

When Recorded, Return to:
500 Mercer Partners, LLC
PO Box 9883
Seattle, WA 98109



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PACIFIC NW TIT AG 67.00
PAGE-001 OF 006
03/17/2010 11:00
KING COUNTY, WA

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PACIFIC NW TIT AG 66.00
PAGE-001 OF 005
11/24/2009 14:29
KING COUNTY, WA

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor	1) 500 Mercer Partners LLC
:	
<input type="checkbox"/>	Additional on page _____
Grantee	1) City of Seattle
:	
<input type="checkbox"/>	Additional on page _____
Legal (abbreviated):	Description Lots 1 - 12, Block 48, Replat of Blocks 44-53, Mercer's 2 nd Addition to North Seattle <i>9/5/11</i>
<input checked="" type="checkbox"/>	Additional on : _____
Assessor's Tax Parcel ID #:	545830-0345, 545830-0390
Reference Nos. of Documents Released or Assigned:	_____

re-record to add legal description

THIS Property Use and Development Agreement (Agreement) is executed this date in favor of the City of Seattle, a municipal corporation (the City); by 500 Mercer Partners, LLC (the Owner), a Washington limited liability company, its successors and assigns. The Agreement shall be a covenant running with the land.

WITNESSETH

WHEREAS, the Owner is vested in fee simple title in the real property located in King County, Washington, described in Exhibit 1 (the Property); and

WHEREAS, the Owner obtained Master Use Permit No. 740059 for development of a mixed-use residential and commercial project (the Project) on the Property.

WHEREAS, the Owner, filed a petition C.F. 305398 with the City for the vacation of the alley in Block 48, Replat of Blocks 44-53, Mercer's 2nd Addition to North Seattle, pursuant to Chapter 35.79 of the Revised Code of Washington and Seattle Municipal Code Chapter 15.62; and

WHEREAS, the Transportation Committee of the City Council held a public hearing on the alley vacation petition on May 20, 2003; and

WHEREAS, the City Council granted approval of the alley vacation petition, subject to conditions on June 9, 2003; and

WHEREAS, the Property is subject to a trail easement area as described in Agreement for Multi-purpose Trail Easement and Restrictive Covenant, King County Recording Number 20031002002553, (the Trail Easement), which is a 10-foot-wide area on the east side of 5th Avenue N between Mercer Street and Roy Street and on the south side of Roy Street between 5th Avenue N and Taylor Avenue N; and

WHEREAS, execution of this Agreement is desired to ensure compliance with any on-going conditions of the vacation approval subsequent to passage of the vacation ordinance;

NOW, THEREFORE, the Owner, hereby covenants, bargains, and agrees on behalf of itself, its successors, and assigns to the following.

Section 1. Addressed below are those conditions of the vacation approval that require on-going responsibility of the Owner, and therefore, were not met prior to passage of the vacation ordinance.

A. The Trail Easement area shall remain open and accessible to the public at all times and improved with the public amenities described in Section B. The Owner may from time to time use portions of the Trail Easement area for sidewalk café use, subject to approval by the Seattle Department of Transportation, issuance of all other necessary permits, and the Owner's compliance with the terms and conditions of the permits.

B. Public amenities provided within the Trail Easement area (the Amenities) shall include:

1. A visible rain garden water feature;
2. Chairs made of punched metal that provide public seating on 5th Avenue;
3. Bicycle racks and upstanding planters along Roy Street and 5th Avenue;

4. Sidewalk bulbs at the corners of 5th Avenue North and Mercer Street, 5th Avenue N and Roy Street, Roy Street and Taylor Avenue N; and

5. Educational signage along the perimeter storefronts.

C. The plaza entry at 5th and Roy shall remain open and accessible to the public and shall not be gated or enclosed.

D. The interior painting graphic signage and metal-graphic design loading bay doors at 5th and Taylor shall remain elements of the project and shall not be altered or removed, except with the prior approval by the Seattle Department of Transportation.

