

ORD. # 113078

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United Medical & Dental Bldg Corp

(BM)

The Fay Corp.

Assmt Lease

Marshall

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Areaway

Canvas Awning

Metal Awning

Entrance

Areaways

CW

5th Ave

Asph Pav

Monorail

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CW

C of 17 Na Se 11.65.5

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George V. Forsyth & wf, Elsie Forsyth

C. of S.

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Cov. Overlay

(BM)

OLIVE WAY

Times Court

Mayflower Hotel

Berco, Inc.

Fidelity Lane

Fidelity Savings & Loan Assn.

C of S 3

(BM)

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5.6%

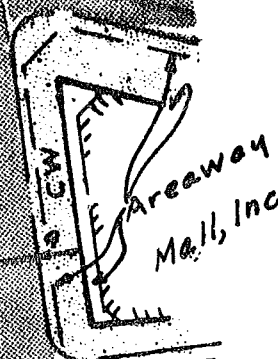
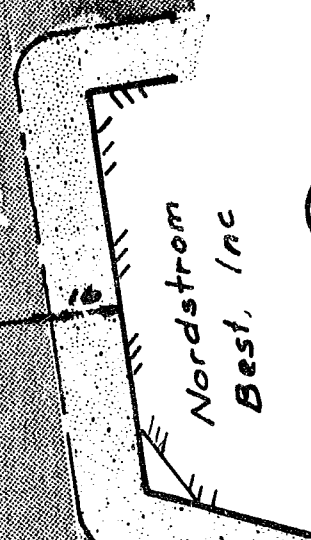
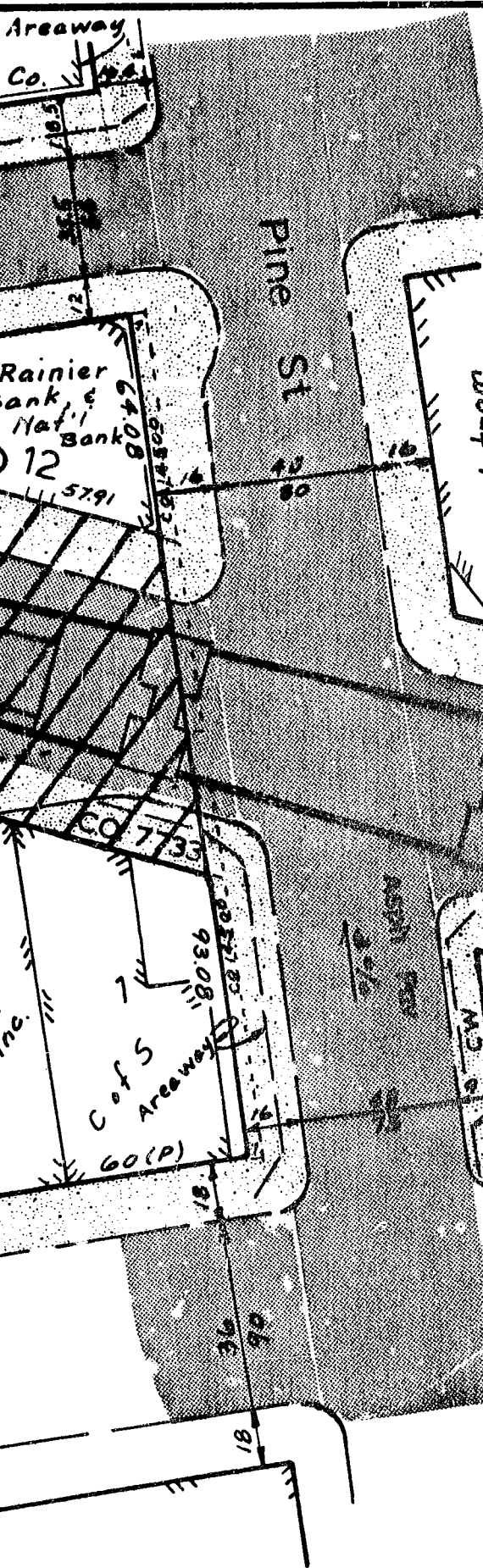
60

Asph Pav

4th Ave

(BM)

2264  
3275



- A.A. Denny's 3d VOL. 1-33
- An Addition as laid off by the heirs of Sarah A. Bell VOL. 1-103

EXHIBIT "A"

SCALE 1" = 60' NE431-25-4 KROLL 39E

**MAP OF PROPERTY COVERED BY**

VACATION PETITION No. 291789

VALID SIGNATURES SHOWN \_\_\_\_\_

INVALID SIGNATURES SHOWN \_\_\_\_\_

PETITION DENIED \_\_\_\_\_ ON FILE \_\_\_\_\_

VACATED BY ORDINANCE No. \_\_\_\_\_

MISCELLANEOUS ORDINANCES VOL. \_\_\_\_\_

UTILITY RIGHTS \_\_\_\_\_

MADE BY ea CHECKED BY \_\_\_\_\_ DATE \_\_\_\_\_

ORDINANCE No. 1130

COUNCIL BILL No. 105753

AN ORDINANCE AMENDING SECTIONS OF RESTLAND AVENUE AND THE ALLEY IN BLOCK 1, L. 1111 SARAH A. BELL'S ADDITION. (Consolidates No. 27093; Council File No. 291789)

# The City of Seattle--Legislative

## REPORT OF COMMITTEE

Honorable President:


Your Committee on Urban Redevelopment

to which was referred the within Council Bill No. 105753 report that we have considered the same and respectfully recommend

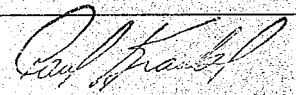
DO PASS

Sept. 17, 1986 UR Cmttee - DO PASS (3-0)

COMPTROLLER FILE No. \_\_\_\_\_

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|---|--|
| Introduced: <u>9-15-86</u>                | By: <u>Exec.</u>   |
| Referred: <u>9-15-86</u>                  | To: <u>Ur</u>  |
| Referred:                                 | To:  |
| Referred:                                 | To:  |
| Reported: <u>SEP 22 1986</u>              | Second Reading: <u>SEP 22 1986</u>   |
| Third Reading: <u>SEP 22 1986</u>         | Signed: <u>SEP 22 1986</u>   |
| Presented to Mayor: <u>SEP 23 1986</u>    | Approved: <u>OCT 2 1986</u>  |
| Returned to City Clerk: <u>OCT 2 1986</u> | Published:  |
| Vetoed by Mayor:                          | Veto Published:  |
| Passed over Veto:                         | Veto Sustained:  |

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Committee Chair

**The City of Seattle--Legislative Department**

**REPORT OF COMMITTEE**

Date Reported  
and Adopted

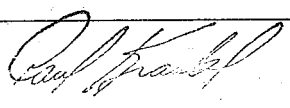
Honorable President:

Your Committee on Urban Redevelopment

to which was referred the within Council Bill No. 105753

report that we have considered the same and respectfully recommend that the same:

DO PASS



Committee Chair

REC'D OMR SEP 23 1988

NOTICE: IF THE DOCUMENT IN THIS FORM IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

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ORDINANCE 113078

AN ORDINANCE vacating portions of WESTLAKE AVENUE AND THE ALLEY IN BLOCK 1, HEIRS OF SARAH A. BELL'S ADDITION. (Resolution No. 27093; Comptroller's File No. 291789)

WHEREAS, the City Council initiated the vacation process by resolution No. 27093 (background file being Comptroller's File No. 291789), for the vacation of portions of WESTLAKE AVENUE AND THE ALLEY IN BLOCK 1, HEIRS OF SARAH A. BELL'S ADDITION, as therein fully described and as generally reflected in Exhibit "A"; and

WHEREAS, following a public hearing commencing on the 23rd day of May, 1984, said petition was granted, upon certain conditions, by the City Council; and

WHEREAS, although the method and manner of providing service connections, service agreements and other such conditions are subject to review and approval by the City pursuant to a separate process, for purposes of this vacation petition only all of said conditions, as reflected in the documents attached and identified herein as Exhibit "B", have been met; and

WHEREAS, because said conditions have been met, and because the petition was filed prior to the amendment to S.M.C. 15.62 requiring governmental agencies and institutions of higher education to pay vacation fees, no appraisal was made and no fee payment for this vacation shall be required from any party; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. That

PORTION OF WESTLAKE AVENUE as established by Ordinance 7733 lying between the northwesterly line of Pine Street as established by Ordinance 14500, the southwesterly line of 5th Avenue and the southeasterly line of Olive Way, and

THE ALLEY IN BLOCK 1, HEIRS OF SARAH A. BELL'S ADDITION as recorded in Volume 1 of Plats, page 103, records of King County, Washington, being the alley in the block between 4th Avenue and 5th Avenue and from the southeasterly line of Olive Way and the northwesterly line of Pine Street as established by Ordinance 14500.

NOTICE:  
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be and the same is hereby vacated; RESERVING to the  
City of Seattle the right to make all necessary slopes  
for cuts or fills upon the above described property in  
the reasonable original grading of any rights of way  
abutting upon said property after said vacation; also,  
RESERVING to the City of Seattle the right to recon-  
struct, maintain and operate any existing overhead or  
underground utilities in said rights of way until ar-  
rangement is made with the owner or owners thereof for  
their removal.

Section 2. Reserving to the City of Seattle an  
easement for installation, construction, erection,  
alteration, repair, energize, operation and maintenance  
of electrical underground distribution facilities,  
together with necessary appurtenances; FURTHER, that no  
structure will be constructed or any excavation will be  
permitted within the limits of the easement area without  
prior written approval from the Director of City Light,  
its successors or assigns; AND FURTHER, that the City  
has the right to grant other utilities the right and  
privilege to occupy and use jointly said distribution  
system and/or easement. All said electrical system is  
to be located upon, under and across the following  
described property situated in King County, State of  
Washington, to wit:

The west 8 feet of the north 120 feet of vacated  
alley in Block 1, Heirs of Sarah A. Bell's  
Addition, according to plat thereof, recorded in  
volume 1, page 103, records of King County,  
Washington, all lying below elevation 122.00 feet,  
City of Seattle, DATUM.

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Section 3. Effective Date. This ordinance shall take effect and be in force only upon the occurrence of the following conditions, whichever is later:

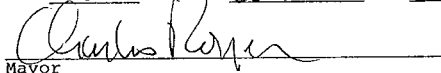
1. Thirty (30) days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the City Charter; and

2. At or immediately prior to the effective date and time of that certain conveyance, in which the City's interest in those certain real properties abutting said vacated portions of Westlake Avenue and alley, as described in Section 1 of this Ordinance, are conveyed to Rouse-Seattle, Inc., for an integrated development as contemplated by Ordinance 111745, as amended.

Passed by the City Council the 22nd day of September, 1986, and signed by me in open session in authentication of its passage this 22nd day of September, 1986.

  
\_\_\_\_\_  
President of the City Council

Approved by me this 2nd day of October, 1986.

  
\_\_\_\_\_  
Mayor

Filed by me this 2nd day of October, 1986.

Attest: Norward J. Brooks  
\_\_\_\_\_  
City Comptroller and City Clerk

By: Margaret Carter  
\_\_\_\_\_  
Deputy Clerk

(SEAL)  
Published \_\_\_\_\_

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ORDINANCE 113069<sup>78</sup>

OCT 2 2 44 PM '84  
RECORDS  
MANAGEMENT

RECEIVED THIS DAY

AN ORDINANCE vacating portions of WESTLAKE AVENUE AND THE ALLEY IN BLOCK 1, HEIRS OF SARAH A. BELL'S ADDITION. (Resolution No. 27093; Comptroller's File No. 291789)

WHEREAS, the City Council initiated the vacation process by resolution No. 27093 (background file being Comptroller's File No. 291789), for the vacation of portions of WESTLAKE AVENUE AND THE ALLEY IN BLOCK 1, HEIRS OF SARAH A. BELL'S ADDITION, as therein fully described and as generally reflected in Exhibit "A"; and

WHEREAS, following a public hearing commencing on the 23rd day of May, 1984, said petition was granted, upon certain conditions, by the City Council; and

WHEREAS, although the method and manner of providing service connections, service agreements and other such conditions are subject to review and approval by the City pursuant to a separate process, for purposes of this vacation petition only all of said conditions, as reflected in the documents attached and identified herein as Exhibit "B", have been met; and

WHEREAS, because said conditions have been met, and because the petition was filed prior to the amendment to S.M.C. 15.62 requiring governmental agencies and institutions of higher education to pay vacation fees, no appraisal was made and no fee payment for this vacation shall be required from any party; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. That

PORTION OF WESTLAKE AVENUE as established by Ordinance 7733 lying between the northwesterly line of Pine Street as established by Ordinance 14500, the southwesterly line of 5th Avenue and the southeasterly line of Olive Way, and

THE ALLEY IN BLOCK 1, HEIRS OF SARAH A. BELL'S ADDITION as recorded in Volume 1 of Plats, page 103, records of King County, Washington, being the alley in the block between 4th Avenue and 5th Avenue and from the southeasterly line of Olive Way and the northwesterly line of Pine Street as established by Ordinance 14500.

86/10-03      \$1154 B  
RECD F      9.00  
CRSHSL      \*\*\*8.00

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be and the same is hereby vacated; RESERVING to the City of Seattle the right to make all necessary slopes for cuts or fills upon the above described property in the reasonable original grading of any rights of way abutting upon said property after said vacation; also, RESERVING to the City of Seattle the right to reconstruct, maintain and operate any existing overhead or underground utilities in said rights of way until arrangement is made with the owner or owners thereof for their removal.

Section 2. Reserving to the City of Seattle an easement for installation, construction, erection, alteration, repair, energize, operation and maintenance of electrical underground distribution facilities, together with necessary appurtenances; FURTHER, that no structure will be constructed or any excavation will be permitted within the limits of the easement area without prior written approval from the Director of City Light, its successors or assigns; AND FURTHER, that the City has the right to grant other utilities the right and privilege to occupy and use jointly said distribution system and/or easement. All said electrical system is to be located upon, under and across the following described property situated in King County, State of Washington, to wit:

The west 8 feet of the north 120 feet of vacated alley in Block 1, Heirs of Sarah A. Bell's Addition, according to plat thereof, recorded in volume 1, page 103, records of King County, Washington, all lying below elevation 122.00 feet, City of Seattle, DATUM.

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Section 3. Effective Date. This ordinance shall take effect and be in force only upon the occurrence of the following conditions, whichever is later:

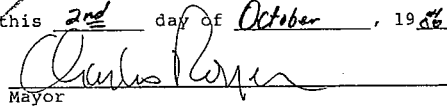
1. Thirty (30) days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the City Charter; and

2. At or immediately prior to the effective date and time of that certain conveyance, in which the City's interest in those certain real properties abutting said vacated portions of Westlake Avenue and alley, as described in Section 1 of this Ordinance, are conveyed to Rouse-Seattle, Inc., for an integrated development as contemplated by Ordinance 111745, as amended.

Passed by the City Council the 29<sup>th</sup> day of September, 1986, and signed by me in open session in authentication of its passage this 29<sup>th</sup> day of September, 1986.

  
\_\_\_\_\_  
President of the City Council

Approved by me this 2<sup>nd</sup> day of October, 1986.

  
\_\_\_\_\_  
Mayor

Filed by me this 2<sup>nd</sup> day of October, 1986.

Attest: Norwood J. Brooks  
City Comptroller and City Clerk

By: Margaret Carter  
Deputy Clerk

(SEAL)

Published \_\_\_\_\_

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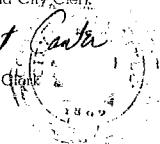
STATE OF WASHINGTON )  
COUNTY OF KING ) SS  
CITY OF SEATTLE )

I, HOWARD J. BROOKS, Comptroller and City Clerk of the City of Seattle, do hereby certify that the within and foregoing is a true and correct copy of the original instrument of the same appears on file, and of record in this department.

In WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of The City of Seattle, this *3rd day of October, 1986*

HOWARD J. BROOKS  
Comptroller and City Clerk

By: *Margaret Carter*  
Deputy Clerk



FILED for Record at Request Of

Return To:

HOWARD J. BROOKS CITY COMPTROLLER  
101 SEATTLE MUNICIPAL BUILDING  
SEATTLE, WA 98104

FILED  
CITY OF SEATTLE  
NOV 13 PM 2 18  
COMPTROLLER AND CITY CLERK

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AN ORDINANCE vacating portions of WESTLAKE AVENUE AND THE ALLEY IN BLOCK 1, HEIRS OF SARAH A. BELL'S ADDITION. (Resolution No. 27023; Comptroller's File No. 291789)

WHEREAS, the City Council initiated the vacation process by resolution No. 27093 (background file being Comptroller's File No. 291789), for the vacation of portions of WESTLAKE AVENUE AND THE ALLEY IN BLOCK 1, HEIRS OF SARAH A. BELL'S ADDITION, as therein fully described; and

WHEREAS, following a public hearing commencing on the 23rd day of May, 1984, said petition was granted by the City Council and as generally reflected in Exhibit "A"; and

WHEREAS, although the method and manner of providing service connections, service agreements and other such conditions are subject to review and approval by the City pursuant to a separate process, for purposes of this vacation petition only all of said conditions, as reflected in the documents attached and identified herein as Exhibit "B", have been met; and

WHEREAS, because said conditions have been met, and because the petition was filed prior to the amendment to S.M.C. 15.62 requiring governmental agencies and institutions of higher education to pay vacation fees, no appraisal was made and no fee payment for this vacation shall be required from any party; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. That

PORTION OF WESTLAKE AVENUE as established by Ordinance 7733 lying between the northwesterly line of Pipe Street as established by Ordinance 14500, the southwesterly line of 5th Avenue and the southeasterly line of Olive Way, and

THE ALLEY IN BLOCK 1, HEIRS OF SARAH A. BELL'S ADDITION/as recorded in Volume 1 of Plats, page 103, records of King County, Washington, being the alley in the block between 4th Avenue and 5th Avenue and from the southeasterly line of Olive Way and the northwesterly line of Pine Street as established by Ordinance 14500.

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AGREEMENT RESPECTING ALLEY VACATION AND ESCROW AGREEMENT

THIS AGREEMENT is made as of the 11<sup>th</sup> day of September, 1986 by and among ROUSE-SEATTLE, INC. ("Rouse"), a Maryland corporation having an address c/o The Rouse Company, 10275 Little Patuxent Parkway, Columbia, Maryland 21044, 1624 FOURTH AVENUE ASSOCIATES ("Associates"), a California limited partnership appearing herein by Donald N. Ravitch, its general partner and whose address is 851 Traeger Avenue, San Bruno, California 94066, FIRST INTERSTATE BANK OF WASHINGTON, N.A., a national banking association ("First Interstate"), having an address at P.O. Box 160, Seattle, Washington 98111 and WESTLAKE PARK ASSOCIATES ("WPA"), a Washington limited partnership whose general partner is Birney N. Dempcy, having an address c/o Dempcy and Braley, Suite 400, 414 Olive Way, Seattle, Washington 98101.

W I T N E S S E T H:

WHEREAS, pursuant to a Contract for Sale of Property dated August 17, 1984, as amended, (the "Contract", a copy of which is attached to the hereinafter referenced Operating and Easement Agreement as Exhibit A) between Rouse and the City of Seattle (the "City"), Rouse has agreed to purchase from the City upon the terms and conditions set forth in the Contract, Lots 1, 3, 8, 9, 10, 11 and 12 in Block 1 in the City of Seattle; and

WHEREAS, pursuant to an offer to sell dated February 18, 1986, between Rouse and the F.S. Stimson Corporation, Rouse has

EXHIBIT "B"

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agreed to purchase from the F.S. Stimson Corporation Lot 2 in Block 1 in the City of Seattle; and

WHEREAS, Forsyth Properties, a limited partnership, is the owner of Lot 7 in Block 1 of the City of Seattle; and

WHEREAS, by Ground Lease Agreement dated October 22, 1982 between Forsyth Properties and Koehler, McFadyen & Company, a Washington corporation, Forsyth Properties leased Lot 7 and the improvements thereon to Koehler, McFadyen & Company for a term of 60 years; and

WHEREAS, said Lots 1, 2, 3, 8, 9, 10, 11 and 12, said lessee's interest in Lot 7, and together with such portions of Westlake Avenue and the alleyway located in Block 1 as may revert to the owner of such property interests as hereinafter provided, are hereinafter referred to as the "Westlake Property"; and

WHEREAS, Rouse, through a partnership involving Stephen Koehler and Douglas McFadyen, desires to develop the Westlake Property by constructing thereon a mixed-use retail and office complex (the "Westlake Project"); and

WHEREAS, First Interstate is the owner of Lot 4 in Block 1, adjacent to the Westlake Property, and Associates is the owner of the adjoining Lot 5 in Block 1; and

WHEREAS, Seattle-First Bank, or its successor trustee, acting as Trustee under the will of Jay C. Silverstone and as Trustee under a written trust agreement executed by Esther Silverstone, (collectively the "Silverstone Trust") is the owner of Lot 6 in Block 1, adjacent to the Westlake Property; and

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WHEREAS, WPA is the lessee of Lot 6 in Block 1 pursuant to a Lease Agreement dated September 17, 1926 between Boston Drug Company as lessor and Steven Berg as lessee, the Silverstone Trust being the successor to the lessor's interest and WPA being the successor to the lessee's interest; and

WHEREAS, in order to facilitate development of the Westlake Project in the most efficient manner, the Seattle City Council has passed a resolution providing for an ordinance for the vacation and closure of those portions of Westlake Avenue presently extending through Block 1 as well as certain alleys presently existing on Block 1, and, in connection with such ordinance, the Seattle City Council has asked that Rouse and the affected private property owners agree as to the manner in which their properties will be serviced following the vacation and closure of such alleys and development of the Westlake Project; and

WHEREAS, the parties have agreed to the closing of such alleys, and, to facilitate such closing and in order to provide for efficient use of the Westlake Project and other improvements located on Block 1, the parties have agreed as to the manner in which the Westlake Project and such improvements are to be serviced from public streets following construction of the Westlake Project; and

WHEREAS, Rouse and the parties have agreed to execute appropriate instruments containing such agreements and creating such easements and to deposit the same in escrow with Safeco Title Insurance Company with instructions to record the same upon the

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satisfaction of certain conditions set forth in this Agreement;  
and

WHEREAS, Safeco Title Insurance Company has agreed to act as escrow agent for the purposes set forth herein.

NOW, THEREFORE, in consideration of the agreements and undertakings herein set forth and other good and valuable consideration, the adequacy and receipt of which the parties hereby acknowledge, the parties hereby agree as follows:

Section 1. Alley Vacation. The parties do hereby consent to the vacation and closing of the alley located on Block 1 in the City of Seattle and more particularly identified in Exhibit A attached hereto, such vacation and closing to be effective at such time as Rouse or its designee takes title to the Westlake Property (provided the conditions precedent to the release of the hereinafter defined Escrowed Documents shall have been satisfied as provided in Section 10). Rouse shall pay, on behalf of the parties, any and all fees and expenses incurred by the parties and payable to public or governmental authorities on account of such alley vacation and closing (including, without limitation, any purchase price or other consideration payable to the City on account of the alley vacation and closing). Following such alley vacation and closing and provided Rouse or its designee shall have acquired title to the Westlake Property and the other applicable conditions set forth in Section 10 have been satisfied: (a) WPA shall convey to Rouse (and does hereby so agree), or to such party as Rouse may designate to take title to the Westlake Property, all

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of the right, title and interest of WPA in and to such property as shall revert to it, as lessee of Lot 6, as a result of such alley vacation and closing, subject to the rights conferred upon WPA by the hereinafter defined Easement and Operating Agreement and Pedestrian Access and Easement Agreement (WPA), but WPA shall use its best efforts to cause such conveyance to Rouse to be free of any mortgages or other encumbrances (except for those encumbrances, if any, shown, and not stricken on Exhibit C-1 hereto), such conveyance by WPA to Rouse to be in the form attached hereto as Exhibit B-3; (b) Associates shall convey to Rouse (and does hereby so agree), or to such party as Rouse may designate to take title to the Westlake Property, all of the right, title and interest of Associates in and to such property as shall revert to it, as owner of Lot 5, as a result of such alley vacation and closing, subject to the rights conferred upon Associates by the hereinafter defined Easement and Operating Agreement, but free of any mortgages or other encumbrances (except for those encumbrances, if any, shown, and not stricken, on Exhibit C-2 hereto), such conveyance by Associates to Rouse to be sufficient to enable Rouse or its designee to obtain title insurance covering the fee interest in all of such property as would vest in the owner of Lot 5 as a result of such alley vacation and closing and shall be in the form attached hereto as Exhibit B-2; and (c) First Interstate shall convey to Rouse (and does hereby so agree), or to such party as Rouse may designate to take title to the Westlake Property, all of the right, title and

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DKT300

interest of First Interstate in and to such property as shall revert to it, as owner of Lot 4, as a result of such alley vacation and closing, subject to the rights conferred upon First Interstate by the hereinafter defined Easement and Operating Agreement and Pedestrian Access and Easement Agreement (First Interstate) but free of any mortgages or other encumbrances (except for those encumbrances, if any, shown, and not stricken, on Exhibit C-3 hereto), such conveyance by First Interstate to Rouse to be sufficient to enable Rouse or its designee to obtain title insurance covering the fee interest in all of such property as would vest in the owner of Lot 4 as a result of such alley vacation and closing and shall be in the form attached hereto as Exhibit B-1. The consideration for such conveyances to Rouse shall be the performance of Rouse's undertakings under this Agreement and execution and delivery by the parties, as hereinafter provided, of the hereinafter defined Easement and Operating Agreement, Pedestrian Access and Easement Agreement (WPA) and Pedestrian Access and Easement Agreement (First Interstate).

Section 2. Improvements on Lot 4. First Interstate and Rouse contemplate that, pursuant to the First Interstate Accessways (as hereinafter defined), there will be first-class mutually beneficial access between the improvements on Lot 4 and the Westlake Project. First Interstate shall not be obligated to undertake any construction or development respecting its improvements on Lot 4 with respect to the First Interstate

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Accessways or otherwise. However, in the event First Interstate determines to undertake any construction or development respecting its improvements, it shall submit to Rouse (for informational purposes only) its development plan respecting the improvements on Lot 4, including the improvements, if any, to be constructed by First Interstate respecting such First Interstate Accessways and the storefronts located on or above Lot 4 and adjacent to such First Interstate Accessways. In order to insure reasonable compatibility between the improvements on Lot 4 and the Westlake Project, First Interstate shall use its reasonable efforts to insure that the retail and service uses for the first two floors of the improvements located on Lot 4 shall be consistent with the retail portions of the Westlake Project; provided, however, that the foregoing shall not be deemed to require First Interstate to discontinue or change any of the present uses of the improvements on Lot 4 or to undertake any construction or development with respect thereto. No portion of such improvements located on Lot 4 shall be used for any unlawful or illegal business, use or purpose, or for any use devoted primarily to the sale of pornographic, erotic or sexually explicit books, magazines, films, tapes or other materials (such as an "adult bookstore") or for any "adult entertainment" establishment featuring live nudity or in such a manner as to constitute a nuisance of any kind (public or private).

Section 3. Improvements on Lot 5. Associates and Rouse contemplate that the improvements located on Lot 5 and the

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Westlake Project shall be mutually complementary. Accordingly, Associates shall afford Rouse, or its designee taking title to the Westlake Property, a reasonable opportunity to review street level architectural treatment of any improvements constructed on Lot 5 so that Rouse may comment as to the reasonable architectural compatibility between such improvements and the Westlake Project; provided, however, that Rouse shall not have any approval rights with respect to such improvements on Lot 5. Associates shall use its reasonable efforts to insure that uses for the first two floors of the improvements located on Lot 5 shall be retail and service operations consistent with the retail portions of the Westlake Project; provided, however, that the foregoing shall not be deemed to require Associates to discontinue or change any of the present uses of the improvements on Lot 5 or to undertake any construction or development with respect thereto. No portion of the improvements on Lot 5 shall be used for any unlawful or illegal business, use or purpose, or for use devoted primarily to the sale of pornographic, erotic or sexually explicit books, magazines, films, tapes or other materials (such as an "adult bookstore") or for any "adult entertainment establishment" featuring live nudity, or in such manner as to constitute a nuisance of any kind (public or private).

Section 4. Improvements on Lot 6. WPA and Rouse contemplate that the improvements on Lot 6 shall be designed so that the WPA Accessway (as hereinafter defined) between such improvements and the Westlake Project will facilitate mutually beneficial access

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and entryways between such improvements and the Westlake Project. As promptly as is practicable following execution of this Agreement, WPA shall submit to Rouse for its review a construction plan showing the manner by which occupants of the improvements located on Lot 6 shall enter the Westlake Project pursuant to the WPA Accessway, in sufficient detail to allow Rouse to design and construct those portions of the WPA Accessway to be provided by Rouse pursuant to Section 6 below, and such plan shall also set forth the plan for construction of any portion of such WPA Accessway to be located on or above Lot 6 and WPA's proposed timetable for any construction within or upon Lot 6 relating to such WPA Accessway (which, in any event, shall be completed prior to completion of the retail portions of the Westlake Project). Rouse, or its designee taking title to the Westlake Property, shall have the right to review and approve such plan to the extent necessary to insure reasonable design and functional compatibility between the improvements on Lot 6 and those portions of the WPA Accessway to be constructed by Rouse or its designee taking title to the Westlake Project. WPA agrees that no portion of the improvements located on Lot 6 shall be used for any unlawful or illegal business, use or purpose, or for use devoted primarily to the sale of pornographic, erotic or sexually explicit books, magazines, films, tapes or other materials (such as an "adult bookstore") or for any "adult entertainment establishment" featuring live nudity, or in such manner as to constitute a nuisance of any kind (public or private).

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Section 5. Servicing. The parties intend that, following the alley vacation and closing as set forth in Section 1, satisfaction of the conditions of Section 10 and delivery from escrow of the Operating and Easement Agreement, Pedestrian Access and Easement Agreement (WPA) and Pedestrian Access and Easement Agreement (First Interstate), Rouse will design and construct the Westlake Project so that the improvements located on Block 1, including the Westlake Project and improvements located on Lots 4, 5 and 6, shall be serviced pursuant to truck dock and service facilities accessed from a portion of the Olive Way frontage of Block 1. The locations of the above-referenced truck dock and service facilities shall be as shown on Exhibit D attached hereto; provided that Rouse, with the approval of the other parties to the extent hereinafter provided, may change the locations and/or dimensions of such truck dock and service facilities. First Interstate, Associates and WPA shall each be entitled to approve any design change in the locations or dimensions of such truck dock and service facilities from that which is shown on Exhibit D provided that such parties shall not withhold approval of changes (a) which are consistent developments of Exhibit D and (b) which will not result in unreasonable restriction of access from improvements on Lots 4, 5 and 6 to the truck dock and service facilities, materially diminish the service access or capacity for Lots 4, 5, or 6 from that described herein and presently shown on Exhibit D, or result in material increased inconvenience to the

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occupants of the improvements on Lots 4, 5 or 6 in the use of such truck dock and service facilities.

WPA, First Interstate and Associates shall not have any approval rights respecting construction of such truck dock and service facilities or the Westlake Project (or plans or drawings with respect thereto) except to the extent expressly provided in this Agreement and such other agreements as may be binding upon Rouse. Rouse may construct additional truck dock and service facilities without the consent of the parties, provided that no portion of such truck dock and service facilities shall extend onto Lots 4, 5 or 6, (not including the vacated portions of alleys) without the consent of the owners of such lots. Within fifteen (15) business days after it shall have received any design changes which it is entitled to approve pursuant to this Section 5, each of First Interstate, Associates and WPA shall notify Rouse, in writing, of its approval or disapproval thereof, specifying in the case of the latter its reasons therefor. Rouse shall undertake to modify the proposed design of the construction or design element in question to address the reasons for any disapproval thereof by First Interstate, Associates or WPA as set forth in a notice of disapproval given pursuant to the foregoing sentence, to the extent the reasons for such disapproval are within the rights of the parties as set forth in this Agreement, and Rouse shall resubmit any such modified design to the parties for approval in the manner above provided. If any party shall fail to provide Rouse with written notice of approval or

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disapproval of design changes as provided herein within fifteen (15) business days following submission thereof by Rouse as hereinabove provided, the same shall be deemed to have been approved by such party. Prior to construction of the truck dock and service facilities, Rouse shall submit to the other parties for review and approval (to the extent of such parties' approval rights set forth herein or in other documents binding upon Rouse) final working plans and specifications with respect thereto.

