

After Recording Return to:
 FOSTER PEPPER PLLC
 1111 Third Avenue, Suite 3400
 Seattle, Washington 98101
 Attn: Joseph E. Delaney



20090106001185

FOSTER PEPPER AG 52.00
 PAGE 001 OF 011
 01/06/2009 14:00
 KING COUNTY, WA

**AGREEMENT REGARDING STORMWATER DRAINAGE IMPROVEMENTS
 (City Place III)**

Party A:	CITY OF SEATTLE, a Washington municipal corporation
Party B:	CITY PLACE III LLC, a Washington limited liability company
Abbreviated Legal Description:	LOTS 1, 2, 3 & 4, AND PTN LOTS 8, 9, 10, 11, 12, 13 & 14, ALL IN BLK 103 VOL 1 PG 79; KING COUNTY, WASHINGTON COMPLETE LEGAL DESC ON <u>EXHIBIT B</u>
Abbreviated description of alley to be vacated:	PTN OF ALLEY ADJNG LOTS 1-3 & 12-14 INCLSV AND PTN OF ALLEY ADJNG PTN OF LOTS 4 & 11 IN BLK 103 VOL 1 PG 79; KING COUNTY, WASHINGTON COMPLETE LEGAL DESC ON <u>EXHIBIT A</u>
Assessor's Property Tax Parcel Account Number(s):	198320-0325-03; 198320-0360-09; 198320-0375-02
Related Documents:	N/A

**AGREEMENT REGARDING STORMWATER DRAINAGE IMPROVEMENTS
(City Place III)**

THIS AGREEMENT REGARDING STORMWATER DRAINAGE IMPROVEMENTS (this "Agreement") is entered into on the 26th day of November, 2008, between the **City of Seattle**, a Washington municipal corporation (the "City"), and **City Place III LLC**, a Washington limited liability company ("City Place III").

RECITALS

Whereas, City Place III is the owner of most of the block bounded by Mercer Street, Boren Avenue North, Republican Street, and Terry Avenue North (Block 103, D.T. Denny's First Addition to North Seattle, Volume 1, page 79, King County Book of Plats, referred to herein as "Block 32") in the South Lake Union Urban Center, legally described in Exhibit B attached hereto; and

Whereas, City Place III has petitioned the City to vacate the northern portion of the north-south alley in Block 32 (the "Alley") which is described in Exhibit A attached hereto (the "Alley Vacation"), and has also applied to the City for permits to construct new buildings on Block 32 including the portion of the Alley to be vacated; and

Whereas, City Place III has offered to construct and dedicate to the City a new twenty (20) foot wide alley extension to connect the portion of the Alley that will remain in place after the Alley Vacation to Boren Avenue North, which will run perpendicular to the Alley (the "Alley Extension"); and

Whereas, the Alley slopes from south to north; stormwater currently flows north on the Alley to Mercer Street; and the construction of buildings on the portion of the Alley to be vacated requires that the stormwater be collected and conveyed to the City's sewer lines in a different manner than currently exists; and

Whereas, City Place III has offered to design and construct a new stormwater system on Block 32 that will convey stormwater from the Alley to the City's sewer system in the public rights-of-way; and

Whereas, City Place III has retained the services of a qualified civil engineering firm to prepare a preliminary design for this stormwater conveyance.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. System Design. City Place III shall prepare a final design for a system to convey stormwater ("CP System") from the portions of the Alley that will remain in place after the Alley Vacation and the Alley Extension to the City's sewer facilities in Terry Avenue North and/or Republican Street (collectively, the "City System"), approximately as shown in the preliminary design drawing attached hereto as Exhibit C. This design will comprise three collection systems as follows:
 - A. The primary system shall be sufficient to collect all stormwater up to a twenty-five (25) year storm event in a catch basin located on the City Place III property, and convey that stormwater in pipes through City Place III's building to the City System.
 - B. Stormwater from storm events greater than the twenty-five (25) year event will overflow to the trench drain on the loading dock to be located near the northwest corner of the Alley that will remain in place after the Alley Vacation, and will be conveyed in pipes through City Place III's building to the City System.
 - C. Stormwater from storm events which exceed the capacity of both the catch basin and the trench drain will sheet flow across the courtyard on City Place III's property and into the gutter located in the Terry Avenue North right of way, which flows north to the City System.

City Place III shall submit the CP System design to Seattle Public Utilities ("SPU") as part of the stormwater plans for its new project on Block 32, for SPU's review and approval (the "CP System Plans").

