

Return Address:

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SEATTLE, WA 98101



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PAGE-001 OF 011
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KING COUNTY, WA

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

1. PROPERTY USE & DEVELOPMENT 2. _____
AGREEMENT
3. _____ 4. _____

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page _____ of document

Grantor(s) Exactly as name(s) appear on document

1. CITY PLACE IV LLC, _____
2. _____

Additional names on page _____ of document.

Grantee(s) Exactly as name(s) appear on document

1. CITY OF SEATTLE, _____
2. _____

Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

LOTS 1-6, BUK 101, D.T. DOLY'S S ADDN., VOL. 1, PG. 202 & LOTS
9-12, BUK 101, D.T. DOLY'S SIF ADDN., VOL. 1, PG. 202, LESS ...

Additional legal is on page 1 of document.

Assessor's Property Tax Parcel/Account Number

assigned 1986200410, 1986200418, 1986200420,
1986200450 & 19163200460

Assessor Tax # not yet

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

"I am signing below and paying an additional \$50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional \$50 fee if the document meets margin/formatting requirements

AFTER RECORDING RETURN DOCUMENT TO:

Roger A. Pearce
Foster Pepper PLLC
1111 3rd Avenue, Suite 3400
Seattle, Washington 98101

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor(s): CITY PLACE IV LLC

Grantee(s): CITY OF SEATTLE

Abbreviated Legal Description:

Lots 1 – 6, Block 101, D.T. Denny's 5th Add., Vol. 1, p. 202; and
Lots 9 – 12, Block 101, D.T. Denny's 5th Add., Vol. 1, p. 202;
Less ptns for alley and for Terry Ave.
Official legal description on **Exhibit A**.

Assessor's Property Tax Parcel or Account Nos:

1986200410, 1986200418, 1986200420; 1986200450, 1963200460

Reference Number of Related Documents: N/A

PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made this date in favor of the CITY OF SEATTLE, a municipal corporation of the State of Washington ("City") by CITY PLACE IV LLC, a Washington limited liability company, owner of the Property described herein ("Owner").

WITNESSETH

WHEREAS, the Owner is vested in fee simple title and has a substantial beneficial interest in the property located in King County, Washington, as legally described in Exhibit A hereto (the "Property");

WHEREAS, the Owner has redeveloped the Property with new office buildings (the "Development") pursuant to City of Seattle Department of Planning and Development Project Nos. 3008521; and

WHEREAS, in connection with the Development, a petition was filed in 2008 under City of Seattle Clerk's File No. 309170 pursuant to RCW Ch. 35.79 and Seattle Municipal Code Ch. 15.62, by the Owner to vacate a portion of the alley in Block 101, D. T. Denny's 1st Addition to North Seattle as legally described in Exhibit B; and

WHEREAS, the City Council granted preliminary approval of the vacation subject to conditions, including the public benefit features listed in Exhibit C, which include the condition that a certain amount of surface plaza area of the Development on the Property (the "Plaza Area") be accessible to the public as described in this Agreement. The surface plaza area open to the public is depicted on Exhibit D.

WHEREAS, the Owner now seeks final vacation of the portion of the alley in Block 101, D. T. Denny's 1st Addition to North Seattle as described in Exhibit B;

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

Section 1. The Plaza Area in compliance with the Council conditions in City of Seattle Clerk's File No. 309170 shall not be developed with buildings at grade level, and shall be developed with a plaza, landscaping, benches, lighting, signs and other open space and pedestrian amenities as shown on Exhibit D hereto. The Plaza Area shall be open to the public to pass through or use the plaza during all hours regardless of whether such use by the public is associated with the Development. Public use of the Plaza Area is, however, subject to the conditions contained in this Agreement.

The Owner shall provide signage in the Plaza Area indicating the Plaza Area is open for public use in accordance with the terms of this Agreement. The signage and any changes to the signage shall be approved by the Seattle Department of Transportation.

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

The areas identified as "Restricted Public Use Areas" on **Exhibit D** may be dedicated from time to time by the Owner, through leases or other written instrument to building tenants, as areas for outdoor seating for eating or drinking establishments located in the Development. In such cases, access to these areas shall be limited to use by patrons of the eating or drinking establishments.

Section 2. The Plaza Area shall be accessible from Boren Avenue North and Terry Avenue North and shall include the following public amenities on the Property as shown on the **Exhibit D** drawing: special pavers, seating, lighting, landscaping, and a signature element such as a mature tree in the portion of the Plaza Area off Terry Avenue North. The amount or types of amenities may be modified by the Owner after receiving the written consent of the Director of the Department of Transportation; provided, the quality of the amenities shall not be diminished and the modified amenities shall be designed to continue to activate the Plaza Area with public uses and pedestrian activity.