If there shall be a bona fide dispute between the parties with regard to design changes subject to approval of any party as provided in this Section 5, or any disapproval thereof by the parties, such dispute shall be submitted for arbitration to George H. Loschky, A.I.A., Loschky, Marquard & Nesholm, Architects, 801 2nd Avenue, Seattle, Washington, or if such person shall refuse or be unable to serve as such arbitrator, then to some impartial member of the American Institute of Architects mutually satisfactory to the parties, or, if the parties shall fail to agree on such person, then to some member of the American Institute of Architects selected by the President of that organization. The decision of the arbitrator in such dispute shall be final and binding on the parties and shall be enforceable in a court of law. The City shall be entitled to participate fully in any such arbitration to the extent provided in the City Contract.

Rouse or its designee shall, at its expense, construct the truck dock and service facilities as soon as practicable following

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acquisition of the Westlake Property pursuant to the Contract and vacating and closing of the alleys as provided in Section 1. Nothing contained herein or shown on Exhibit D shall be construed as any representation by Rouse respecting any aspect of its construction of the Westlake Project other than with respect to the location of the truck dock and service facilities, it being understood and agreed that Exhibit D is attached for illustrative purposes only respecting the truck dock and service facilities, and that Rouse shall have no obligation to install or construct any of the facilities shown on Exhibit D, except to the extent expressly set forth in this Agreement. The truck dock and service facilities and Westlake Project shall at all times be and remain the property of Rouse or its designee taking title to the Westlake Property, until such time as such party shall convey or transfer the same, provided that the parties shall be entitled to use the truck dock and service facilities in accordance with and subject to the Easement and Operating Agreement. Notwithstanding the foregoing, Rouse, or its designee taking title to the Westlake Property, shall construct the Westlake Project in accordance with the applicable provisions of the Contract with respect to design and configuration of the Westlake Project, and Rouse shall not, without the prior written approval of the parties, modify the provisions of the Contract respecting design and/or configuration of the Westlake Project.

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Rouse shall maintain and operate the truck dock and service facilities at its expense in accordance with the Easement and Operating Agreement.

Section 6. Access to the Westlake Project. Following acquisition of the Westlake Property by Rouse or its designee, vacation and closing of the alleys as provided in Section 1, and satisfaction of the conditions of Section 10 and delivery from escrow of the Operating and Easement Agreement, Pedestrian Access and Easement Agreement (WPA) and Pedestrian Access & Easement Agreement (First Interstate), Rouse will design and construct the Westlake Project so as to allow (a) direct pedestrian access from the improvements constructed on Lot 6 to the Westlake Project at the second level of the Westlake Project, which access shall be at an elevation of approximately 126.5 feet (City of Seattle Datum) and (b) direct pedestrian access from the improvements constructed on Lots 4 and 5 to the Westlake Project at the main level (street grade) of the Westlake Project and also at level 2 (that is, the second level above grade) of the Westlake Project. The locations of such accessway serving improvements on Lot 6 (the "WPA Accessway") shall be generally as set forth on Exhibit E, and the location of such accessways serving Lot 4 (the "First Interstate Accessways") shall be generally as set forth on Exhibits E-1 and E-2. Nothing contained herein or shown on Exhibits E, E-1, and/or E-2 shall be construed as any representation of Rouse respecting any aspect of its construction of the Westlake Project other than with respect to the general location of the WPA Accessway and

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First Interstate Accessways as presently contemplated, it being understood and agreed that Exhibits E, E-1 and E-2 are attached for illustrative purposes only and that Rouse shall have no obligation to install or construct any of the facilities shown on Exhibits E, E-1 and/or E-2 except to the extent expressly set forth in this Agreement. In addition, nothing contained herein shall create or be deemed to create any rights in Associates with respect to those portions of the First Interstate Accessways located on or above Lot 4, and although the Westlake Project will be designed to allow access from the improvements on Lot 5 to the Westlake Project pursuant to the First Interstate Accessways, use by Associates of those portions of the First Interstate Accessways located on or above Lot 4 shall be subject to separate agreement between First Interstate and Associates.

WPA shall be entitled to approve any change in the location or configuration of the WPA Accessway from that which is shown on Exhibit E and First Interstate shall be entitled to approve any change in the location or configuration of the First Interstate Accessways from that which is shown on Exhibits E-1 and E-2; provided that WPA and First Interstate shall not withhold approval of changes which (a) are consistent developments of the WPA Accessway design or First Interstate Accessways design (as the case may be) as shown on Exhibits E, E-1 and on E-2, and (b) which will not result in any substantial diminution of the nature and quality of access from Lot 6 to the Westlake Project pursuant to the WPA Accessway, or from Lot 4 to the Westlake Project pursuant

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to the First Interstate Accessways. First Interstate and WPA shall not have any approval rights respecting construction of WPA Accessways or First Interstate Accessways (or plans or drawings with respect thereto) except to the extent expressly provided herein or in such other agreements as may be binding upon Rouse. Within fifteen (15) business days after it shall have received changes respecting the location or configuration of the WPA Accessway, WPA shall notify Rouse, in writing, of its approval or disapproval thereof, specifying in the case of the latter its reasons therefor; and within fifteen (15) business days after it shall have received changes respecting the location or configuration of the First Interstate Accessways, First Interstate shall notify Rouse, in writing, of its approval or disapproval thereof, specifying in the case of the latter its reasons therefor. Rouse shall undertake to modify the proposed design of the WPA Accessway or First Interstate Accessways to address the reasons for any disapproval thereof by WPA or First Interstate as set forth in a notice of disapproval given pursuant to the foregoing sentence, to the extent the reasons for such disapproval are within the rights of WPA or First Interstate (as the case may be) as set forth in this Agreement, and Rouse shall resubmit any such modified design to WPA and/or First Interstate for approval in the manner above provided. If WPA or First Interstate shall fail to provide Rouse with written notice of approval or disapproval of changes respecting the location or configuration of the WPA Accessway or First Interstate Accessways (as the case may

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be) within fifteen (15) business days following submission thereof by Rouse as hereinabove provided, the same shall be deemed to have been approved by WPA or First Interstate (as the case may be). Any bona fide dispute between the parties with regard to changes respecting the WPA Accessway or First Interstate Accessways, or any disapproval thereof by WPA or First Interstate, shall be resolved by arbitration in the manner provided in Section 5 above.

Rouse, or its designee taking title to the Westlake Property, shall construct, at its cost and expense, that portion of the WPA Accessway and First Interstate Accessways located on the Westlake Property, WPA shall construct, and bear the cost and expense of, such portion of the WPA Accessway located on or above Lot 6, and First Interstate shall construct, and bear the cost and expense of, such portions of the First Interstate Accessways located on or above Lot 4. Pursuant to and in accordance with the hereinafter described Pedestrian Access and Easement Agreement (WPA), WPA shall have access to the Westlake Project pursuant to the WPA Accessway, and, pursuant to and in accordance with the hereinafter described Pedestrian Access and Easement Agreement (First Interstate), First Interstate shall have access to the Westlake Project pursuant to the First Interstate Accessways. Rouse shall have the right to install fire doors and security grilles within the WPA Accessway and First Interstate Accessways, to the extent provided in this Agreement or in the Pedestrian Access and Easement Agreement (WPA) or Pedestrian Access and Easement Agreement (First Interstate) (as the case may be). Associates

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shall make its own arrangements with First Interstate respecting Associates' use of the First Interstate Accessways.

Section 7. WPA Parking. As part of its construction of the Westlake Project, Rouse, or its designee taking title to the Westlake Property, shall construct a Parking Garage located generally beneath the office and retail portions of the Westlake Project. WPA shall have the right to reserve for its use in connection with hotel operations one space within such parking garage during all hours of operation and two additional spaces within such garage from 4:00 p.m. to 8:00 a.m. each weekday and at all hours of operation on weekends, all at the standard monthly parking rates applicable from time to time to such parking garage.

Section 8. First Interstate Bank Operations on the Westlake Property. Rouse agrees that First Interstate shall have the right to install and maintain one automated remote teller machine in space leased by First Interstate within the Westlake Project generally at the location shown on Exhibit F attached hereto, or, in the alternative, First Interstate shall have the right to install and maintain one automated remote teller machine in space within improvements on Lot 4 but fronting upon interior portions of the Westlake Project generally at the location shown on Exhibit F. On or prior to June 1, 1987, First Interstate will advise Rouse as to which of the above alternatives it desires respecting the automated remote teller machine, and if First Interstate fails so to advise Rouse on or prior to June 1, 1987, it shall have no further rights to install and/or maintain automated remote teller

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machine within the Westlake Project pursuant to this Section 8. The space within the Westlake Project occupied by the automated remote teller shall be leased to First Interstate for a term of 10 years at an annual rental which is competitive with the base rental comparable to that charged at other projects developed by affiliates of The Rouse Company (not to exceed \$40 per square foot escalated every three years in proportion to increases in the Consumer Price Index) and generally upon the terms and conditions set forth in the form lease used for the leasing of the Westlake Project. First Interstate shall pay a proportionate share of common area costs and other charges (not to exceed \$25 per square foot in the first year and increasing as retail tenant charges increase in the Westlake Project thereafter) as set forth in such form lease; however, First Interstate shall not be required to pay percentage rent respecting such space. First Interstate shall bear the entire cost of installing and maintaining any such automated remote teller machine, including but not limited to any engineering costs resulting from the election by First Interstate to install the automated remote teller machine within improvements on Lot 4 but fronting upon interior portions of the Westlake Project, such engineering costs to include, without limitation, any and all costs resulting from the fact that improvements on Lot 4 and the Westlake Project will comprise separate seismic buildings to be separated by a three hour fire wall and such additional fire separation as may be required by applicable

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law, rule or regulation. The provisions of this Section 8 shall survive the termination of this Agreement.

Section 9. [Intentionally Omitted].

Section 10. Execution of Conveyancing and Easement Agreement; Escrow. The parties agree that certain of the undertakings set forth in this Agreement shall be implemented and effectuated pursuant to the following agreements to be executed by the parties:

- (a) Form of conveyance of interest in vacated portions of the closed alleys to be conveyed by WPA to Rouse or its designee (Exhibit C-1);
- (b) Form of conveyance of interest in vacated portions of the closed alleys to be conveyed by Associates to Rouse or its designee (Exhibit C-2);
- (c) Form of conveyance of interest in vacated portion of closed alleys to be conveyed by First Interstate to Rouse or its designee (Exhibit C-3);
- (d) Form of easement and operating agreement (the "Easement and Operating Agreement") respecting, among other things, the truck dock and service facilities to be constructed by Rouse for the use of the parties and to be executed by each of the parties (Exhibit G);
- (e) Form of easement agreement (the "Pedestrian Access and Easement Agreement (WPA)") respecting, among other things, the WPA Accessway and to be executed by WPA and Rouse (Exhibit H); and

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(f) Form of easement agreement (the "Pedestrian Access and Easement Agreement (First Interstate)") respecting, among other things, the First Interstate Accessways and to be executed by First Interstate and Rouse (Exhibit I).

The above referenced documents are hereinafter collectively referred to as the "Escrowed Documents". Contemporaneously with the execution of this Agreement, the parties have executed the Escrowed Documents, and they have delivered the same in escrow to Safeco Title Insurance Company (the "Escrow Agent"), whose instructions are to record the same on behalf of the parties when all of the following shall have occurred:

(a) The alley identified on Exhibit A and situated on Block 1 has been closed and vacated in accordance with the applicable procedures of the City of Seattle;

(b) Rouse or its designee shall have acquired title to the Westlake Property (other than those portions of vacated alleys conveyed pursuant to Escrowed Documents);

(c) The City shall have subordinated any interest which it may have in the Westlake Property (following the City's conveyance to Rouse pursuant to the Contract) to the easements established pursuant to the Operating and Easement Agreement, the Pedestrian Access and Easement Agreement (WPA) and the Pedestrian Access and Easement Agreement (First Interstate) sufficient to allow issuance of the title insurance policy referenced in paragraph (f) below;

(d) Forsyth Properties, as fee owner of Lot 7, shall have subordinated the fee interest in Lot 7 to the easements

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established pursuant to the Operating and Easement Agreement and Pedestrian Access and Easement Agreement (WPA) sufficient to allow issuance of the title insurance policy referenced in paragraph (f) below;

(e) The Silverstone Trust shall have executed and recorded an easement agreement respecting use of such portion of the vacated alley as revert to it as fee owner of Lot 6 or otherwise consented to the use of its property in the manner set forth in the Operating and Easement Agreement sufficient to allow issuance of the title insurance policy referenced in paragraph (f) below;

(f) First Interstate, Associates and WPA shall each have received a title insurance policy (at no cost to any of them) in the amount of \$1,000,000 and insuring their respective rights in and to the easements created for their benefit pursuant to the Operating and Easement Agreement without risk on account of any prior or superior interest except such matters as are identified (and not stricken) in Exhibits C-1, C-2 and C-3, those matters identified on Exhibit J attached hereto and such exceptions as are normal and customary or which they shall approve;

(g) A duly authorized officer of Rouse or its designee taking title to the Westlake Project shall have certified to each of First Interstate, Associates and WPA that Rouse has obtained the necessary governmental permits sufficient to enable it to commence construction respecting the Westlake Project;

(h) WPA and Associates shall have received reasonably satisfactory assurances from the Seattle Fire Marshall or other

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appropriate governmental official to the effect that the fire exiting plan contemplated in the Operating and Easement Agreement (or otherwise as agreed by Rouse, WPA and Associates) and allowing for fire exiting from the improvements on Lots 5 & 6 through the Westlake Project will be permitted under applicable fire safety rules and regulations;

(i) The Seattle Fire Marshall or other appropriate government official shall approve a fire exiting plan for the period of construction of the Westlake Project which shall be reasonably acceptable to WPA and Associates, the cost, if any, of implementing of such plan to be borne by Rouse; and

(j) Rouse shall have given First Interstate, Associates or WPA reasonably satisfactory assurances (by amending the contract or otherwise) to the effect that Rouse is permitted under the Contract to restrict its rights to further amend the Contract in the manner provided in the Easement and Operating Agreement, Pedestrian Access and Easement Agreement (First Interstate) and Pedestrian Access and Easement Agreement (WPA).

If all of the above-described conditions are satisfied as of the date on which Rouse or its designee takes title to the Westlake Property to be conveyed pursuant to the Contract, then the Escrow Agent shall cause the Escrowed Documents to be recorded contemporaneously with such conveyance of the Westlake Property to Rouse or its designee; otherwise, the Escrow Agent shall record the Escrowed Documents contemporaneously with satisfaction of the last of the above-described conditions. In the event such

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conditions are not satisfied on or prior to January 1, 1988, this Agreement and the escrow shall be terminated and of no further force and effect and the Escrow Agent shall not record the Escrowed Documents, but shall destroy all copies of the Escrowed Documents in the possession of the Escrow Agent.

At such time as the Escrowed Documents are recorded, the parties shall each provide the other with reasonable evidence of their authority to execute the Escrowed Documents and effect the easements and conveyances set forth therein.

In the event Rouse determines that its designee shall take title to the Westlake Property, the Escrow Agent shall return the executed Escrowed Documents jointly to the parties for the sole purpose of modifying the same to provide that such designee shall be the party granting and receiving the easements therein (in lieu of Rouse), the parties agreeing to make such modifications, whereupon the Escrowed Documents shall promptly be returned to the Escrow Agent to be held in accordance with this Section 10. In addition, in the event it is necessary or appropriate, at the time of recordation, to re-execute the Escrowed Documents or change the effective date thereof, or to reflect that Rouse's designee taking title shall be a party thereby, or to fill in blanks, provide additional information or make other non-material changes thereto the parties shall cause the Escrowed Documents to be re-executed to such effect, provided and so long as the same does not adversely affect the rights and obligations of the parties thereto. Any expenses incurred by the Escrow Agent in connection with the

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escrow created pursuant to this Section 10, shall be for the accounts of the parties, and shall be promptly reimbursed to the Escrow Agent by Rouse. Rouse shall pay all fees and expenses incurred in connection with the recordation of the Escrowed Documents. Rouse hereby agrees to indemnify and hold the Escrow Agent harmless from any loss, damage or expense, including reasonable attorneys' fees, that it may incur in connection with the escrow. The Escrow Agent shall receive no fees for acting as escrow agent hereunder unless, in the event of a dispute between the parties as to the disposition of the Escrowed Documents, a court of competent jurisdiction awards the Escrow Agent such fees.

The provisions of this Section 10 constitute instructions to the Escrow Agent, and by executing a copy of this Agreement, the Escrow Agent accepts the herein created escrow and agrees to abide by the instructions set forth herein. It is understood and agreed that the Escrow Agent shall have no responsibilities, and shall assume no responsibilities whatsoever, for performance by any of the parties of their obligations to each other. The Escrow Agent shall not in any way be bound by any other agreement or contract by and between the parties, and the sole duty and responsibility of the Escrow Agent shall be to hold the Escrowed Documents, as escrow agent, and to act as instructed herein.