2. Construction of System. After approval by SPU and City Place III has received other required permits and approvals, City Place III shall construct the CP System during development of Block 32 in conformance with the approved CP System Plans, including any SPU-approved field changes.
3. Maintenance of System. City Place III shall be solely responsible, at its cost, for the maintenance, repair and replacement of the CP System. City Place III's responsibility for maintenance, repair and replacement of the CP System does not include responsibility for any public right-of-way, except for repair of right-of-way that it damages during maintenance, repair or replacement of the CP System.
4. Indemnification. City Place III agrees to indemnify, defend and hold the City, its agents, employees and contractors harmless from and against any and all causes of action, claims, liability and costs (including but not limited to reasonable attorney's fees and costs), and for any and all claims for injuries and/or damages suffered by any person, and for any and all damage to property which may be caused by City Place III in the exercise of its rights, duties and obligations under this Agreement (collectively, "Claims"), provided that City Place III shall not be responsible to the City for any injuries and/or damages to any person

or property caused solely by the City's, its agent's, employee's, or contractor's negligence.

5. Duration, Successors and Assigns. The provisions of this Agreement as set forth herein shall continue in full force and effect in perpetuity from the date of recordation hereof, unless terminated by the mutual agreement of the City and City Place III (or their successors or assigns) pursuant to a written instrument recorded in the official records of King County, Washington. All terms and conditions provided herein shall run with the land and shall inure to the benefit of, and be binding upon, the successors, assigns, personal representatives or heirs of the parties herein.

6. Miscellaneous.

A. Attorney's Fees. If any suit or other proceeding is instituted by any of the parties to this Agreement arising out of or pertaining to this Agreement, including but not limited to filing suit or requesting an arbitration or other alternative dispute resolution process, and appeals and collateral actions relative to such suit or proceeding, the substantially prevailing party shall be entitled to recover its reasonable attorneys' fees and all costs and expenses from the substantially non-prevailing party, in addition to such other available relief.

B. Notices. Any notice, request, approval, consent or other communication required or permitted to be given by any party to any other hereunder shall be in writing and shall be deemed to have been duly given when delivered personally or by overnight courier; or received following deposit as prepaid certified mail (return receipt requested) with the United States Postal Service; and addressed to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other.

City: City of Seattle
Director of Seattle Public Utilities
700 Fifth Avenue, Suite 4900
P.O. Box 94769
Seattle, WA 98124-4018

With a copy to: City of Seattle
City Attorney's Office
600 Fourth Avenue, Fourth Floor
P.O. Box 94769
Seattle, WA 98124

City Place III: City Place III LLC
c/o Vulcan Inc.
505 Fifth Avenue S, Suite 900

Seattle, WA 98104
Attn: Vice President, Real Estate

With a copy to: Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299
Attn: Joseph E. Delaney

- C. Entire Agreement. This Agreement represents the entire agreement of the parties on the subject matter hereof and supersedes all prior negotiations and agreements related thereto. This Agreement may be modified, supplemented or amended only by a written instrument signed by the parties hereto or their successors or assigns.
- D. Further Assurances. As and to the extent otherwise contemplated by this Agreement, each party to this Agreement agrees that it will at any time and from time to time after the date hereof, at its sole cost and expense, immediately following the reasonable request of the other party, promptly execute, acknowledge (if necessary) and deliver or cause to be properly executed, acknowledged (if necessary) and delivered, such agreements, certificates, statements, instruments and documents and promptly take, or promptly cause to be taken, such other and further steps and actions, as may be required by law or as reasonably shall be deemed necessary by the other party in order to more fully effect, evidence or carry out the intent and purposes of this Agreement.
- E. Captions. The captions set forth in this Agreement are included for convenience of reference only and shall not in any way limit or affect the meaning or interpretation of any terms or provisions of this Agreement.
- F. Governing Law. This Agreement shall be interpreted and construed under and governed by the internal laws of the State of Washington without regard to choice of laws provisions.
- G. Exhibits. The exhibits attached to this Agreement are deemed incorporated herein as though set forth in full.
- H. Waiver. Neither the waiver by any party of any breach of any provision hereof, nor the failure of any party to seek redress for violation of or insist upon strict performance of any such provision, shall be considered a waiver of such provision or any subsequent breach thereof.
- I. Counterparts. This Agreement may be executed in counterparts, and each counterpart hereof shall be deemed to be an original instrument, but such counterparts together shall constitute but one agreement.