The Plaza Area is contiguous with improvements outside the Plaza Area that were required and constructed as part of the permitting for the Development, including sidewalk improvements, street trees and pedestrian enhancements in the rights-of-way of Boren Avenue North, Harrison Street and Terry Avenue North.

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

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

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

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

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

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

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

Section 10. Owner shall indemnify, hold harmless, and defend the City and its officers, agents and employees, from any and all claims, losses, liabilities, liens, costs, or expenses including attorney's fees, resulting from or arising out of public use of the Plaza Area, except to the extent resulting from the negligence or intentional acts of the City.

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

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

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

Dated this 29th day of May, 2012.

OWNER:

CITY PLACE IV LLC,
a Washington limited liability company

By: CITY INVESTORS LLC
a Washington limited liability company
Its: Manager

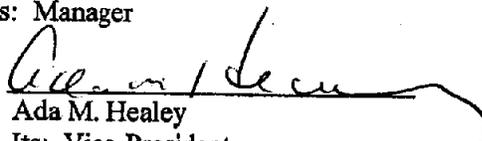
By: 
Ada M. Healey
Its: Vice-President

EXHIBIT A

Legal Description of the City Place IV LLC Property

THOSE PORTIONS OF BLOCK 101 OF D.T. DENNY'S 5TH ADDITION TO NORTH SEATTLE IN KING COUNTY, WASHINGTON, AND MORE PARTICULARLY DESCRIBED AS A WHOLE AS FOLLOWS:

PARCEL A:

LOTS 1 AND 2, BLOCK 101, D.T. DENNY'S 5TH ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS AT PAGE 202, IN KING COUNTY, WASHINGTON.

PARCEL B:

LOT 3, BLOCK 101, D.T. DENNY'S 5TH ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS AT PAGE 202, IN KING COUNTY WASHINGTON.

PARCEL C:

LOTS 4, 5 AND 6, BLOCK 101, D.T. DENNY'S 5TH ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS AT PAGE 202, IN KING COUNTY, WASHINGTON;
EXCEPT THAT PORTION OF THE WEST 2 FEET OF SAID LOTS 4, 5 AND 6 DEEDED TO THE CITY OF SEATTLE FOR ALLEY PURPOSES BY DEED RECORDED UNDER RECORDING NUMBER 20110310000270.

PARCEL D:

LOTS 9 AND 10, BLOCK 101, D.T. DENNY'S 5TH ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS AT PAGE 202, IN KING COUNTY, WASHINGTON.
EXCEPT THE WEST 5 FEET THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 162246 FOR STREET PURPOSES;
AND EXCEPT THAT PORTION OF THE EAST 2 FEET OF THE SOUTH 34.88 FEET OF SAID LOT 9 DEEDED TO THE CITY OF SEATTLE FOR ALLEY PURPOSES BY DEED RECORDED UNDER RECORDING NUMBER 20110310000270.

PARCEL E:

LOTS 11 AND 12, IN BLOCK 101 OF D.T. DENNY'S 5TH ADDITION TO NORTH SEATTLE AS PER PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 202, RECORDS OF KING COUNTY.
EXCEPT THE WEST 5 FEET THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO 162246 FOR STREET PURPOSES.

EXHIBIT B

Legal Description of Portion of Alley to be Dedicated (C.F. 309170)

The sixteen-foot-wide alley bisecting Block 101 of D.T. Denny's Fifth Addition to North Seattle according to the plat thereof recorded in Volume 1 of Plats at Page 202, Records of King County, Washington, lying south of the south margin of Harrison Street and lying north of the north margin of Thomas Street;
Except the South 158 feet thereof;
The parcel described above contains 3,229 square feet, more or less. Situate in City of Seattle, King County, Washington.