E. The retail windows along the 5th Avenue façade of the Project shall remain as transparent as practicable and at a minimum, shall meet codified transparency requirements.

F. The Public Amenities shall be maintained to the highest standard. The Public Amenities shall not be removed or modified unless they are being replaced in-kind. The in-kind replacement of any Public Amenity shall be similar to the original in size, placement, and in quality of design and material. Any change to the streetscape or Public Amenities, other than routine maintenance or in-kind replacement, shall require prior approval by the Seattle Department of Transportation.

Section 2. The legal description of the Property where the Project is located is included in Exhibit 1, which is incorporated into this Agreement. An executed copy of this Agreement shall be recorded in the records of King County and the terms and covenants of this Agreement shall attach to and run with the Property.

Section 3. This Agreement is made for the benefit of the City and the public. The City may institute and prosecute any action in law or equity to enforce this Agreement.

Section 4. In the event any covenant, condition, or restriction in this Agreement, or any portion thereof, is determined to be invalid or void, the invalidity or voidness shall not affect any other covenant, condition, or restriction.

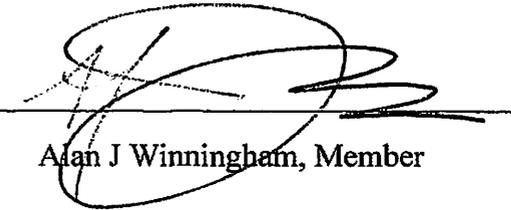
Section 5: The Owner shall indemnify and hold the City harmless for any and all claims, losses, liabilities, liens, costs or expenses resulting from or arising out of public use of the Public Amenities, except to the extent such claims, losses, liabilities, liens, costs or expenses resulting from the sole negligence of the City. If any claim covered by the paragraph is asserted against the City, the Owner 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.

DATED this 16 day of November 2009.

500 Mercer Partners, LLC

By: Mercer Street Management, LLC, member

By: _____


Alan J Winningham, Member

STATE OF WASHINGTON)
ss.)
COUNTY OF KING)

On this day, personally appeared before me Alan J Winningham, to me known to be a member of Mercer Street Management LLC, a Washington limited liability company which in turn is the managing partner of 500 Mercer partners, LLC, a Washington limited liability company, the limited liability company that executed the within and foregoing instrument, and acknowledged the 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 authorized to execute said instrument on behalf of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18 day of November, 2009.

Claudia M Ihrig
Claudia M. Ihrig
(print or type name)
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle, WA
My Commission expires: Dec 9-2011

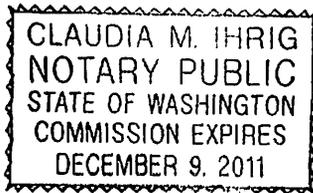


EXHIBIT 1

PROPERTY DESCRIPTION

PARCEL A:

Lots 1 through 12, inclusive, Block 48, Replat of Blocks 44 to 53, inclusive, Mercer's Second Addition to North Seattle, according to the plat thereof recorded in Volume 9 of Plats, page 54, in King County, Washington;

TOGETHER WITH the west half of vacated alley adjacent to said Lots 10 through 12, as vacated under City of Seattle Ordinance Number 46050;

EXCEPT that portion of Lots 7 through 9, said Block, now included in 5th Avenue North as widened and as provided in City of Seattle Ordinance Number 100337;

AND EXCEPT the west 21 feet of Lots 10 through 12, inclusive, as condemned by the City of Seattle under King County Superior Court Case Number 746324.

PARCEL B:

TOGETHER WITH all after-acquired rights and title in and to any portion of the following described property:

A sixteen foot strip lying southerly of the margin of Roy Street and northerly of the margin of Mercer Street within Block 48, Replat of Blocks 44 to 53, inclusive, Mercer's Second Addition to North Seattle, according to the plat thereof recorded in Volume 9 of Plats, page 54, in King County, Washington;

EXCEPT the west half of said strip adjacent to Lots 10 through 12, inclusive, of said Plat.