[Signature page to Agreement Regarding Stormwater Drainage Improvements]

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

CITY:

CITY OF SEATTLE,
a Washington municipal corporation

By:

Nancy Ahern

Name:

Nancy Ahern

Its:

Deputy Director, Seattle Public Utilities

CITY PLACE III:

CITY PLACE III LLC,
a Washington limited liability company

By:

CITY INVESTORS LLC,
a Washington limited liability company,
its Manager

By:

Adam Healey

Name:

Adam M. Healey

Its:

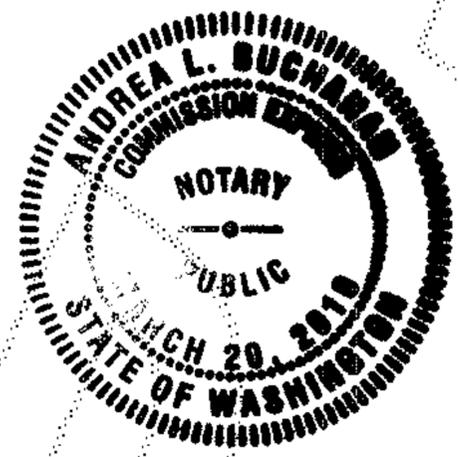
Vice President

STATE OF WASHINGTON
COUNTY OF KING

SS.

I certify that I know or have satisfactory evidence that Nancy Ahern
is the person who appeared before me, and said person acknowledged that said person signed
this instrument, on oath stated that said person was authorized to execute the instrument and
acknowledged it as the Deputy Director, SPU of CITY OF SEATTLE, a Washington
municipal corporation, to be the free and voluntary act of such municipal corporation for the
uses and purposes mentioned in the instrument.

Dated this 26 day of November, 2008



Andrea L. Buchanan
(Signature of Notary)

~~Nancy Ahern~~ Andrea L. Buchanan
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at Seattle

My appointment expires 3-20-2010

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that Ada M. Healey is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Vice President of City Investors LLC, a Washington limited liability company, the Manager of CITY PLACE III LLC, a Washington limited liability company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument.

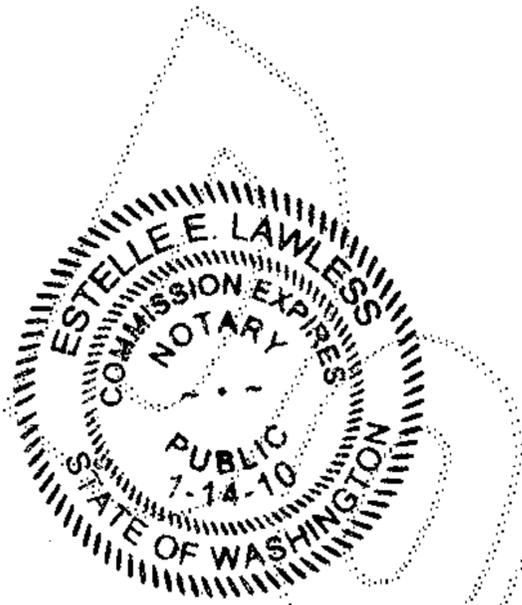
Dated this 2nd day of September, 2008.

Estelle E Lawless
(Signature of Notary)

ESTELLE E LAWLESS
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at Renton

My appointment expires 1/14/2010



Document

EXHIBIT A
Legal Description of Alley to be Vacated

THE PORTION OF THE ALLEY ADJOINING LOTS 1 THROUGH 3 INCLUSIVE AND LOTS 12 THROUGH 14 INCLUSIVE, AND THAT PORTION OF THE ALLEY ADJOINING LOTS 4 AND 11, EXCEPT THE SOUTHERN 20 FEET THEREOF, ALL IN BLOCK 103, DAVID T. DENNY'S FIRST ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 79, IN KING COUNTY WASHINGTON.