EXHIBIT C

Plazas open to the public on Terry and Boren Avenues North **(completed and to be maintained on the Property pursuant to this Agreement)**

The 13,692 SF of open space available to the public 24 hours/day
One signature mature tree is planted on the Terry Avenue Plaza
Landscaping, seating, lighting, special paving are provided on both plazas
Preservation and reuse of the Terry Avenue Building is consistent with the
Landmarks Controls & Incentives Agreement

Terry Avenue North improvements **(completed and accepted by the City)**

Improvements are consistent with the Terry Avenue North Design Guidelines
A 31-foot wide sidewalk is provided
Sidewalk paving includes a combination of colored concrete pavers and
architectural concrete
Back-in angle parking
Improvements on Terry Avenue North include street trees and understory
planting areas, ornamental street lights, fixed benches and bicycle racks

Other Rights-of-way **(completed and accepted by the City)**

Curb bulbs to support pedestrian activity
Street trees, sidewalk improvements and retail frontage as feasible on Harrison
St. and Boren Ave. N

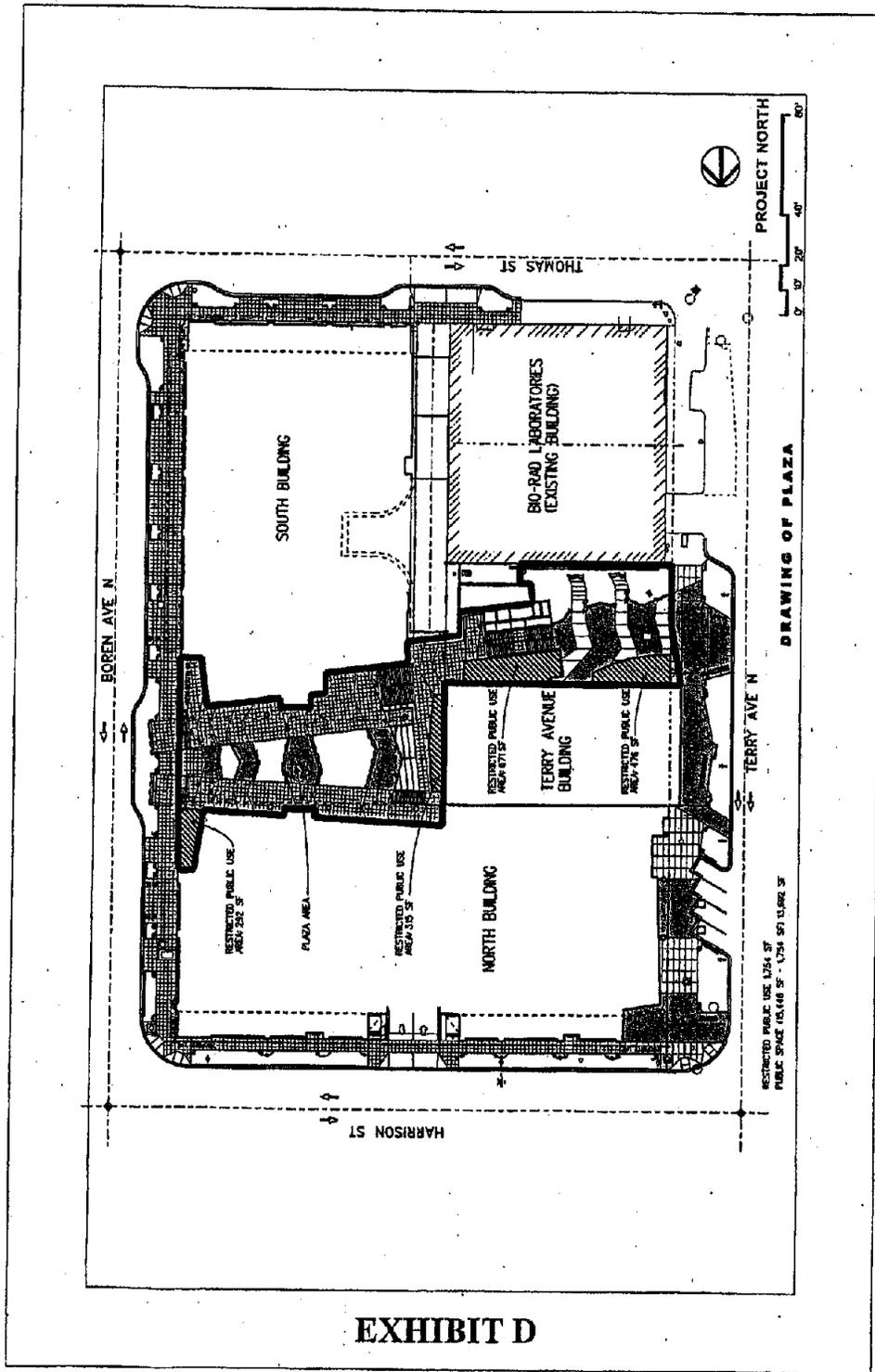


EXHIBIT D