Section 11. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective successors and assigns, and their respective properties and interests within Block 1 of the City of Seattle, and this

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Agreement or a memorandum hereof shall be recorded among the land records of the City of Seattle. Any transfer by any of the parties of its interest in their respective properties or interests within Block 1 shall be in all respects subject to the terms and conditions of this Agreement, and the transferor shall cause the transferee thereunder to assume in writing each of the terms and provisions of this Agreement, whereupon the transferor shall be released from any further liability or obligation hereunder. WPA warrants and represents that it is the lessee, of Lot 6 within Block 1 of the City of Seattle. Associates warrants and represents that it is the fee simple owner of Lot 5 within Block 1 of the City of Seattle. First Interstate warrants and represents that it is the fee simple owner of Lot 4 within Block 1 of the City of Seattle. Rouse warrants and represents that it is the contract purchaser, pursuant to the City Contract, of the Westlake Property to be conveyed pursuant to the City Contract. No modification or amendment of this Agreement shall be of any effect unless the same is in writing and signed by all of the parties hereto.

Section 12. Termination of Agreement. This Agreement shall terminate and be of no further force and effect upon the earlier to occur of (a) recordation of the Escrowed Documents (although certain of the provisions of this Agreement may be incorporated by reference in certain of the Escrowed Documents) or (b) January 1, 1988; provided, however, that upon termination pursuant to clause

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(a) above, the provisions of Sections 7 and 8 shall survive termination of this Agreement.

Section 13. Governing Law. This Agreement shall be construed and governed by the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

ATTEST: Jordan W. Glegg

ROUSE-SEATTLE, INC.  
By: DARRELL M. VANCE  
Title: VICE-PRESIDENT

ATTEST:

FIRST INTERSTATE BANK, N.A.  
By: STACEE R. WOODS  
Title: VICE PRESIDENT

Robert S. Boyd  
Robert S. Boyd  
Pres. President

ATTEST:

1624 FOURTH AVENUE ASSOCIATES  
By: ARNOLD KAVITCH  
General Partner

ATTEST: Helen W. Davis

WESTLAKE PARK ASSOCIATES  
By: Bonnie W. Berger  
General Partner

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The undersigned Safeco Title Insurance Company, as escrow agent, executes this Agreement for the purpose of accepting the escrow created pursuant to Section 10 above and hereby agrees to abide by the instructions set forth in said Section 10.

SAFECO TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF King )

On this 11th day of September, 1986, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared DARRELL M VANCE, to me known to be the VICE PRESIDENT of ROUSE SEATTLE INC., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that HE is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Christina J. Mulsally  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at Seattle  
Commission Expires 7/9/87

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 1986, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at \_\_\_\_\_

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OPERATING AND EASEMENT AGREEMENT

THIS AGREEMENT is made as of the 11<sup>th</sup> day of September, 1986 by and among ROUSE-SEATTLE, INC. ("Rouse"), a Maryland corporation having an address c/o The Rouse Company, 10275 Little Patuxent Parkway, Columbia, Maryland 21044, 1624 FOURTH AVENUE ASSOCIATES ("Associates"), a California limited partnership appearing herein by Donald N. Ravitch, its general partner and whose address is 851 Traeger Avenue, San Bruno, California 94066, FIRST INTERSTATE BANK OF WASHINGTON, N.A., a national banking association ("First Interstate"), having an address at P.O. Box 160, Seattle, Washington 98111 and WESTLAKE PARK ASSOCIATES ("WPA"), a Washington limited partnership whose general partner is Birney M. Dempcy, having an address c/o Dempcy and Braley, Suite 400, 414 Olive Way, Seattle, Washington 98101

W I T N E S S E T H:

WHEREAS, pursuant to a Contract for Sale of Property dated August 17, 1984, as amended, (the "Contract", a copy of which is attached hereto as Exhibit A) between Rouse and The City of Seattle (the "City") and further pursuant to a Deed dated \_\_\_\_\_, 198\_\_ (the "City Deed", a copy of which is attached hereto as Exhibit B) from the City to Rouse, Rouse has acquired from the City, (or on or prior to the date of recordation of this Agreement shall have acquired) upon the terms and

EXHIBIT "B"

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conditions set forth in the Contract, Lots 1, 3, 8, 9, 10, 11 and 12 in Block 1 in the City of Seattle; and

WHEREAS, pursuant to a Deed from the F. S. Stimson Corporation to Rouse, Rouse has acquired from the F. S. Stimson Corporation (on or prior to the date of recordation of this Agreement shall have acquired) Lot 2 in Block 1 in the City of Seattle; and

WHEREAS, Forsyth Properties, a limited partnership, is the owner of Lot 7 in Block 1 of the City of Seattle; and

WHEREAS, by Ground Lease Agreement dated October 22, 1982 between Forsyth Properties and Koehler, McFadyen & Company, a Washington corporation, Forsyth Properties leased Lot 7 and the improvements thereon to Koehler, McFadyen & Company for a term of 60 years; and

WHEREAS, pursuant to Assignment of Ground Lease from Koehler, McFadyen & Company to Rouse, Rouse has acquired (or on or prior to the date of recordation of this Agreement shall have acquired) the lessee's interest in the aforesaid Lot 7 Ground Lease Agreement; and

WHEREAS, pursuant to Ordinance of the Seattle City Council and conveyances from other property owners within Block 1, Rouse

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has acquired (or on or prior to the date of recordation of this Agreement shall have acquired) title to or easements over those portions of Westlake Avenue formerly located in Block 1 and property constituting a certain alleyway formerly located in Block 1; and

WHEREAS, said Lots 1, 2, 3, 8, 9, 10, 11 and 12, said lessee's interest in Lot 7 and said former portions of Westlake Avenue and said alleyway in Block 1 are hereinafter referred to as the "Westlake Property"; and

WHEREAS, Rouse desires to develop the Westlake Property by constructing thereon a mixed-use retail and office complex (the "Westlake Project"); and

WHEREAS, First Interstate is the owner of Lot 4 in Block 1, adjacent to the Westlake Property and Associates is the owner of the adjoining Lot 5 in Block 1; and

WHEREAS, Seattle-First Bank, or its successor trustee, acting as Trustee under the will of Jay C. Silverstone and as Trustee under a written trust agreement executed by Esther Silverstone, (collectively the "Silverstone Trust") is the owner of Lot 6 in Block 1, adjacent to the Westlake Property; and

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WHEREAS, WPA is the lessee of Lot 6 in Block 1 pursuant to a Lease Agreement dated September 17, 1926 between Boston Drug Company as lessor and Steven Berg as lessee, the Silverstone Trust being the successor to the lessor's interest and WPA being the successor to the lessee's interest; and

WHEREAS, in order to provide for efficient use of the Westlake Project and other improvements located on Block 1, the parties have agreed as to the manner in which the Westlake Project and such improvements are to be serviced from public streets following construction of the Westlake Project; and

WHEREAS, the parties have agreed as to certain other matters respecting the use and operation of the Westlake Project and certain other improvements in Block 1; and

WHEREAS, in connection with their agreements respecting the servicing of the Westlake Project and other improvements located in Block 1 and other matters respecting the operation of the Westlake Project and adjacent property and improvements, the parties desire to establish necessary easements, property rights and obligations respecting the Westlake Project and adjacent property and improvements to insure that the Westlake Project and adjacent property and improvements are operated in an efficient and complementary manner with respect to servicing and in other respects; and

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WHEREAS, Forsyth Properties has subordinated (or as of the date of recordation of this Agreement shall have subordinated) its interest in Lot 7 to the easements created pursuant to this Agreement; and

WHEREAS, the City has subordinated (or as of the date of recordation of this Agreement shall have subordinated) its reversionary interest under the City Deed to the easements created pursuant to this Agreement; and

WHEREAS, the Silverstone Trust has granted (or as of the date of recordation of this Agreement shall have granted) to Rouse, for use by the Parties, an easement over portions of Lot 6 for purposes consistent with this Agreement.

NOW, THEREFORE, in consideration of the agreements and undertakings herein set forth and other good and valuable consideration, the adequacy and receipt of which the parties hereby acknowledge, the parties hereby agree as follows:

#### ARTICLE I

##### EXHIBITS AND DEFINITIONS

Section 1.1. Exhibits. Attached hereto and forming a part of this Agreement are the following Exhibits, which, for the



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purpose of identification, have been initialled by the parties hereto or their attorneys:

|           |   |
|-----------|---|
| Exhibit A | Contract for Sale dated August 17, 1984 between the City of Seattle and Rouse-Seattle, Inc., as amended |
| Exhibit B | Deed dated _____, 198__ from the City of Seattle to Rouse-Seattle, Inc. [modify as appropriate]         |
| Exhibit C | List of Approved Rouse Initial Plans  |
| Exhibit D | Westlake Project Site Plan (Schematic) showing Truck Dock and Service Facilities and Fire Exits         |
| Exhibit E | Legal Description of Air Rights Easement Area   |

Section 1.2. Definitions. As used in this Agreement, the following terms have the following definitions:

"Acting Party" has the meaning ascribed to it in Section 10.1.

"Approved Rouse Final Plans" has the meaning ascribed to it in Section 4.3.

"Approved Rouse Initial Plans" has the meaning ascribed to it in Section 4.3.

"Associates" means 1624 Fourth Avenue Associates and its successors and assigns.

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"Block 1" means all of that land located within Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103 in King County, Washington.

"Building(s)" means any one or more of the Westlake Project, the building improvements located on Lots 4, 5, and/or 6 or any other building located on Block 1 as the context requires.

The "City" means the City of Seattle, a municipal corporation.

The "City Deed" has the meaning ascribed to it in the Recitals of this Agreement.

The "Contract" has the meaning ascribed to it in the Recitals of this Agreement.

"Consumer Price Index" means the Consumer Price Index for all Urban Consumers (U.S. City Average) of the United States Bureau of Labor Statistics or if the same is discontinued a comparable index, formula or other means of measurement of the relative purchasing power of the dollar.

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"Default Rate" has the meaning ascribed to it in Section 11.1.

"Defaulting Party" has the meaning ascribed to it in Section 11.1.

"Designated Representative" has the meaning ascribed to it in Section 4.2.

"First Interstate" means First Interstate Bank of Washington, N.A. and its successors and assigns.

"Grantor" has the meaning ascribed to it in Section 5.1.

"Grantee" has the meaning ascribed to it in Section 5.1.

"Land Records" means the conveyance and/or mortgage records of King County, Washington.

"Laws" means all applicable present and future Federal, State, Municipal, governmental agency or quasi-governmental agency statutes, charters, laws, codes, rules, rulings, ordinances, orders, programs, guidelines and/or regulations.

"Liened Party" has the meaning ascribed to it in Section 10.1.

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"Lot 1" means Lot 1, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington; EXCEPT the Westerly 12 feet of said lot condemned by the City of Seattle in King County Superior Court Cause No. 52280, for the widening of Fourth Avenue, as provided by Ordinance 13778 of said City; and EXCEPT the Southeasterly 7 feet of said lot condemned by the City of Seattle, in King County Superior Court Cause No. 57057 for the widening of Pine Street as provided by Ordinance 14500 of said City; and EXCEPT the portion of said lot condemned by the City of Seattle, in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

"Lot 2" means Lot 2, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington; EXCEPT the Westerly 12 feet of said lot condemned by the City of Seattle in King County Superior Court Cause No. 52280 for the widening of Fourth Avenue, as provided by Ordinance 13778 of said City; and EXCEPT the portion of said lot condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

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"Lot 3" means Lot 3, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to the plat recorded in Volume 1 of Plats, page 103, in King County, Washington; EXCEPT the Westerly 12 feet of said Lot condemned by the City of Seattle in King County Superior Court Cause No. 52280 for the widening of Fourth Avenue, as provided by Ordinance 13776 of said City.

"Lot 4" means Lot 4, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington; EXCEPT the Westerly 12 feet of said Lot condemned by the City of Seattle in King County Superior Court cause No. 52280 for the widening of Fourth Avenue as provided by Ordinance 13776 of said City.

"Lot 5" means the Southerly 50 feet of Lot 5, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington; EXCEPT the Westerly 12 feet of said Lot condemned by the City of Seattle in King County Superior Court cause No. 52280 for the widening of Fourth Avenue as provided by Ordinance 13776 of said City.

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"Lot 6" means Lot 5 and Lot 6, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, Page 103, in King County, Washington; EXCEPT the southeasterly 50 feet of said Lot 5; AND EXCEPT the Westerly 12 feet of said Lot condemned by the City of Seattle in King County Superior Court cause No. 52280 for the widening of Fourth Avenue as provided by Ordinance 13776 of said City.

"Lot 7" means Lot 7, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington; EXCEPT the portion of said Lot condemned by the City of Seattle in King County Superior Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance No. 7733 of said City.

"Lots 8, 9, 10, 11 and 12" means all those portions of Lots 8, 9, 10 and 11, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, Page 103, in King County, Washington; lying Westerly of the West line of Westlake Avenue, as condemned by the City of Seattle in King County

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Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance 7733 of said City; and those portions of Lots 10, 11 and 12, Block 1, Addition to the Town of Seattle as laid off by the Heirs of Sarah A. Bell, deceased (commonly known as Heirs of Sarah A. Bell's Addition to the City of Seattle), according to plat recorded in Volume 1 of Plats, page 103, in King County, Washington, lying easterly of the east line of Westlake Avenue as condemned by the City of Seattle in King County Superior Court Cause No. 36118 for the establishing of Westlake Avenue as provided by Ordinance 7733 of said City; EXCEPT the southeasterly 7 feet of said Lot 12 condemned by the City of Seattle in King County Superior Court Cause No. 57057 for the widening of Pine Street as provided by Ordinance 14500 of said City.

"Mortgage" means any one or more mortgages, deeds of trust, deeds to secure debt, loan deeds, trust indentures, owner's interest in a sale-leaseback, lessor's interest in a lease-sublease back, security agreements or any similar security or title retention device, including without limitation any leasehold mortgage, which shall, from time to time, create a lien upon the estate of any party in its respective property and which shall be security for one or more notes, bonds or other evidences of indebtedness issued by a party.

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"Mortgagee" means the holder of a Mortgage or the lender in whose favor the Mortgage was created, together with its successor, assignee or designee selected by the Mortgagee to take title to the property encumbered by the Mortgage upon foreclosure or assignment or deed in lieu of foreclosure.

"Non-Defaulting Party" has the meaning ascribed to it in Section 11.1.

"Party" means a party to this Agreement, and the successors and assigns of any such party.

"Preparing Party" has the meaning ascribed to it in Section 4.2.

"Reviewing Party" has the meaning ascribed to it in Section 4.2.

"Rouse" means Rouse-Seattle, Inc., or such other party as Rouse-Seattle, Inc. may designate to take title to the property conveyed pursuant to the City Deed, and its successors and assigns.

"Silverstone Trust" has the meaning ascribed to it in the Recitals of this Agreement.

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"Supporting Elements" has the meaning ascribed to it in Section 5.4.

"Term" means the term of this Agreement from its execution date until the occurrence of the Termination Date.

"Termination Date" has the meaning ascribed to it in Section 12.1.

"Truck Dock and Service Facilities" means the areas and facilities labelled as such and shown on Exhibit D.

"Unavoidable Delay" has the meaning ascribed to it in Section 16.13.

The "Westlake Property" has the meaning ascribed to it in the Recitals of this Agreement.

The "Westlake Project" has the meaning ascribed to it in the Recitals of this Agreement.

"WPA" means Westlake Park Associates and its successors and assigns.

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ARTICLE II

CERTAIN REPRESENTATIONS

Section 2.1. Rouse's Representations as to Title. Rouse represents and warrants that:

(a) Rouse has (or upon recordation of this Agreement shall have) fee simple title to those portions of the Westlake Property other than Lot 7 and such property as reverted to the owner of Lot 7 upon the vacation and closure of Westlake Avenue within Block 1; and

(b) Rouse has (or upon recordation of this Agreement shall have) a valid leasehold interest in Lot 7 and such property as reverted to the owner of Lot 7 upon the vacation and closure of Westlake Avenue within Block 1.

Section 2.2. First Interstate's Representations as to Title. First Interstate represents and warrants that it has fee simple title to Lot 4.

Section 2.3. Associates' Representations as to Title. Associates represents and warrants that it has fee simple title to Lot 5.

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Section 2.4. WPA's Representations as to Title. WPA represents and warrants that it has a valid leasehold interest in Lot 6 and the improvements located thereon.