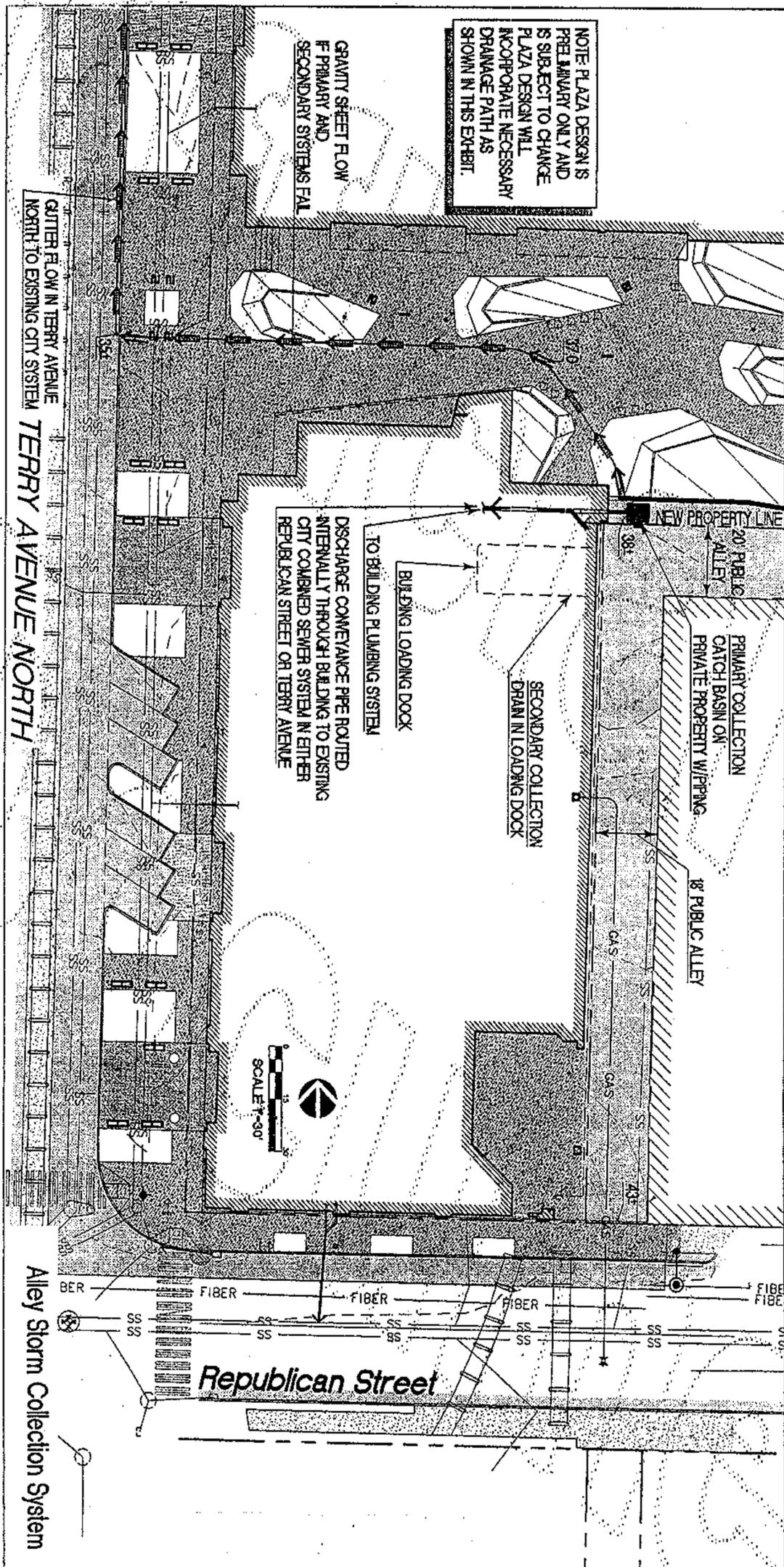
SITUATED IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON

EXHIBIT B
Legal Description of City Place III Property

LOTS 1 THROUGH 4 INCLUSIVE AND LOTS 8 THROUGH 14 INCLUSIVE, ALL IN
BLOCK 103, DAVID T. DENNY'S FIRST ADDITION TO NORTH SEATTLE,
ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE
79, IN KING COUNTY WASHINGTON.

SITUATED IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF
WASHINGTON

EXHIBIT C Preliminary Stormwater System Design



COUGHLIN PORTER LUNDEEN
 A CONSULTING STRUCTURAL AND CIVIL ENGINEERING CORPORATION

PROJECT: Block 32
 PROJECT NO. C070097-04 CLIENT: Vulcan Inc
 413 PINE STREET, SUITE 300 SEATTLE, WA 98101
 DESIGNED BY: PRW DATE: 12/09/08
 CHECKED BY: JNP SHEET 1 OF 1
 P: 206/343-0460 F: 206/343-5691

Exhibit C