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King County, WA
King County, WA

When Recorded, Return to:
HILLIS CLARK MARTIN & PETERSON P.S.
Attn: Melody B. McCutcheon
1221 Second Avenue, Suite 500
Seattle, WA 98104

PROPERTY USE AND DEVELOPMENT AGREEMENT

Owner:	CITY PLACE VI, LLC
Grantee:	CITY OF SEATTLE
Legal Description (abbreviated)	Lots 1-5 and 8-14, Block 93 D.T. Denny's 1st Add. to North Seattle, Vol. 1, p. 79, King County, WA
☒ Additional legal description on:	Exhibit B
Assessor's Tax Parcel ID #:	1983200065, 1983200075, 1983200085
Reference Nos. of Related Documents:	N/A

** RE-RECORD TO CORRECT SCRIVENER'S ERROR IN RECITAL C ON PAGE 2 **

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT ("Agreement") is executed this 29th day of July, 2015, in favor of THE CITY OF SEATTLE, a Washington municipal corporation (the "City"), by CITY PLACE VI, LLC, a Washington limited liability company ("Owner").

RECITALS

A. **WHEREAS**, the Owner is vested in fee simple title and has a substantial beneficial interest in the property located in King County, Washington, described in Exhibit A attached and incorporated into this Agreement by this reference (the "Property"); and

B. **WHEREAS**, the Owner applied for and received approval of a Master Use Permit (Project Nos. 3012560 and 3012563) to develop office buildings on the Property, and has redeveloped the Property according to the Master Use Permit (the "Development"); and

C. **WHEREAS**, in connection with the Development, a petition was filed by the Owner under City of Seattle Clerk's File No. ~~31245~~ 312425 according to Chapter 35.79 of the Revised Code of Washington and Seattle Municipal Code Chapter 15.62, to vacate a portion of the alley in Block 93 of D.T. Denny's 1st Addition to North Seattle as legally described in Exhibit B attached and incorporated into this Agreement by this reference; and

D. **WHEREAS**, the Transportation Committee of the Seattle City Council held a public hearing on the vacation petition and recommended approval of the petition, subject to conditions; and

E. **WHEREAS**, the Seattle City Council granted preliminary approval of the vacation petition, subject to conditions, on December 17, 2012 in City of Seattle Clerk's File No. 312425 ("Council Vacation Decision") including the public benefit elements listed in Section 1 of this Agreement (the "Public Benefit Elements"); and

F. **WHEREAS**, execution of a Property Use and Development Agreement was required to ensure that the Public Benefit Elements shall be provided and maintained; and

G. **WHEREAS**, the Owner now seeks final vacation of the portion of the alley in Block 93 of D.T. Denny's 1st Addition to North Seattle as described in Exhibit B;

NOW, THEREFORE, the Owner agrees that if the ordinance vacating the above-referenced alley is passed by the Seattle City Council and approved by the Mayor, then the Owner shall provide and maintain the Public Benefit Elements according to this Agreement:

AGREEMENT

Section 1. Public Benefit Elements. Described below are those Public Benefit Elements of the alley vacation approval located on the Property or in the adjacent rights-of-way that require ongoing provision and maintenance during the life of the Development.

Table for Section 1

Public Benefits	Description	Provided as a Vacation Public Benefit Element
1. Publicly Accessible Open Space (see Exhibit C)	Public open space enhances the pedestrian experience with retail access, landscape, seating, café spaces and weather protection	See attached depiction on Exhibit C
	A. Westlake "Plaza"	1,800 sf
	B. 9th Avenue "Plaza"	2,200 sf
	C. Pedestrian Galleria	7,800 sf
	D. Public Bench Seating	250 lf
	E. Public Café Seating	1,300 sf
	F. Overhead Weather Protection (canopies and bldg. overhangs)	7,000 sf
	G. Landscaped Areas	2,500 sf (includes 6 trees)
	H. Gallery Parasol	Provided
	I. Water Feature	800 sf
2. Streetscape Amenities	A. Street Tree Upgrades (Caliper)	(1) Mercer Street (5) Westlake Ave N (6) 9th Ave N (3) Republican Street
	B. Planting Improvements in R.O.W.	Additional trees: (7) Mercer Street (5) Westlake Ave N (10) 9th Ave N (3) Republican Street 3,700 sf of planting area
	C. Overhead weather protection (canopies) on Westlake Ave N. and portions of Mercer Street	3,100 sf steel/glass canopy
	D. Overhead weather protection (building overhangs at pedestrian areas) on portions of Mercer Street and 9th Ave N	1,200 sf building overhangs
	E. Seating elements in R.O.W.	100 lf
	F. Pedestrian lighting	Provided
	G. Pedestrian wayfinding elements on Westlake Ave N and 9th Ave N	(1) Westlake Ave N (1) 9th Ave N
	H. Dog bag dispensers on 9th Ave N, Westlake and Republican Street	(1) Westlake Ave N (1) 9th Ave N (1) Republican Street
	I. Streetscape improvements: there are a number of streetscape improvements that collectively activate the street and invite the public in. These include providing retail frontage where not required along Mercer Street, 9th Ave N and the pedestrian galleria and underground utilities along 9th Ave N	Westlake Ave N: 100% retail, lobby, public