### ARTICLE III

#### OVERALL DEVELOPMENT

Section 3.1. Plan of Development. The Parties intend that the Westlake Project and improvements located upon property within Block 1 and adjacent to the Westlake Project be developed and operated in a complementary and mutually beneficial fashion. Accordingly, the Parties have agreed as to the construction and maintenance of certain common facilities and to create certain easements, rules and regulations with respect thereto (all as more particularly set forth hereinafter) and to place and/or confirm certain restrictions and limitations upon the development and use of certain improvements located upon Block 1.

Section 3.2. Development of the Westlake Project.

Rouse, as owner of the Westlake Property, covenants and agrees that the Westlake Project shall be developed in accordance with the Contract and City Deed. Rouse further agrees to develop the Westlake Property so as to provide, for the non-exclusive use and benefit of First Interstate, Associates and WPA, truck dock,

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loading, unloading and appurtenant service facilities, with service accessways providing vehicular service access from public streets to truck docks within the Westlake Project and pedestrian service access from such truck docks to Lots 4, 5 and 6 (the "Truck Dock and Service Facilities") generally as shown on Exhibit D attached hereto. Rouse may, from time to time, execute agreements modifying or amending the Contract provided that Rouse shall not modify or amend (a) the provisions of the Contract or City Deed respecting the permitted uses for the retail portions of the Westlake Project or (b) any other provision of the Contract or City Deed in a manner which would materially adversely affect use of the Truck Dock and Service Facilities without the prior written consent of the other Parties hereto.

#### ARTICLE IV

##### PLANNING AND CONSTRUCTION OF IMPROVEMENTS

Section 4.1. Planning Responsibilities. Rouse shall cause, at no cost to any other Party, the preparation of all plans and specifications for all aspects of the Westlake Project located on the Westlake Property, and Rouse will, upon the written request of any other Party, provide such requesting Party with copies of such plans and specifications, or such portions thereof as may be requested. Except as provided in Section 4.5, First Interstate, Associates, and WPA shall, at no cost to Rouse, be responsible for

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appropriate plans and specifications for all aspects of any development or construction of any improvements on their respective properties within Block 1, and, upon the written request of Rouse, each of them will provide Rouse with copies of such plans and specifications, or such portions thereof as may be requested by Rouse; provided that none of First Interstate, Associates or WPA shall be obligated to prepare plans and specifications except to the extent it elects or is required to develop or construct improvements on its property within Block 1. This Agreement shall not obligate any Party to prepare plans and specifications except to the extent expressly provided herein. Those plans and specifications identified in Section 4.3 shall be subject to the approval of other Parties to the extent (and only to the extent) set forth in Section 4.3.

Section 4.2. Procedure for Approval of Plans.

(a) Where plans and specifications are required hereunder to be approved by any of the Parties hereto, the submission and approval of the same shall be accomplished in accordance with the following procedure:

(i) The Party preparing such plans and specifications (the "Preparing Party") shall cause the same to be prepared and submitted to each of the Parties reviewing the same (the

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"Reviewing Party") prior to the commencement of any construction pursuant to such plans.

(ii) Within fifteen (15) working days after the Reviewing Party shall have received such plans and specifications, it shall give the Preparing Party its notice of approval or disapproval thereof, specifying in the case of the latter its reasons therefor. Approval of such plans and specifications shall not be unreasonably withheld and may be withheld only for the reasons set forth in this Agreement.

(iii) The Preparing Party shall, upon receipt of a notice of disapproval, promptly undertake to amend and modify the plans and specifications so as to address, to the extent required under this Agreement, the reasons for disapproval as set forth in the notice of disapproval, and, upon completion thereof the same shall be approved by the Reviewing Party within fifteen (15) working days after the receipt of same. If there shall be a bona fide dispute between any of the Parties as to whether disapproval of any plans or specifications or any amendment or modification thereof is permitted hereunder, such dispute shall be submitted for arbitration to George H. Loschky, A.I.A., Loschky, Marquard & Nesholm, Architects, 1 2nd Avenue, Seattle, Washington or if such person shall refuse or be unable to serve as such arbitrator, then to some impartial member of the American Institute of Architects mutually satisfactory to the disputing Parties, or if

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the disputing Parties fail to agree on such person, then to some impartial member of the American Institute of Architects selected by the president of that organization. Any Party's Mortgagees shall have the right to participate fully in any such arbitration, and the City likewise shall have the right to participate fully in any such arbitration, to the extent provided in the Contract or City Deed. The decision of the arbitrator in any such dispute shall be final and binding upon the parties and enforceable in a court of law.

(iv) If the Reviewing Party shall fail to give notice of its approval or disapproval within fifteen (15) days after receipt of any plans and specifications submitted to it for its approval, or of any required modification or amendment thereof, the same shall be deemed to have been approved.

(v) Upon approval of plans and specifications as provided herein, the same shall not be modified or amended thereafter in any material respect without the approval of the Reviewing Party.

(b) Any document required to be submitted for approval in accordance with the foregoing shall be accompanied by a letter from the Preparing Party's "Designated Representative", as hereinafter defined, stating that such document is submitted for approval pursuant to this Agreement and setting forth the time

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within which such approval is required to be given hereunder, and unless accompanied by such a letter, such document shall not be deemed to have been submitted for approval. Any such document shall be deemed to have been submitted on the date of personal delivery or on the third day following mailing if sent by certified or registered mail. All such documents shall be sent to the Reviewing Party's "Designated Representative" at the address set forth below.

(c) Rouse's "Designated Representative" shall be Darrell M. Vange, whose address is c/o Rouse-Seattle, Inc., 414 Olive Way, Suite M20, Seattle, Washington 98101 unless or until another person shall be specified by Rouse in a notice given to the other Parties pursuant to Article XV. Associates' "Designated Representative" shall be Michael L. Schwartz, whose address is 851 Traeger Avenue, San Bruno, California 94066, unless or until another person shall be specified by the Associates, in a notice given to the other Parties pursuant to Article XV. First Interstate's "Designated Representative" shall be Steve Brodniak, whose address is 999 Third Avenue, Seattle, Washington 98104, unless or until another person shall be specified by First Interstate in a notice given to the other Parties pursuant to Article XV. WPA's "Designated Representative" shall be Birney M. Dempcy, whose address is c/o Dempcy & Braley, Suite 400, 414 Olive Way, Seattle, Washington 98101 unless or until another person

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shall be specified by WPA in a notice given to the other parties pursuant to Article XV.

(d) Any notice of approval or disapproval required to be given under this Section 4.2 shall be accompanied by a letter from the Reviewing Party's Designated Representative to the Preparing Party's Designated Representative at the address specified above stating that such notice is given pursuant to this Agreement and unless accompanied by such a letter, such notice shall not be deemed to have been given.

Section 4.3. Plans and Specifications for which Approval is Required; Approval Standards. The Parties agree that Associates, First Interstate and WPA shall have approval rights respecting plans for the Truck Dock and Service Facilities. In this respect Associates, First Interstate and WPA have approved the plans and specifications identified on Exhibit C (the "Approved Rouse Initial Plans") respecting the Truck Dock and Service Facilities and Accessways. First Interstate, Associates and WPA shall have the right to approve, in the manner set forth in Section 4.2 above, final plans of Rouse respecting the Truck Dock and Service Facilities to the extent (and only to the extent) such final plans indicate design changes in the location or configurations of the Truck Dock and Service Facilities as shown on the Approved Rouse Initial Plans. First Interstate, Associates and WPA shall not withhold their approval of such final plans if the same do not

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contain design changes to the locations or configurations of the Truck Dock and Service Facilities from the locations and configurations shown on the Approved Rouse Initial Plans, nor shall First Interstate, Associates and WPA withhold their approval of such design changes respecting locations and configurations if such changes (i) are consistent developments of the applicable Approved Rouse Initial Plans and (ii) will not result in unreasonable restriction of access from improvements on Lots 4, 5 and 6 to the Truck Dock and Service Facilities, or a material increase in inconvenience for those using the same, or a material diminution in the service access or capacity provided by such Truck Dock and Service Facilities to Lots 4, 5 or 6. Final plans respecting construction of the Westlake Project, as approved by First Interstate, Associates and WPA to the extent (and only to the extent) required under this agreement are hereinafter called the "Approved Rouse Final Plans".

Section 4.4. Construction of the Westlake Project.

(a) Rouse shall construct the Westlake Project, including, without limitation, the Truck Dock and Service Facilities, in accordance with the Contract, the City Deed, the Approved Rouse Final Plans (where applicable) and all applicable Laws. Prior to the commencement of construction of the Truck Dock and Service Facilities, Rouse shall submit to the other Parties for their review final working plans and specifications with respect

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thereto. Rouse shall use its reasonable efforts, subject to Unavoidable Delay, to substantially complete construction of the Westlake Project within twenty-four (24) months following the date on which Rouse shall have acquired title to the property conveyed pursuant to the City Deed. In addition and without limiting the generality of the foregoing, Rouse shall use its reasonable efforts, subject to Unavoidable Delay, to substantially complete construction of the Truck Dock and Service Facilities, sufficient to enable the Parties to use the same as hereinafter provided, within nineteen (19) months following the date on which Rouse shall have acquired title to the property conveyed pursuant to the City Deed. Rouse will bear the cost of all governmental permits and approvals respecting construction of the Westlake Project, including, without limitation the Truck Dock and Service Facilities.

(b) In order to minimize interference with the use and enjoyment by First Interstate, Associates and WPA of their respective properties on Block 1, during construction of the Westlake Project Rouse will undertake the following:

(i) Rouse shall, from time to time, designate a space or spaces either upon its property or in Olive Way adjacent to Block 1 (to the extent permitted by applicable Laws) sufficient in size to allow WPA to locate a dumpster therein for the disposal of waste materials, trash and garbage generated by the operation of

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its improvements on Lot 6. Rouse shall designate the dumpster location as close to WPA's improvements as is practicable in light of Rouse's construction requirements, and Rouse shall be entitled to relocate the dumpster site from time to time during construction. Rouse and WPA shall cooperate in good faith to establish regularly scheduled times for use of the dumpster by WPA (and WPA shall, in any event, notify Rouse's construction office prior to entry onto the job site to obtain access to the dumpster), and Rouse shall be entitled to impose reasonable rules and regulations respecting use of such dumpster in order to maintain its job site in a safe and secure condition.

(ii) Rouse will use its reasonable efforts, consistent with sound and prudent construction practices, to provide to First Interstate and Associates facilities for the disposal of trash (which facilities may be located on the Westlake Property and used by parties other than First Interstate and Associates, including, without limitation, parties engaged in the construction of the Westlake Project) located as close to the improvements of First Interstate and Associates as is practicable in light of Rouse's construction requirements. First Interstate and Associates shall be entitled to use such facilities (which Rouse may relocate from time to time) in common with others. First Interstate, Associates and Rouse shall cooperate in good faith to establish regularly scheduled times for use of such facilities by First Interstate and Associates (and First Interstate and Associates shall, in any event, notify Rouse's construction office prior to entry onto the

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job site to obtain access to such facilities), and Rouse shall be entitled to impose reasonable rules and regulations respecting use of such facilities in order to maintain its job site in a safe and secure condition.

(iii) If, notwithstanding the facilities respecting trash removal made available pursuant to clauses (i) and (ii) above, any of WPA, First Interstate or Associates incurs trash removal costs during construction of the Westlake Project substantially in excess of the trash removal costs incurred prior to such construction, Rouse shall pay to such Party the amount of any such excess; provided WPA, First Interstate and Associates (1) endeavor in good faith to minimize trash removal costs and (2) provide Rouse with such evidence as Rouse may reasonably request evidencing any increased trash removal costs. Any dispute respecting trash removal costs incurred by First Interstate or Associates shall be resolved by arbitration pursuant to Article XIV.

(iv) Following completion of below grade construction, beneath, within, and in the vicinity of, the vacated alley, pouring of grade slabs and completion of construction above the vacated alley to the extent necessary for personal safety, Rouse will endeavor in good faith (consistent with prudent construction practices, personal safety and applicable Laws) to provide temporary service access to the improvements on Lots 4, 5 and 6 at

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locations accessible at the easterly lot lines of Lots 4, 5 and 6; provided that (1) Rouse shall designate the temporary service routes, and may, from time to time, alter such routes in order to facilitate Rouse's construction activities and schedule or discontinue such access to the extent required for personal or public safety (2) Rouse may take such action as it reasonably deems necessary to secure the areas of temporary access and (3) the Parties shall cooperate in good faith to establish regularly scheduled times for the use of such temporary access by the Parties (and each Party shall, in any event, notify Rouse's construction office prior to such Party's entry onto such areas of temporary service access), and Rouse shall be entitled to impose reasonable rules and regulations respecting use of such temporary service access in order to maintain its job site in a safe and secure condition, (4) Rouse may prohibit vehicular traffic over the areas of such temporary service access and (5) nothing contained herein shall obligate Rouse to use more than its reasonable efforts to provide such temporary service access as provided herein.

(v) If, as a result of Unavoidable Delay or otherwise, Rouse has not substantially completed construction of the Truck Dock and Service Facilities sufficient to enable the Parties to use the same, as hereinafter provided, on or prior to the date set forth above, Rouse shall endeavor in good faith, consistent with sound and prudent construction practices, subject to the

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conditions set forth in subparagraph (iv) above (other than the limitations respecting vehicular use) and provided the same does not result in material expense to Rouse, to provide vehicular service access to the improvements located on Lots 4, 5 and 6 at locations accessible at the easterly lot lines of said Lots.

(vi) Rouse shall indemnify and hold the Parties harmless, in the manner and to the extent set forth in Section 7.4, at all times during construction (including, without limitation, indemnification against loss or damage due to utility or power interruption or discontinuance as a result of Rouse's construction activities), and Rouse shall endeavor in good faith to keep the improvements and property reasonably free of dust, dirt and construction debris.

(vii) To the extent consistent with sound and prudent construction practices and applicable Laws and/or requirements of the City, Rouse will endeavor in good faith to maintain sidewalk access along the Olive Way and Fourth Avenue boundaries of the Westlake Project, and the Parties may, at their cost and expense, install signs along the Olive Way, Fourth Avenue and Pine Street boundaries of the Westlake Project directing the public to the Parties' improvements, provided that such signs shall be subject to review by Rouse to insure consistency with Rouse's construction signs and graphics.

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(viii) To the extent obtainable, Rouse shall bear the cost and expense of any governmental permits and approvals necessary for the construction and use of temporary service access pursuant to clauses (ii) and (iii) above.

Section 4.5. Reimbursement of Certain Costs. Subject to the provisions hereinafter set forth in this Section 4.5, Rouse shall reimburse First Interstate, Associates and/or WPA (as the case may be) their reasonable cost incurred (a) to seal any window openings on the easterly exterior of their respective Buildings obstructed by construction of the Westlake Project within the vacated alley, to resurface (by sheet rock or similar means) and paint the interior walls in which such sealed window openings are located, and to create a square footage of window area elsewhere in the Buildings whose openings are sealed as provided above, (b) to provide reasonable access to utility rooms, utilities, equipment and facilities within their respective Buildings to the extent such access is denied or made impracticable because of the vacation and closing of the alley and construction of portions of the Westlake Project thereon, or (c) to undertake and complete any other construction to the extent required by any applicable Laws (as of the commencement of construction of the Westlake Project) because of the closing and vacation of the previously existing alley and/or construction of portions of the Westlake Project thereon (including, without limitation, any required reconfigurations or reconstruction of fire exiting and/or

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handicapped access serving the Buildings in Lots 4, 5 and/or 6), provided First Interstate, Associates and/or WPA as the case may be, (x) endeavors in good faith to minimize the cost of any such work (consistent with sound business practices) to be reimbursed by Rouse (y) incurs such cost within one year following completion of construction of the Westlake Project and (z) provides Rouse with invoices or other reasonably satisfactory evidence of the cost incurred in connection therewith. Subject to the foregoing, Rouse shall make payment of any amounts to be reimbursed hereunder promptly following completion of the work in question.

Notwithstanding the foregoing, any of First Interstate, Associates or WPA may at its option and in lieu of undertaking the work to be reimbursed by Rouse to such Party pursuant to this Section 4.5, require that Rouse itself undertake and complete such work, in which event (and provided Rouse and such Party agree upon a mutually acceptable scope of work and schedule) Rouse shall undertake and complete the same during the construction of the Westlake Project. Any dispute as to whether Rouse shall be required to reimburse any Party for, or itself undertake, any work pursuant to this 4.5 shall be resolved by arbitration pursuant to Article XIV, except that arbitration shall not apply to a dispute as to whether my work is required by applicable laws.

