 underground parking stalls.

To meet its public benefit requirement, the Developer has provided streetscape improvements to

enhance the pedestrian environment that include: retail storefront and building setbacks, widened sidewalks, overhead weather protection, landscaping, lighting, a rain garden for natural drainage, and a pedestrian plaza. The pedestrian plaza is approximately 2,080 square feet and includes features designed to welcome and engage the public through the use of art, landscaped planters, concrete seat walls, special paving treatment, and pedestrian-level lighting.

Please check one of the following:

**This legislation does not have any financial implications.**

**This legislation has financial implications.**

**Other Implications:**

**a) Does the legislation have indirect financial implications, or long-term implications?**

This legislation does not accept or appropriate funds. The Developer dedicated property to the City in lieu of paying the vacation fee as allowed by SMC 15.62.090 B.

**b) What is the financial cost of not implementing the legislation?**

The vacation petition, already approved by the Seattle City Council, obligates the City to complete the vacation process, provided the Petitioner meets all the conditions imposed by the Council and the vacation fee is paid or otherwise satisfied. The Developer has met all the street vacation conditions and deeded the in-lieu parcel to the City.

**c) Does this legislation affect any departments besides the originating department?**

No. As part of the initial vacation review process, all interested departments were notified of the vacation petition and asked to comment. Any identified issues were resolved prior to the approval of this final legislation.

**d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

None. This legislation completes the vacation process.

**e) Is a public hearing required for this legislation?**

No.

**f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No.

**g) Does this legislation affect a piece of property?**

Yes. It completes the vacation of right-of-way.

**h) Other Issues:**

None.

**List attachments to the fiscal note below:**

Attachment A: Alley Vacation Map

