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KING COUNTY, WA

When Recorded Return to:

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KING COUNTY, WA

Document Title(s) (or transactions contained therein)

- 1. Property Use and Development Agreement

Grantor: 1) FH, LLC

Additional on page N/A

Grantee: 1) City of Seattle

Additional on page N/A

Legal Description (abbreviated): LOTS 1 THROUGH 8, BLK 70, TERRY'S FIRST ADDITION TO THE TOWN OF SEATTLE, VOLUME 1, PAGE 49

Full legal on Page 5

Assessor's Tax

Parcel ID #: 8590400825, 8590400826, 8590400827, 8590400830, 8590400835, 8590400845, 8590400850

Reference Nos. of Documents Released or Assigned: N/A

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT ("Agreement") is executed this date in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by FH, LLC ("FH"), a Washington limited liability company.

WITNESSETH

WHEREAS, FH is vested in fee simple title in the real property (the "Property") situated in King County, Washington, described in Exhibit A hereto; and

WHEREAS, FH applied for and received approval of a Master Use Permit (Project No. 2206790) to develop an office building project (the "Project") on the Property; and thereafter developed such Project; and

WHEREAS, the Project necessitated the vacation of the alley in Block 70, Terry's First Addition to the Town of Seattle; and

WHEREAS, FH filed a petition (C.F. 307526) for the vacation of the above-referenced alley pursuant to Chapter 35.79 of the Revised Code of Washington and Seattle Municipal Code (“SMC”) Chapter 15.62; and

WHEREAS, the Transportation Committee of the Seattle City Council (“Transportation Committee”) held a public hearing on the alley vacation petition on March 14, 2006; and

WHEREAS, the Transportation Committee subsequently discussed the project in a public meeting; and

WHEREAS, the Seattle City Council recommended approval of the alley vacation petition, subject to conditions, on March 20, 2006; and

WHEREAS, execution of this Agreement is desired to ensure compliance with any condition of alley vacation approval that will not be fully satisfied prior to passage of the ordinance vacating the above-referenced alley,

NOW, THEREFORE, FH hereby covenants, bargains, and agrees on behalf of itself, its successors, and assigns, that if the ordinance vacating the above-referenced alley is passed by the Seattle City Council and approved by the Mayor, FH shall operate and maintain the Project in accordance with this Agreement.

Section 1: Addressed below are those conditions of the alley vacation approval that require ongoing effort during the operation of the Project, and could not, therefore, be met prior to passage of the ordinance vacating the above-referenced alley.

A. Cherry Street Public Benefit Features: The Cherry Street public benefit features (i.e., the hillclimb, paving treatments, terracing, benches/resting places, additional landscaping, and potential signage) (“Cherry Street Hillclimb”) shall be maintained open and available at all times for public use and enjoyment.

B. 8th Avenue Garden Crescent: The 8th Avenue Garden Crescent (“Garden Crescent”) public benefit features (i.e., publicly-accessible open space, landscaping, seating, a chess table, and paving treatments) shall be maintained open and available for public use and enjoyment from 7 a.m. until 7 p.m. each day.

Section 2: To ensure the safety and security of Project residents, the public, and the Property, FH will adopt and enforce those certain rules and regulations, attached hereto as Exhibit B, regarding the use of and access to the Cherry Street Hillclimb and the Garden Crescent. These rules and regulations shall be displayed in at least two (2) prominent locations in both the Cherry Street Hillclimb and the Garden Crescent.

Section 3: The Cherry Street Hillclimb and the Garden Crescent are located in areas within the Property as delineated by dashed lines on the Site Plan, attached hereto as Exhibit C. An executed copy of this Agreement shall be recorded in the records of King County, Washington, and the covenants hereof shall be deemed to attach to and run with

the Property.

Section 4: FH shall indemnify and hold the City harmless for any and all claim, losses, liabilities, liens, costs or expenses resulting from or arising out of public use of the Cherry Street Hillclimb and the Garden Crescent. If any claim covered by this paragraph is asserted against the City, FH, upon notice from the City, shall defend the same at its sole cost and expense, and shall pay any final judgment rendered upon such claim.