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ARTICLE V

EASEMENTS

Section 5.1. General Provisions. For the purpose of this Article the following will apply:

(a) A Party granting an easement is called a "Grantor."

(b) A Party to whom an easement is granted is called a "Grantee".

(c) The word "in" with respect to an easement granted "in" a particular parcel or property means, as the context may require, "in," "to," "on," "over," "through," "upon," "across" and "under," or any one or more of the foregoing.

(d) The grant of an easement by a Grantor shall bind and burden its property to the extent of its interest therein, which for purposes of the granting of any easement under this Agreement shall be deemed to be the servient estate, and any such grant shall survive the total or partial destruction of the subject matter of the easement and extend for such period as is hereinafter provided and shall run with the land. To the extent a Party owns a leasehold interest in property, the easements granted hereunder shall, to the extent permitted by law, bind the

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leasehold, as well as the Party holding the leasehold interest. The grant of an easement to a Grantee shall benefit the Grantee and its property on Block 1 (including, but not limited to, any leasehold, fee or real property interest of a Grantee), which property shall, for the purpose of this Agreement, be deemed to be a dominant estate, without payment of any fee or other charge therefor.

(e) In the event WPA acquires fee title to Lot 6, the easements granted hereunder shall burden the fee interest in Lot 6 (in the case of easements granted by WPA) and benefit such fee interest (in the case of easements granted to WPA) without the necessity of confirmation by any other document. However, upon the request of any Grantor or Grantee, each Party will execute and acknowledge an appropriate document confirming that such easements burden and benefit the fee interest in Lot 6, upon WPA's acquisition thereof.

(f) Unless provided otherwise, all easements granted hereunder are perpetual, irrevocable and non-exclusive and may be used in common by the Grantor and Grantee and their successors and assigns and its and their tenants, subtenants, concessionaires, licensees, contractors and the respective officers, employees, agents, customers and invitees of each.

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(g) All easements granted hereunder shall exist by virtue of this Agreement and the Exhibits hereto, without the necessity of confirmation by any other document and shall be binding upon each Grantor, its successors and assigns, for the benefit of each Grantee, its successors and assigns. Upon the termination or release of any easement (in whole or in part) in respect of all or any part of the property burdened thereby, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of any Grantor or Grantee, each other Grantor and Grantee will execute and acknowledge an appropriate document memorializing the existence (including the location and any conditions) or the termination or release (in whole or in part), as the case may be, of any easement.

Section 5.2. Easements Respecting Truck Dock and Service Facilities.

(a) Rouse, as Grantor, hereby grants to Associates, First Interstate and WPA, as Grantees, effective as of the date on which the retail portions of the Westlake Project are first open for business and for the benefit of Lots 4 and 5 and WPA's leasehold interest in Lot 6, and improvements constructed or to be constructed thereon pursuant to this Agreement, a perpetual easement over and upon those portions of the Westlake Property and Westlake Project comprised of the Truck Dock and Service

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Facilities (as shown on Exhibit D or as the same may be actually constructed pursuant to the applicable Approved Rouse Final Plans, or as the same may be reconfigured, with the approval of WPA, First Interstate and Associates as provided in Section 8.2(c), following damage to or destruction of all or part of the Westlake Project) for the purpose of service and service access (and for emergency fire exiting to the extent set forth in Section 5.3) to and from the improvements constructed or to be constructed on Lots 4, 5 and WPA's leasehold interest in Lot 6, (including vehicular access between such improvements and truck loading docks, circulation, passage and temporary parking of service vehicles, and loading and unloading of service vehicles and pedestrian activity associated therewith) in accordance with the purposes for which Truck Dock and Service Facilities are designed and subject to the provisions of Section 5.3.

Section 5.3. Use of Truck Dock and Service Facilities. Each of the Parties will take such action as may be reasonable to confine the use of the Truck Dock and Service Facilities to those persons to whom easements are granted under the provisions of Section 5.2 (or who are otherwise entitled to use the same pursuant to Section 5.1(f)) and to those uses and purposes for which the Truck Dock and Service Facilities are designed, and none of the Parties shall authorize the use of the same by anyone other than those persons to whom easements are granted under Section 5.2, or who are otherwise entitled to use the Truck Dock and

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Service Facilities pursuant to Section 5.1(f). Certain portions of the Truck Dock and Service Facilities shall be restricted to pedestrian use as shown on Exhibit D. In addition, to the extent required by applicable Laws, certain portions of the Truck Dock and Service Facilities may also, as shown on Exhibit D, be used by First Interstate and Associates for emergency fire exiting purposes and First Interstate and Associates shall each have the right to construct one fire door between their respective improvements and the Truck Dock and Service Facilities, provided: (a) the location of any such fire door shall be generally as shown on Exhibit D; (b) the plans and specifications respecting any such fire door shall be subject to reasonable approval by Rouse; (c) any such fire door shall be constructed at the sole cost, risk and expense of First Interstate or Associates, as the case may be (unless the necessity for constructing such fire door is due to the vacation and closing of the previously existing alleys and/or the construction of portions of the Westlake Project thereon, in which event Rouse shall bear the cost thereof pursuant to Section 4.5) and in accordance with all applicable Laws; (d) Rouse shall have no obligation respecting the maintenance of any such fire door; (e) Rouse shall have no obligation to alter or modify the Truck Dock and Service Facilities in order to accommodate any such fire door; (f) First Interstate or Associates (as the case may be) shall, at its own cost and expense, install any signage required as part of any fire exiting program relating to its fire door; and (g) any such fire door must be alarmed and integrated into Rouse's

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security system at the sole cost, risk and expense of First Interstate or Associates (as the case may be).

Unless required by law, Rouse shall not permit any person to do any of the following in or about any part of the Truck Dock and Service Facilities without the consent of each of the Parties:

(a) Parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of the Truck Dock and Service Facilities by persons entitled to use the same, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interests of any of the retail or business establishments within the Westlake Project or improvements of the Parties located on Block 1;

(b) Deface, damage or demolish any sign, light standard or fixtures, landscaping material or other improvement on property within the Westlake Property, Westlake Project or other property of the Parties on Block 1; or

(c) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind; provided, that with respect to paragraphs (a), (b) and (c) above, Rouse shall not be deemed to be in default hereunder so long as

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Rouse uses reasonable efforts to halt or prevent any such act or acts from taking place on property under its control. To the extent permitted by law, Rouse (and only Rouse) shall have the right to deny access to or exclude from the Truck Dock and Service Facilities any person engaged in the commission of any such act or acts or to restrain any such person from coming upon the Truck Dock and Service Facilities. In so acting, Rouse shall not be deemed to be the agent of any other Party, unless expressly authorized or directed in writing to do so by such other Party.

In addition to the foregoing, Rouse shall, from time to time, promulgate reasonable rules and regulations respecting the Truck Dock and Service Facilities and designed to promote the orderly and efficient use and operation thereof by the Parties and the tenants and occupants of the Westlake Project and of the other improvements of the Parties located on Block 1. First Interstate, Associates and WPA shall abide by and be bound by such reasonable rules and regulations (and shall cause tenants and occupants of their respective improvements located on Block 1 so to abide) provided and for so long as such rules and regulations are reasonable, apply uniformly to tenants and occupants of the Westlake Project and do not materially interfere with the Parties' use of the Truck Dock and Service Facilities as contemplated in this Agreement. It is understood and agreed that tenants and occupants of improvements located on Lots 4, 5 and 6 shall be entitled to use the Truck Dock and Service Facilities on the same

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basis (and subject to the same rules and regulations) as is applicable to tenants of the Westlake Project. Rouse shall provide within the Truck Dock and Service Facilities, at locations designated from time to time by Rouse, dumpsters for use by First Interstate, Associates and WPA (along with other tenants or occupants of the Westlake Project), and each of First Interstate, Associates and WPA shall reimburse Rouse at market rates (based on mutually agreed estimates as to yardage of trash) for dumpster rental, pick up charges and dump fees. In the event of a dispute as to what constitutes market rates or as to the appropriate estimate of yardage of trash, such dispute shall be determined by arbitration pursuant to Article XIV, and pending such determination, the Party or Parties challenging the rates or yardage estimate (First Interstate, Associates or WPA, as the case may be) shall pay any uncontested amounts. All amounts due to Rouse under this Section 5.3 shall be payable monthly, within ten (10) days following receipt of statements.

The easements granted hereunder with respect to the Truck Dock and Service Facilities and the rights of First Interstate, Associates and WPA to use the same (or any replacements or relocations thereof as herein provided) pursuant to this Agreement shall remain in effect notwithstanding any redevelopment, alteration, reconstruction or reconfiguration of the improvements and Buildings of First Interstate, Associates or WPA located on Block 1; provided, however, that if, in the future, any of First

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Interstate, Associates or WPA develops or constructs (by alteration, renovation or otherwise) improvements on Block 1 which, by virtue of a change in applicable Laws or otherwise, would result in use demands respecting the Truck Dock and Service Facilities greater than the maximum use demands reasonably possible for any development and use allowable for such property under zoning and land use Laws in effect as of the execution of this Agreement, such Party shall only be entitled to make such use of the Truck Dock and Service Facilities as is consistent with such maximum use demands allowable under such applicable Laws in effect as of the date of execution of this Agreement. Prior to any such redevelopment, alteration, reconstruction or reconfiguration by First Interstate, Associates or WPA, all of the Parties shall attempt to agree as to whether the same shall increase such Party's use demands beyond that allowable pursuant to the preceding sentence, and, if so, how such increased use demands may be minimized. The Parties shall further attempt to agree as to restrictions on the use, by the Party undertaking such redevelopment, alteration, reconstruction or reconfiguration (First Interstate, Associates or WPA, as the case may be), of the Truck Dock and Service Facilities so as to prevent an increase in use demands in excess of those allowable hereunder. The provisions of this paragraph shall apply to Rouse's use of the Truck Dock and Service Facilities respecting redevelopment, alteration, reconstruction or reconfiguration following the full completion of the Westlake Project (including, without limitation

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the office, retail and garage components of the Westlake Project), it being the Parties' intention that following completion of the Westlake Project, Rouse will not, without all Parties' consent, redevelop, alter, reconstruct or reconfigure the same so as to increase use demands respecting the Truck Dock and Service Facilities. Any dispute as to whether a proposed redevelopment, alteration, reconstruction or reconfiguration would exceed the maximum use demands reasonably possible under zoning and land use laws in effect as of the execution of this Agreement, or the restrictions imposed on a Party's use of the Truck Dock and Service Facilities pursuant to this paragraph shall be resolved by arbitration pursuant to the provisions of Article XIV.

Section 5.4. Easements for Attachment, Support and Encroachments.

(a) Each Party, as Grantor, hereby grants to each of the other Parties, as Grantee, easements in its property within Block 1 for the installation, use, maintenance, repair, replacement and removal of underground pilings, pile caps, soldier piles, tie-backs, footings, foundations, bearing walls, tie-ins to existing walls and supports on the property of the Grantor (collectively "Supporting Elements") for the purpose of supporting improvements of the Grantee during excavation and construction on the Grantee's property; provided that any of the foregoing (i)

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shall be subject to the reasonable written approval by the Grantor, (ii) shall not impair the structural integrity of or otherwise materially interfere with the use and possession of the present or future Buildings or property of Grantor), (iii) shall be temporary and limited to periods of construction (to the extent reasonably permitted pursuant to sound and prudent construction practices and provided that (1) permanent underpinning installed by Rouse along and beneath the southern exterior of the improvements on Lot 4, (2) subterranean de-tensioned tie backs and (3) other subterranean Supporting Elements may remain upon the Grantors' property so long as such Supporting Elements permitted pursuant to clauses (1), (2) and (3) above do not interfere with the use of the Grantor's property), and (iv) shall not encroach upon the property of any Grantor by more than thirty (30) feet. Upon the installation of Supporting Elements, the Grantee installing the same shall provide "as built" drawings of the same to each Grantor in whose property such Supporting Elements are located.

(b) The exercise of easements under this Section shall not result in damage or injury to the improvements of any other Party hereto or reduce the value of such improvements (except upon the payment of fair compensation) and shall not interfere with or interrupt the business operations conducted by any other Party hereto or by any other person claiming occupancy by, through or under such Party. Each Grantee, at its expense, shall promptly

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repair, replace or restore any and all improvements of Grantor which have been damaged or destroyed by Grantee in the exercise of the easements granted under this Section and shall defend, indemnify and hold Grantor harmless from all loss, liability, cost or expense incurred in connection with Grantee's exercise of such easements or due to third party claims resulting from encroachments permitted under this Section, except to the extent such loss, liability, cost or expense is caused by the negligence of Grantor.

Section 5.5. Limitations on Rights to Remove Supporting Elements. Each Party covenants that if all or any part of its Buildings are removed or destroyed and if such Party does not elect to restore the same, such Party will leave in place any Supporting Elements. Each Party shall be obligated to leave said Supporting Elements in place only for so long as the Buildings of another Party supported or served by such Supporting Elements shall stand as originally constructed or as replaced or shall be the process of being restored or replaced. Nothing in this Section shall be deemed to impose any obligation on any Party to restore or reconstruct all or any part of its Buildings. In addition, nothing contained in this Section shall be deemed to prohibit any Party from demolishing those portions of its Buildings other than Supporting Elements at any time.

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Section 5.6. Air Rights Easement.

(a) Rouse, as Grantor, hereby grants to each of the other Parties, as Grantee, for the mutual benefit of their respective properties and Buildings on Block 1, perpetual, irrevocable and non-exclusive reciprocal easements in, over and upon those portions of the airspace above Block 1 identified in Exhibit E attached hereto and made a part hereof, to the extent of Rouse's interest therein, for the purpose of establishing a sixteen (16) foot separation between the Westlake Project and the Buildings located on Lots 4, 5 and 6 at an elevation commencing approximately sixty five (65) feet above grade (measured at the Olive Way boundary of the easement area) so as to meet Seattle building code requirements and prevent construction of improvements within such airspace described in Exhibit E, except as provided in paragraph (b) below.

(b) With respect to the air rights easement granted pursuant to this Section 5.6, no Party, nor any other person or party, shall erect or construct improvements within the area of such air rights easement except for vents, fire escapes, fire protection exits or devices and other fixtures, installations or encroachments upon such airspace which (i) are appurtenant to structures or improvements located adjacent to such airspace, (ii) are required or permitted by applicable Laws and (iii) do not

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adversely affect the other Parties' ability to use and develop their property in accordance with applicable Laws.

Section 5.7. Easements for Fire Exits. Pursuant to Section 5.6 WPA shall have the right to construct, install, maintain and use within the airspace described in Exhibit E fire escapes and fire exits serving the improvements on Lot 6. Rouse, as Grantor, hereby grants to WPA, as Grantee, for the benefit of WPA's Buildings on Lot 6, a non-exclusive easement in, over and upon the Westlake Property and Westlake Project for the purpose of fire emergency exit from the fire escape serving WPA's Building on Lot 6 through the Westlake Project to Olive Way, the location of such easement to be generally as shown on Exhibit D. During construction of the Westlake Project, Rouse may modify or reconfigure the fire exit areas shown on Exhibit D so long as the same will not result in material inconvenience for those using the same in the event of a fire emergency or prevent WPA from complying with applicable Laws respecting fire safety. Rouse shall consult with WPA respecting any such reconfiguration of fire exit areas. Following the completion of construction of the Westlake Project, Rouse and WPA shall mutually agree upon the specific location of such fire exit areas as are the subject of the easement created pursuant to this Section 5.7, and, upon the request of either WPA or Rouse, the Parties shall execute and record an appropriate instrument confirming the existence and location of such easement. During construction of the Westlake

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Project, Rouse shall be obligated to satisfy the requirements of the appropriate governmental entities having jurisdiction respecting fire safety resulting from the inability of WPA, because of such construction, safely to utilize the fire escape located on the easterly side of WPA's Building on Lot 6.

Section 5.8. No Dedication of Easements. Nothing contained in this Article V, including the grant of any or all easements herein provided, shall be deemed to constitute a dedication of any property or any portion or portions thereof to any governmental body or agency or to the general public, or construed to create any rights in or for the benefit of any persons other than the Parties hereto, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

Rouse shall have the right to close off the Truck Dock and Service Facilities for such reasonable periods of time as may be necessary for the installation of utilities or improvements or for the repair or restoration of its property, or as may be legally necessary to avoid the possibility of dedicating the same for public use or prevent the acquisition or creation of prescriptive rights by any person or governmental authority; provided, however, that before closing off any part of the Truck Dock and Service Facilities as provided above, Rouse shall give written notice to each of the other Parties hereto of its intention to do so and



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shall coordinate its closing with the activities of each of the other Parties so that there is no unreasonable interference with the operation of the improvements or property of such other Party.