Public Benefits	Description	Provided as a Vacation Public Benefit Element
3. Bicycle Infrastructure	A. Public bicycle racks	(20) Public bicycle racks
	B. Fix-It station on 9th Ave N	(50 sf) Fix-It Station
	C. Bike box	SDOT deemed bike box not appropriate in this location
	D. Provisions for future bike share station	(400 sf) for Pronto! Bike Share program located along 9th Ave N.
4. Voluntary Building Setback	Voluntary Building Setbacks are proposed within the property line to enhance the landscape design, enhance the sidewalk and provide exterior area adjacent to retail	
	A. Along Westlake Ave N	290 lf; 2,400 sf
	B. Along Mercer Street	185 lf; 1,100 sf
	C. Along 9th Ave N	315 lf; 2,400 sf
	D. Along Republican Street	74 lf; 450 sf
5. Sustainable Features	A. Incorporate Green Factor into project	Green Factor Target
	B. Target LEED Gold	LEED Gold Commitment
	C. Incorporate raingardens at 9th Ave N	1,300 sf
	D. Increase public awareness of incorporated sustainable measures through information materials and/or displays	Display showing sustainable features to be installed
	E. Green roofs	1,300 sf
	F. Reclaim rain water for irrigation	Achieved a 50% reduction (against similar projects) of potable water use for irrigation.
6. Streetcar Station	A. Incorporate SLU Streetcar Station into building at Westlake Ave N	NE corner of building
	B. Provide interactive Commuter Information Center kiosk	(1) Westlake Ave N
	C. Provide seating and weather protection for streetcar patrons	Adjacent to building

Section 2: Maintenance. The Owner shall maintain all of the Public Benefit Elements in good repair for the life of the Development.

Section 3: Public Access.

3.1 Except as otherwise provided in this Agreement, public access shall be allowed 24 hours a day every day of the year to the following Public Benefit Elements on the Property, as listed in the Table for Section 1, such that the public can pass through or use the Public Benefit Element regardless of whether such use by the public is associated with the Development: All items listed in Section 1 as Publicly Accessible Open Space, all items listed in Section 3D as Bicycle Infrastructure, and all items listed in Section 6 as the Street Car Station improvements; provided that:

(a) The Owner may adopt reasonable rules and regulations regarding use of and access to such Public Benefit Elements as are necessary to ensure the security of the users of the Public Benefit Elements and the Development, so long as the rules and regulations are consistent with the terms of this Agreement, and a summary of them is posted in visible locations in the Development; and

(b) The areas identified as Restricted Public Use Areas on Exhibit C attached and incorporated by reference 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.

3.2 Signage shall be provided at both Westlake Avenue N and at 9th Avenue N indicating the public may access and use the Publicly Accessible Open Space.

3.3 The Publicly Accessible Open Space identified as item 1 in the Table for Section 1 is depicted in Exhibit C. Exhibit C shows the overall area that comprises the Publicly Accessible Open Space, and also specifically depicts the 1,300 square feet of Public Café Seating that is item 1.E in the Table for Section 1, and the Restricted Public Use Areas designated pursuant to Subsection 3.1(b) of this Agreement. With the exception of the Restricted Public Use Areas designated pursuant to Subsection 3.1(b), the Publicly Accessible Open Space shall not be used for any commercial or retail purpose.

Section 4. Closures. The Owner shall have the right to temporarily close or modify the Public Benefit Elements for: construction; maintenance and repair; temporary use for private functions directly related to the Development or the Owner; the maintenance of safety or security for the Development or persons using the Development; or other circumstances beyond the Owner's control.

Section 5. Binding Effect. An executed copy of this Agreement shall be recorded in the records of King County and the covenants shall be deemed to attach to and run with the Property. The Owner agrees that the terms of this Agreement shall be binding on the Owner and its successors, heirs, and assigns.