Section 5: This Agreement may be amended or modified by mutual agreement between the City and FH, according to the following procedure. Minor changes to this Agreement may be approved by the Seattle Department of Transportation ("SDOT"), if the approved change is consistent with the purpose and intent of the conditions. Any major changes to this Agreement, as determined by SDOT, shall require approval by the City Council of the City by resolution or ordinance. SDOT shall provide FH with notice and the opportunity to comment on whether a change is considered minor or major, prior to SDOT making that determination. Nothing in this Agreement shall be construed as a surrender of the City's governmental powers.

Section 6: This Agreement is made for the benefit of the City and the public. The City may institute and prosecute any proceeding law in equity to enforce this Agreement.

Section 7: It is further expressly agreed that in the event any covenant or condition or restriction in this instrument or any portion thereof is invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition, or restriction.

Dated this 16 day of October, 2009.

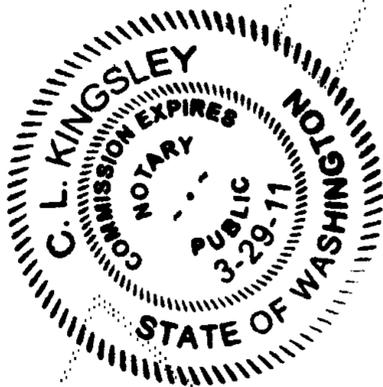
FH, LLC, a Washington limited liability company

By: F. Marsh Kellegrew
Name: F. Marsh Kellegrew
Title: CEO & President

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 16th day of September, 2009, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared MARSH KELLEGREW, to me known to be the person who signed as CEO : President of FH, LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said CEO : President of the limited liability company and that he was authorized to execute said instrument.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.



C. L. Kingsley
(Signature of Notary)

C. L. Kingsley
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at Seattle.
My appointment expires: 03-29-11.

EXHIBIT A

Legal Description

LOTS 1 THROUGH 8, INCLUSIVE, BLOCK 70, TERRY'S FIRST ADDITION TO THE TOWN OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 49, IN KING COUNTY, WASHINGTON;

TOGETHER WITH ALLEY ADJOINING WHICH, UPON VACATION, WOULD ATTACH BY OPERATION OF LAW.

EXHIBIT B

Rules and Regulations

The following rules and regulations shall apply to the Cherry Street Hillclimb and the Garden Crescent (collectively, the "Public Benefit Areas").

1. Hours of Public Access. The Cherry Street Hillclimb shall remain open and available for public use twenty-four (24) hours per day, seven (7) days per week. The Garden Crescent shall remain open and accessible to the public from 7 a.m. until 7 p.m., seven (7) days per week.
2. Pedestrian Use. The Public Benefit Areas are available for pedestrian use only. With the exception of wheelchairs, walkers, and other mobility devices used by individuals with disabilities, the use of personal transportation devices such as, but not limited to, skateboards, roller skates, rollerblades, bicycles, and scooters is prohibited.
3. Harassment Prohibited. Verbally or physically offensive, threatening, or intimidating behavior directed at residents of the Property or members of the public present in the Public Benefit Areas, within private residences at the Property, or within the interior or exterior common areas of the Property is prohibited.
4. Use of Alcohol and Illegal Drugs Prohibited. The use of alcohol and illegal drugs is prohibited.
5. Noise. Noise levels from activity in the Public Benefit Areas may not at any time exceed those mandated by the City's noise control ordinance, found at SMC Chapter 25.08.
6. Pets. Pets shall at all times be under the control of their owners. Dogs must be leashed; other pets must be restrained in the manner customary for that animal. Owners must collect and dispose of any waste generated by their pets.
7. Weapons Prohibited. The possession and/or use of weapons (as defined in Seattle Municipal Code, Title 12A) is prohibited at all times.
8. Bodily Functions. Urination or defecation by persons is prohibited at all times within the Public Benefit Areas.
9. Sleeping. Sleeping within the Public Benefit Areas is prohibited.
10. Panhandling. Panhandling is prohibited.
11. Sales and/or Solicitation of Merchandise and Services. All sales and solicitation of food, merchandise, or services is prohibited.

12. Other Activities Not Listed. In addition to the foregoing restrictions and limitations, all acts not specifically enumerated in these rules and regulations, but prohibited by Seattle Municipal Code, Title 12A, Criminal Code, are prohibited within the Public Benefit Areas.

Unofficial Document

Exhibit C

Site Plan

(see attached diagram)