ARTICLE VI

USE AND OPERATING COVENANTS

Section 6.1. Rouse's Use and Operating Covenant. Commencing on the date on which the retail portions of the Westlake Project are first open for business and continuing during the Term of this Agreement, and subject to discontinuances of use due to condemnation, temporary discontinuances of use due to damage or destruction of all or portions of the Westlake Project, and provided compliance is not rendered impossible by action or inaction of any other Party hereto or by persons or events over which Rouse has no control, Rouse shall continuously manage, operate and keep the Truck Dock and Service Facilities in good, clean operating condition and repair, and shall at its cost and expense make all needed repairs thereto and shall restore the same and all systems, facilities or equipment therein as often as the same shall be worn out, damaged or obsolete.

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ARTICLE VII

INSURANCE

Section 7.1. Rouse's Casualty Insurance. At all times during the Term of this Agreement, including periods of construction, Rouse shall keep all of its improvements and Buildings, located on Block 1 insured by all-risk property insurance, with coverage sufficient to provide for the restoration and repair of the Truck Dock and Service Facilities in the event of casualty. None of the Parties shall otherwise be required to carry property insurance under this Agreement; however, in the event a Party maintains property insurance respecting its improvements and/or Buildings located on Block 1, such Party will provide copies of its property insurance policies (or certificates thereof) to such other Parties as may request the same in writing.

Section 7.2. Liability Insurance. Each of the Parties shall, at its own cost and expense, provide and keep in force comprehensive general liability insurance policies (including coverage against contractual liability), in standard form. Provided coverage is obtainable at commercially reasonable rates, such liability insurance policies of Rouse, First Interstate and Associates shall include, without limitation, coverage against liability in an amount of not less than \$10,000,000 with respect to any one occurrence, and in an amount of not less than

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\$10,000,000 with respect to personal injuries to or death of any one person, and in an amount of not less than \$5,000,000 with respect to damage to or destruction of property of others. Provided coverage is obtainable by WPA at commercially reasonable rates, its liability insurance policy hereunder shall include, without limitation, coverage against liability in an amount of not less than \$1,000,000 with respect to any one occurrence, including property damage. Such policies of insurance may include a deductible clause of not more than \$500,000 per individual claim in the case of Rouse, Associates and First Interstate and of not more than \$5,000 per individual claim in the case of WPA. The coverage amounts shall be subject to review and adjustment on each fifth anniversary of the Term of this Agreement in order to determine the adequacy of such amounts in light of the then existing circumstances, provided that no such adjustments shall reduce the coverage amount. If the Parties are unable to agree as to the adequacy of such coverage amounts and deductibles, the dispute shall be resolved by arbitration in accordance with the provisions of Article XIV; provided that, in lieu of arbitration WPA may elect to have its coverage amount and deductible increased by an amount proportionate to the increase in the Consumer Price Index as most recently reported as of each such fifth anniversary dates over the Consumer Price Index most recently reported as of the commencement of the Term or the previous adjustment date (as the case may be).

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Section 7.3. Waiver of Subrogation. No Party hereto shall be liable to any other Party or to any insurance company (by way of subrogation or otherwise) insuring the other Party for any loss or damage to any improvement, building, structure, fixture, furnishings or other tangible property, or any resulting loss of income, or any injury to any agent, employee of such other Party, to the extent the same is covered by any property, General Liability insurance or Worker's Compensation insurance maintained (or required to be maintained hereunder) by the Party suffering such loss or damage, or to the extent the same would have been covered by all-risk property insurance, written at replacement cost value with replacement cost endorsement, Comprehensive General Liability with broad form general liability endorsement or Worker's Compensation insurance, had the party suffering such loss maintained the same, even though such loss or damage might have been occasioned by the negligence of such Party causing such loss or damage, its agents or employees, and the Party suffering such loss or damage agrees that it shall look to its property insurance and such additional insurance as such Party may maintain as the sole means of recovery for such loss or damage; provided, however, that if, by reason of the foregoing waiver, any Party shall be unable to reasonably obtain any of the above-referenced insurance, such waiver will not be deemed to have been made by such Party with respect to the insurance which it otherwise would be unable to obtain or (as to such Party and respecting the same type of insurance) by the Parties which would have received the benefit of

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such waiver, and, provided further, that if, by reason of the foregoing waiver, any Party shall be unable to obtain any such insurance without the payment of an additional premium therefor, then unless the Parties having the benefit of such waiver shall agree to pay to such Party the cost of such additional premium within thirty (30) days after notice of the statement setting forth such requirement and the amount of the additional premium, such waiver shall be of no force and effect, as to such insurance, between such Party and such claiming Parties.

Section 7.4. Indemnity. Except as set forth in Section 7.3 and to the extent permitted by law, each of the Parties agrees to and does hereby indemnify, defend and save the others harmless from and against any and all claims, actions, damages, liability and expense occasioned wholly or in part, directly or indirectly, by any act or omission of it, its tenants, subtenants, agents, contractors, employees or invitees, and occurring on or respecting the indemnifying Party's property or activities on Block 1, except to the extent attributable to the acts or omissions of the Party claiming the benefit of such indemnity or of its tenants, subtenants, agents, contractors, employees or invitees.

Section 7.5. Policy Requirements. All insurance required in this Article shall be effected under valid and enforceable policies issued by financially responsible insurers which are subject to the service of legal process in the State of Washington

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and have a general financial condition classified as "XII" or better and a general policyholders rating of "A" or better, as classified and rated in the edition of "Best's Key Rating Guide of Property and Liability Insurers" most recently published by A. M. Best Company as of the date of issue of such policies or with equivalent financial classification and policyholders rating if the present rating and classification system utilized by the said A. M. Best Company shall be changed or if such Guide shall no longer be published. All insurance obtained pursuant to this Article shall be primary, non-contributory not contingent upon and not in excess of any other insurance, and the insurance required under Section 7.2 shall be carried in favor of and name as insureds all Parties hereto. Originals, certified copies or other reasonably satisfactory evidence of the existence and effectiveness of the initial policies or renewal policies, if any, as the case may be, required to be carried by each Party shall be delivered to all other Parties prior to initiation of construction and thereafter not less than fifteen (15) days prior to the expiration dates of the expiring policies. Any such Policy to be delivered to Rouse shall be delivered to Rouse c/o The Rouse Company, 10275 Little Patuxent Parkway, Columbia, Maryland, 21044, Attention: Risk Manager, or to such other person or address as Rouse may, from time to time, designate. Each Party may carry any insurance required to be maintained under this Article under a "blanket-policy" covering other properties of such Party or its affiliates. Each Party may also carry any part of the insurance

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required to be maintained under Section 7.2 under an umbrella excess liability policy meeting the requirements of this Section.

Section 7.6. Disposition of Insurance Proceeds.

(a) Any loss covered by insurance maintained by Rouse as provided in Section 7.1 shall be adjusted with the Rouse. Insurance proceeds with respect to loss of or damage to trade fixtures, equipment, furnishings, inventory or other personal property shall be paid to the Rouse and first applied by it to the repair or restoration of any damage or otherwise as required or permitted by the terms of this Agreement.

(b) In the event of loss occasioned by damage to or destruction of the Truck Dock and Service Facilities, and if the loss shall be in excess of \$250,000, then the insurance proceeds respecting such loss (but only to the extent necessary to restore the Truck Dock and Service Facilities) shall be deposited (in escrow, for the benefit of the Parties) with Rouse's senior Mortgagee, or if there shall be no Rouse Mortgagee, with a bank, trust company or other corporate fiduciary to be selected by the insured and approved by the other Parties hereto (which approval shall not be unreasonably withheld). Such insurance proceeds shall be held in trust by such depository as a fiduciary for the purposes herein expressed and disbursed for application to the work or repair or restoration as such work progresses. If the

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loss shall not exceed \$250,000 the insurance proceeds shall be paid to the insured and first applied by it toward the repair and restoration of such damage of the Truck Dock and Service Facilities or otherwise as required or permitted by the terms of this Agreement. The amount of \$250,000 in this Section 7.2 shall be subject to adjustment every five (5) years during the Term and shall be increased to reflect increases in the Consumer Price Index most recently reported as of the date of adjustment.

#### ARTICLE VIII

##### DAMAGE AND DESTRUCTION

Section 8.1. Damage and Destruction. In the event of the destruction of or damage to any portion of the property of any Party hereto located upon Block 1, and if such Party elects to rebuild, restore or repair the same (it being understood that under certain conditions as set forth in Section 8.2 the Parties may elect not to rebuild, restore or repair its property), such Party shall promptly rebuild, restore and repair the same, or cause such rebuilding, restoration and repair, in a good and workmanlike manner. In the case of Rouse, any such rebuilding, restoration and repair shall include, at the option of any other Party, the rebuilding, restoration and repair (as necessary) of the Truck Dock and Service Facilities to as good a condition, to the same general appearance, and on the same level or levels as

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existed prior to such damage or destruction. Except as herein provided, nothing contained herein shall prevent or prohibit any Party from redesigning the improvements to be rebuilt, restored or repaired (following damage or destruction) pursuant to this Section 8.1.

Section 8.2. Election not to Rebuild. Following completion of construction of the Westlake Project and subject to the rights, if any, of the City, any Mortgagees or other third parties, any Party hereto may, at its sole option, elect not to rebuild or restore the improvements located upon its property within Block 1 following damage to or destruction of the same, provided that:

(a) Such Party shall promptly clear away any ruins resulting from such damage or destruction and put its property in a slightly condition;

(b) The easements set forth in Article V shall remain in full force and effect in accordance with the terms of Article V and this Agreement; and

(c) In the event Rouse elects not to restore its improvements, the easement granted herein with respect to the Truck Dock and Service Facilities shall remain in full force and effect with respect to those portions of the Westlake Property encumbered thereby, and promptly following such damage or

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destruction, and regardless of the availability of insurance proceeds, Rouse shall either (i) rebuild, restore and repair (as necessary) the Truck Dock and Service Facilities as provided in Section 8.1 or (ii) provide a grade level covered or uncovered service roadway approximately sixteen (16) feet in width extending from Olive Way to Pine Street and in the location of the alley vacated prior to the recordation of this Agreement or (iii) provide other alternative service facilities for use by First Interstate, Associates and WPA for servicing the improvements located on Lots 4, 5 and 6. Such alternative service facilities referenced in clause (iii) above shall be designed to provide service access which is at least as convenient and service capacity at least as great as that provided to First Interstate, Associates and WPA immediately prior to the damage or destruction. First Interstate, Associates and WPA shall have the right to approve the plans respecting the service roadway or alternative service facilities referenced in clauses (ii) and (iii) above, such approval not to be unreasonably withheld. Any dispute as to service access or service capacity required under this Section 8.2(c) or respecting plans for the service roadway or alternative service facilities (as the case may be) shall be resolved by arbitration pursuant to Article XIV. Upon the completion of construction of the service roadway or alternative service facilities as referenced in clauses (ii) or (iii) above, the parties will mutually confirm, by recordation of an appropriate instrument the location of the same and that the same shall be

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encumbered by the easement and subject to the restrictions referenced in Section 5.2. The obligations of Rouse under this paragraph (c) shall be binding upon Rouse regardless of any claim which a Mortgagee of Rouse may have to insurance proceeds, and the proceeds of Rouse's casualty insurance as provided in Section 7.1 shall be applied to the repair and/or restoration of the Truck Dock and Service Facilities or to such other construction as is permitted pursuant to this paragraph (c); however, except as provided in this paragraph (c), Rouse shall not be required to rebuild or restore its improvements pursuant to this Agreement (regardless of the time of damage or destruction) to the extent the applicable insurance proceeds are required by its Mortgagee to be applied to the reduction of its Mortgage.

#### ARTICLE IX

##### MORTGAGES AND TRANSFERS

Section 9.1. Mortgages. At any time and from time to time during the Term of this Agreement, any Party may assign or encumber its interest in this Agreement by way of a Mortgage or Mortgages containing such terms and provisions as such Party shall, in its sole discretion, deem fit and proper, and no Mortgagee of such Party shall be bound by the provisions of this Agreement as a result of any such Mortgage. Notwithstanding the foregoing, following completion of construction of the Westlake

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Project should any such Mortgagee otherwise succeed to the interest of such Party in this Agreement pursuant to foreclosure, assignment or deed in lieu of foreclosure, such Mortgagee, and any Party who acquires the mortgaging Party's interest in this Agreement through such Mortgagee shall be bound by the provisions of this Agreement; provided, however, that a Mortgagee of Rouse which succeeds to the interest of Rouse in this Agreement and the Westlake Property pursuant to foreclosure, assignment or deed in lieu of foreclosure prior to completion of the Westlake Project shall only be required to complete construction of the Truck Dock and Service Facilities or a grade level surface roadway as provided in Section 8.1(c), and such Mortgagee of Rouse shall only be obligated to complete construction of the remainder of the Westlake Project to the extent required under the Contract.

Section 9.2. Release Upon Transfer. If at any time, any Party shall sell, assign, transfer or convey the entirety of its interest in the property which is the subject of this Agreement, other than by the execution of a Mortgage, such Party shall be relieved of all further liability hereunder accruing from and after the transfer date hereunder. Such Party shall, however, as a condition of such transfer, cause the transferee expressly to assume and be bound by all the terms, covenants and conditions in this Agreement contained and to be performed on the part of such Party.

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ARTICLE X

DISCHARGE OF LIENS

Section 10.1. No Liability. The Parties hereby give notice that no Party (the "Liened Party") shall be responsible or liable for any work performed in or on Block 1 by or for any other Party (the "Acting Party") or any tenant or subtenant thereof or for any materials furnished at Block 1 to or for the Acting Party or any tenant or subtenant thereof, nor shall the Liened Party be subject to a lien upon its property for the cost of any labor, services or materials provided to the Acting Party in the performance of the Acting Party's obligations, or the exercise of its rights, under this Agreement.

Section 10.2. Discharge of Lien. If, in connection with any work done or claimed to have been done by or on behalf of an Acting Party or any tenant or subtenant thereof, or in connection with any material supplied to such Acting Party or any tenant or subtenant thereof, any mechanic's, laborer's or materialman's lien shall be filed against the property or estate of the Liened Party, such Acting Party, at its cost and expense, within thirty (30) days after notice of the filing of such lien, shall, upon the demand of any Liened Party, either (a) cause the same to be discharged of record, or (b) cause the same to be insured over to the satisfaction of any Liened Party demanding such discharge;

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provided that, in the event of a bona fide dispute as to the propriety of the lien and if the property of the Liened Party is not threatened with foreclosure to satisfy the lien or otherwise jeopardized by the lien, the Acting Party shall not be required to discharge or insure over the lien so long as the Acting Party provides the Liened Party with a bond (naming the Liened Party as an obligee) in form and amount reasonably satisfactory to the Liened Party (provided that the amount of such bond shall be at least equal to 125% of the amount claimed under the lien) and issued by a surety licensed to do business in the State of Washington and reasonably satisfactory to the Liened Party and sufficient in all respects to protect the Liened Party's interest in its property affected by the lien, and shall also defend, at its sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of such lien, and shall pay any damages suffered or incurred therein by the Liened Party, and shall satisfy and discharge any judgments entered therein, and shall save the Liened Party harmless from any claims or damage therefrom.

ARTICLE XI

DEFAULTS AND REMEDIES

Section 11.1. Rights of Self-Help. If any party (the "Defaulting Party") fails to perform any of the provisions,

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covenants or conditions of this Agreement on its part to be performed (including, without limitation, the making of payment to others which the Defaulting Party has agreed herein to make) at the time and in the manner herein provided for the performance thereof, or if any provision, covenant or condition in this Agreement requires the diligent pursuit of a conduct or a course of work and if the Defaulting Party shall fail to pursue it diligently, then, in addition to any other remedies at law or in equity or as otherwise provided in this Agreement, any other Party (the "Non-Defaulting Party") may, upon reasonable notice to the Defaulting Party or upon such other notice as may be specifically provided herein, cure or prosecute the curing of such default and all reasonable expense incurred in connection therewith, including legal fees, together with interest thereon at the Default Rate shall promptly be paid by the Defaulting Party to the Non-Defaulting Party effecting such cure; provided that no Party shall enter upon the property of any other Party for the purpose of exercising self-help rights except to the extent expressly set forth in this Agreement, and nothing contained in this Agreement shall in any manner authorize any Party to take over or assume operation of the property of any other Party. Notwithstanding the foregoing, in the event of a monetary default under this Agreement or if a Party sustains monetary damages by reason of any default hereunder, the Non-Defaulting Party or Parties, upon obtaining a judgment against the Defaulting Party, shall have recourse only against the Defaulting Party's interest in property in or on Block

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1, and no other property of the Defaulting Party shall be subject to levy or attachment as a result of such default or judgment. The term "Default Rate" means the annual rate of interest equal to the lesser of (a) the rate of interest announced from time to time by The Chase Manhattan Bank (National Association) (or some other bank agreed upon by the Parties) for short term loans to large businesses having the highest credit standing or (b) the highest rate of interest allowed by law.

Section 11.2. No Termination. The Parties expressly agree that any provision of law or equity to the contrary notwithstanding, in the event of any default hereunder, such default shall not give rise to a right to terminate this Agreement, and the Parties expressly understand and agree that this Agreement shall continue in effect through its Term, notwithstanding any default by any Party.

Section 11.3. Remedies Not Exclusive. The remedies provided for in this Article are not the sole remedies of a Party and shall not be construed to be, by way of limitation, the only remedies available to the parties, but in addition any Party shall be entitled to all remedies available under other provisions of this Agreement or available in law or equity for breach by any other Party; provided that each Party's monetary liability under this Agreement shall be limited as provided in Section 11.1, and

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nothing herein shall permit a Party to terminate this Agreement as a result of default by another Party.

Section 11.4. Rights of Mortgagees. The Parties agree to accept performance and compliance by any Defaulting Party's Mortgagee of and with any term, covenant, agreement, provision or limitation on the Defaulting Party to be kept, observed or performed by the Defaulting Party under this Agreement. Without limiting the generality of the foregoing, in the event any Party shall be a Defaulting Party under this Agreement, no other Party shall exercise its rights or remedies provided in Section 11.1 unless it shall first give to each of the Defaulting Party's Mortgagees whose name and address shall have been provided to the Non-Defaulting Party pursuant to Article XV notice of the event or events giving rise to the Defaulting Party's default hereunder and stating such Non-Defaulting Party's intention to exercise its remedies hereunder on a date specified in such notice. Notwithstanding such notice, the Non-Defaulting Party shall not exercise its remedies hereunder if (i) such default by the Defaulting Party can be cured by the payment of a fixed monetary amount and within thirty (30) days after the date on which such notice is given, such Mortgagee shall make such payment or (ii) such default can be cured with the exercise of reasonable diligence by such Mortgagee, and such Mortgagee, within sixty (60) days after the date such notice is given commences such proceedings (including, without limitation, the filing of a

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petition for the appointment of a receiver) as it may deem necessary to succeed to the Defaulting Party's interest under this Agreement and thereafter diligently pursues the curing of such default. Upon request, each Party will enter into an agreement with any Mortgagee granting to the Mortgagee the rights set forth in this Section 11.4. This Agreement shall not be modified, amended, surrendered, canceled or wholly terminated by any Party, nor shall any waiver of any Party's rights hereunder be effective, without the written consent of each of such Party's senior Mortgagee, provided the name and address of such Mortgagee shall have been furnished to the Parties pursuant to Article XV.

#### ARTICLE XII

##### TERM AND TERMINATION DATE

Section 12.1. Term. This Agreement shall remain in full force and effect and binding upon each Party hereto and its property to the extent herein provided until the occurrence of the Termination Date as hereinafter defined. On the date of the first to occur of the following events (the "Termination Date"), this Agreement shall terminate in its entirety.

(a) Upon the condemnation of all or substantially all of the Westlake Project including, in any event, the Truck Dock and Service Facilities (provided that such termination shall not be

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effective until such time as title to the condemned property vests in the condemning authority and the Grantees of easements hereunder shall be entitled to claim compensation from the condemning authority on account of their lost easements or easement rights hereunder); or

(b) Upon the unanimous consent of all Parties and each Party's senior Mortgagee.

On the Termination Date each Party shall be released from each covenant, provision and condition to be performed by it under this Agreement (including, without limitation, those respecting easements), except that the parties shall not be released from any liability incurred prior to the Termination Date.

Section 12.2. Evidence of Termination. Upon the request of a Party, all Parties shall sign and exchange an instrument in recordable form evidencing the termination of this Agreement.

#### ARTICLE XIII

##### COMPLIANCE WITH LAWS

Section 13.1. Compliance with Laws. At all times during the Term, the Parties shall comply with all Laws then in effect

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respecting the performance of their respective obligations and the exercise of the respective rights hereunder.

ARTICLE XIV

ARBITRATION

Section 14.1. Arbitration. If a dispute shall arise between or among any two (2) or more of the Parties, and if, pursuant to any express provision of this Agreement, such dispute is to be resolved by arbitration, then any such dispute shall be resolved by arbitration. Except to the extent expressly provided otherwise herein, any such arbitration shall be in accordance with the commercial arbitration rules of the American Arbitration Association then obtaining.

The arbitrators shall be sworn faithfully and fairly to determine the question(s) at issue, and shall afford all Parties participating in the arbitration a hearing and the right to submit evidence, with the privilege of cross-examination on the question(s) at issue, and shall, with all possible speed, make their determination in writing, and shall give all Parties participating in the arbitration notice of such determination. Any Mortgagee of a Party shall be entitled to participate fully in such hearing. All fees and costs of any such arbitration shall be paid as provided in the commercial arbitration rules of the

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American Arbitration Association or as determined by the arbitrators. Each arbitrator shall be independent of any affiliation or interest with any of the Parties and shall be experienced in the development and operation of high quality, mixed-use real estate projects.

Section 14.2. Arbitration to be Binding. In any proceeding conducted pursuant to this Article, the award of the arbitrators shall be final and binding, and enforceable in any court of competent jurisdiction.

#### ARTICLE XV

##### NOTICES

Section 15.1. Notice Addresses. Every notice, demand, consent, approval or other communication which any Party is required or desires to give or make or communicate upon or to any other Party shall be in writing and shall be sent by mailing the same by registered mail or certified mail, postage prepaid, return receipt requested, as follows:

IF TO ASSOCIATES: SC Management Co.  
851 Traeger Avenue, Suite 200  
San Bruno, California 94066  
Attention: Michael L. Schwartz

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or to such other address or addresses as Associates shall from time to time and at any time designate by notice to the other Parties.

IF TO FIRST  
INTERSTATE:

First Interstate Bank of  
Washington, N.A.  
999 Third Avenue  
Seattle, Washington 98104  
Attention: Manager, Property  
Management Division

or to such other address or addresses as First Interstate shall from time to time and at any time designate by notice to the other Parties.

IF TO WPA:

Westlake Park Associates  
c/o Dempcy & Braley  
Suite 400, 414 Olive Way  
Seattle, Washington 98101  
Attention: Birney M. Dempcy

or to such other address or addresses as WPA shall from time to time and at any time designate by notice to the other Parties.

IF TO ROUSE:

Rouse-Seattle, Inc.  
c/o The Rouse Company  
10275 Little Patuxent Parkway  
Columbia, Maryland 21044  
Attention: General Counsel

or to such other address or addresses as Rouse shall from time to time and at any time designate by notice to the other Parties.

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Section 15.2. Mailing. Every notice, demand, request, or other communication sent in the manner aforesaid shall be deemed to have been given, made or communicated, as the case may be, and shall be effective on the second business day after the same has been deposited, registered or certified, properly addressed as aforesaid, postage prepaid, in the United States mail, except that any notice, demand, request, or other communication to a Party (but not to any Mortgagee) may be personally delivered, and in such event shall be deemed to have been given on the date the same shall have been personally delivered to the officer or representative of the Party (as identified above) to whom such notice, demand, request or other communication is addressed. Each Party shall designate an officer or representative to receive such personal delivery.

Section 15.3. Copies. Any Party may require, at any time, that additional copies of any notice, be sent to such person(s), not, as to each notice, in excess of three (3) copies at any one time, as shall from time to time be designated in any notice from such Party as to such requirement.

ARTICLE XIV

MISCELLANEOUS

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Section 16.1. Table of Contents and Section Headings. The table of contents and section headings in this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 16.2. Successors. Subject to the other provisions of this Agreement, all of the terms, covenants, obligations and conditions of this Agreement shall inure to the benefit of and shall bind as the case may be, the Parties hereto, and their respective heirs, executors, administrators, legal representatives, successors and assigns.

Section 16.3. Real Estate Commissions. Each of the Parties represents and warrants unto the others that there are no commissions, charges or other compensation due any broker, agent or finder with respect to this Agreement or the negotiations thereof, and each of the Parties covenants and agrees with the others that if any Party hereto utilizes an agent, broker, or finder, the Party so using an agent, broker or finder or incurring such commissions, charges, fees or similar expenses will pay, hold harmless and indemnify the others from and against all claims, costs, expenses or liability (including, without limitation, the cost of counsel fees in connection therewith) for any such

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compensation, commissions, charges or other compensation claimed by any such broker, agent or finder.

Section 16.4. Estoppel Certificates. Each Party agrees that at any time and from time to time at reasonable intervals, within thirty (30) days after written request by any other Party, such Party will execute, acknowledge and deliver to the requesting Party or to any prospective Mortgagee, assignee or tenant or subtenant, a certificate stating (i) that the Agreement is unmodified and in force and effect (or if there have been modifications, that this Agreement is in force and effect as modified, and identifying the modification agreements, or if the Agreement is not in force and effect the certificate shall so state); (ii) whether or not, to the best knowledge of the certifying Party, there is any existing default by any Party under the Agreement with respect to which a notice of default has been served, and if there is any such default, specifying the nature and extent thereof; and (iii) whether or not, to the best knowledge of the certifying Party, there are any setoffs, defenses or counterclaims against enforcement of the obligations of the certifying Party hereunder.

Section 16.5. No Waiver. No failure of any Party hereto to exercise any power given it hereunder or to insist upon strict compliance by any other Party with its obligations hereunder, and no custom or practice of the parties at variance with the terms

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hereof shall constitute a waiver of any Party's right to demand exact compliance with the terms hereof.

Section 16.6. Partial Invalidity. In any term, covenant, or condition of this Agreement or the application thereof to any person, party or circumstances shall, to any extent, be illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity or becomes unenforceable because of judicial construction, the remaining terms, covenants and conditions of this Agreement, or the application of such term, covenant or condition to persons, parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 16.7. Rights Cumulative. All rights, powers and privileges conferred herein upon the Parties shall be cumulative but not restrictive to those given by law.

Section 16.8. Waivers and Consents. One or more waivers of any covenant, term or condition of this Agreement by any Party shall not be construed as a waiver of subsequent breach of the same covenant, term or condition. The consent or approval by any Party to or of any act by any other Party requiring such consent

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or approval shall not be deemed to waiver or render unnecessary consent to or approval of any subsequent similar act.

Section 16.9. Entire Agreement. This Agreement and all the Exhibits attached hereto contains the entire agreement of the Parties with respect to the subject matter hereof, and no representations or agreements, oral or otherwise, between the Parties not embodied herein, attached hereto or hereinabove referenced shall be of any force and effect. Any additions or amendments to this Agreement subsequent hereto shall be of no force and effect unless in writing and signed by the Parties hereto.

Section 16.10. Transfer; Binding Nature. Except as provided in Section 9.1, any sale, transfer or conveyance of any property subject to this Agreement or any part thereof or interest therein shall be subject to this Agreement, and it shall be deemed construed without further agreement that the purchaser or grantee at any such sale, transfer or conveyance has assumed and agreed to carry out any and all obligations of the transferor in this Agreement so long as such purchaser or grantee shall be the owner of the interest so transferred. As a condition of any such sale, transfer or conveyance, the transferee thereunder shall execute such instruments as the other Parties may reasonably require confirming the foregoing, and each Party represents and covenants that it will not make any such sale, transfer or conveyance except

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in accordance with the provisions of this Section 16.10. Without limiting the generality of the foregoing, if WPA shall acquire the fee interest in Lot 6, this Agreement shall remain in full force and effect as between WPA, as fee owner of Lot 6, and the other Parties, in accordance with its terms.

Section 16.11. No Partnership. Nothing herein and no subsequent acts of any of the Parties shall be deemed or construed by the Parties hereto, nor by any third party, as creating or authorizing the creation of the relationship of principal and agent or of partnership or joint venture between the Parties, or any of them.

Section 16.12. Expense of Obligations. Where this Agreement imposes obligations or responsibilities upon any Party hereto, such obligations and responsibilities shall be performed at the expense of such Party responsible therefore except where otherwise specifically provided.

Section 16.13. Unavoidable Delay. Except as otherwise expressly provided, each Party hereto shall be excused from performing any of its obligations or undertakings provided in this Agreement (except any of its obligations to pay any sums of money under the applicable provisions hereof) for so long as the performance of such obligation is prevented or delayed by any cause which is beyond the reasonable control of such Party,

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including but not limited to such of the following as may be beyond the reasonable control of such Party: Act of God; fire; earthquake; flood; explosion; action of the elements; war; invasion; insurrection; riot; mob violence; sabotage; malicious mischief; inability to procure or general shortage or rationing or regulation of labor, equipment, facilities, sources of energy (including, without limitation, electricity, gas, gasoline or steam), materials or supplies in the open market; failure of transportation; strikes; lockouts; action of labor unions; condemnation; requisition; order of government or civil or military or naval authorities; litigation involving a Party or others relating to zoning, subdivision, or other governmental action or inaction pertaining to Block 1, or any portion thereof; or any other cause, whether similar or dissimilar to the foregoing, not reasonably within the control of such Party; provided, however, that no Party shall be entitled to relief under this Section by reason of any event unless such Party shall have given the other Parties notice of such event and the nature of such event within a reasonable time after the occurrence of such event, and unless such Party uses reasonable prudence and diligence (without unreasonable expense) to avoid or mitigate the delay caused by such event. Any delay or cause excusing performance pursuant to the terms of this Section 16.13. is referred to herein as "Unavoidable Delay".

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Section 16.14. Recordation. This Agreement or a memorandum hereof shall be recorded among the Land Records. All costs and expenses of such recording shall be shared equally by the Parties.

Section 16.15. Number and Gender. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and vice versa, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include corporation, firm or association.

Section 16.16. No Third Party Rights. Nothing in this Agreement shall be construed to permit anyone other than the Parties hereto and their respective Mortgagees, successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of any non-performance hereunder.

Section 16.17. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have caused these presents to be executed, acknowledged and delivered in form and manner proper

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE, IT IS DUE TO THE QUALITY OF THE DOCUMENT.















City of Seattle

Executive Department-Office of Management and Budget  
Gary Zanker, Director  
Charles Royer, Mayor

9/15/86  
OK  
MJP



September 2, 1986

The Honorable Douglas Jewett  
City Attorney  
City of Seattle

Dear Mr. Jewett:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING  
DEPARTMENT: Engineering

SUBJECT: An Ordinance vacating portions of Westlake Avenue and  
the Alley in Block 1, heirs of Sarah A. Bell's Addition

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding  
this request for legislation directly to your office for review and drafting.

After reviewing this request and drafting appropriate legislation:

- ( X ) File the legislation with the City Clerk for formal introduction to the City Council as an Executive Request.
- ( ) Do not file with City Council but return the proposed legislation to OMB for our review. Return to \_\_\_\_\_.

Sincerely,

Charles Royer  
Mayor

By

*Nancy Saemi for*

JIM RITCH  
Acting Budget Director  
JR/NS

Enclosure

cc: Director, SED

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REC'D OMB SEP 3 1986



033390

Seattle  
Engineering Department

Eugene V. Avery, Director of Engineering  
Charles Royer, Mayor

August 29, 1986

The Honorable Charles Royer  
Mayor of the City of Seattle  
1200 Municipal Building  
600 Fourth Avenue  
Seattle, Washington 98104

VIA: Office of Management and Budget

RE: Vacation of a Portion of  
Westlake Avenue, et al.  
C.F. No. 291789  
Resolution No. 27093

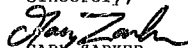
Dear Mayor Royer:

Here for City Council approval is a Council Bill vacating a portion of Westlake Avenue and a certain alley. (Comptroller's File Number 291789; Resolution No. 27093).

The vacation was approved by the City Council following a public hearing held on May 23, 1984. The various conditions placed on the vacation have been satisfied and is now ready for your consideration.

I recommend approval of this Council Bill.

Sincerely,

  
GARY ZARKER  
Director of Engineering

LAK/lah  
19:22

Enclosures

cc: James M. Bourey, Director, Office for Planning  
Eugene V. Avery, Manager, Property & Court Services, OPF

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