Section 6. Modification. This Agreement may be amended or modified by mutual agreement between the City and Owner, 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 in the Council Vacation Decision. Any major changes to this Agreement, as reasonably determined by SDOT, shall require approval by the City Council by resolution or ordinance. SDOT shall provide the Owner 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.

The legal description of the Property is attached to this Agreement as Exhibit A. The description of the Property shall change to include that portion of the existing alley bisecting the Property that is vacated by the City in connection with the Development. This change shall not require any modification or amendment to this Agreement.

Section 7. Enforcement. This Agreement is made for the benefit of the City and the public. The City may institute and prosecute any proceeding in law or in equity to enforce this Agreement.

Section 8. Insurance. 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 damages arising out of bodily injuries or death. The City Risk Manager may require an increase in the insurance limit that the Owner shall provide within 90 days of the required increase. The insurance policies obtained shall be issued by companies authorized to conduct business in Washington State and shall name the City as an additional insured. The Owner shall provide evidence of insurance to the City Risk Manager at the City's request.

Section 9. Indemnity. Owner covenants and agrees to defend, indemnify, and hold harmless the City of Seattle, its officials, officers, employees, and agents from all liabilities, claims, causes of action, judgments, or expenses, including reasonable attorney fees and necessary litigation expenses, resulting from any actual or alleged bodily injury (including death) or actual or alleged damage to property arising out of or in connection with the use or occupation of the Public Benefit Elements. The indemnification obligations under this Agreement do not apply to any liabilities, claims, causes of action, judgments or expenses resulting from bodily injury or property damage caused by the negligence or intentional acts of the public or the City, or its officers, employees, elected officials, agents or subcontractors.

Section 10. Reservation. The Owner reserves the right to use the Public Benefit Elements for any purpose that does not interfere with the public's use of the Public Benefit Elements, including but not limited to the right to use the Public Benefit Elements as described in Sections 1 and 3 of this Agreement and the right to grant easements within the Property, provided the easements do not interfere with the public's use of the Public Benefit Elements.

Section 11. No Dedication. Notwithstanding the covenants contained in this Agreement, nothing in this Agreement shall constitute a public dedication of any portion of the Property, Development, or Public Benefit Elements.

Section 12. Severability. It is 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.

CITY PLACE VI, LLC, a Washington limited liability company

By: _____
Name: Ada M. Healey
Its: Vice President
Date: July 29, 2015

STATE OF WASHINGTON }
} ss.
COUNTY OF KING }

On this day personally appeared before me Ada M. Healey, to the known to be the Vice President, of **CITY PLACE VI, LLC**, a Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 29th day of July, 2015.

_____
Printed Name: ESTELLE E. LAWLESS
Notary Public in and for the State of Washington,
residing at Renton
My Commission Expires: 1/14/18

ESTELLE E. LAWLESS
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
01-14-18

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PARCEL A:

LOTS 1, 2, 8, 9, 10, 11, 12, 13 AND 14, BLOCK 93, D. T. DENNY'S FIRST ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 79, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THE EAST 12 FEET OF SAID LOTS 1 AND 2 CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 47549 FOR WIDENING WESTLAKE AVENUE, AS PROVIDED BY ORDINANCE NO. 12023 OF THE CITY OF SEATTLE; AND

EXCEPT THE NORTH 11.36 FEET OF LOTS 1 AND 14, CONVEYED TO THE CITY OF SEATTLE FOR MERCER STREET BY DEED RECORDED UNDER RECORDING NO. 97060, AS PROVIDED BY ORDINANCE NO. 2083 OF THE CITY OF SEATTLE; AND

EXCEPT THOSE PORTIONS CONVEYED TO THE CITY OF SEATTLE FOR STREET PURPOSES RECORDED SEPTEMBER 11, 2009 UNDER RECORDING NOS. 20090911000662, 20090911001472 AND 20130604001006.

PARCEL B:

LOT 3 AND THE NORTH HALF OF LOT 4, BLOCK 93, D. T. DENNY'S FIRST ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 79, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THE EAST 12 FEET OF SAID LOTS 3 AND 4 CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 47549 FOR WIDENING WESTLAKE AVENUE, AS PROVIDED BY ORDINANCE NO. 12023 OF THE CITY OF SEATTLE.

PARCEL C:

THE SOUTH HALF OF LOT 4 AND ALL LOT 5, BLOCK 93, D. T. DENNY'S FIRST ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 79, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THE EAST 12 FEET OF SAID LOTS 4 AND 5 CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 47549 FOR WIDENING WESTLAKE AVENUE, AS PROVIDED BY ORDINANCE NO. 12023 OF THE CITY OF SEATTLE; AND

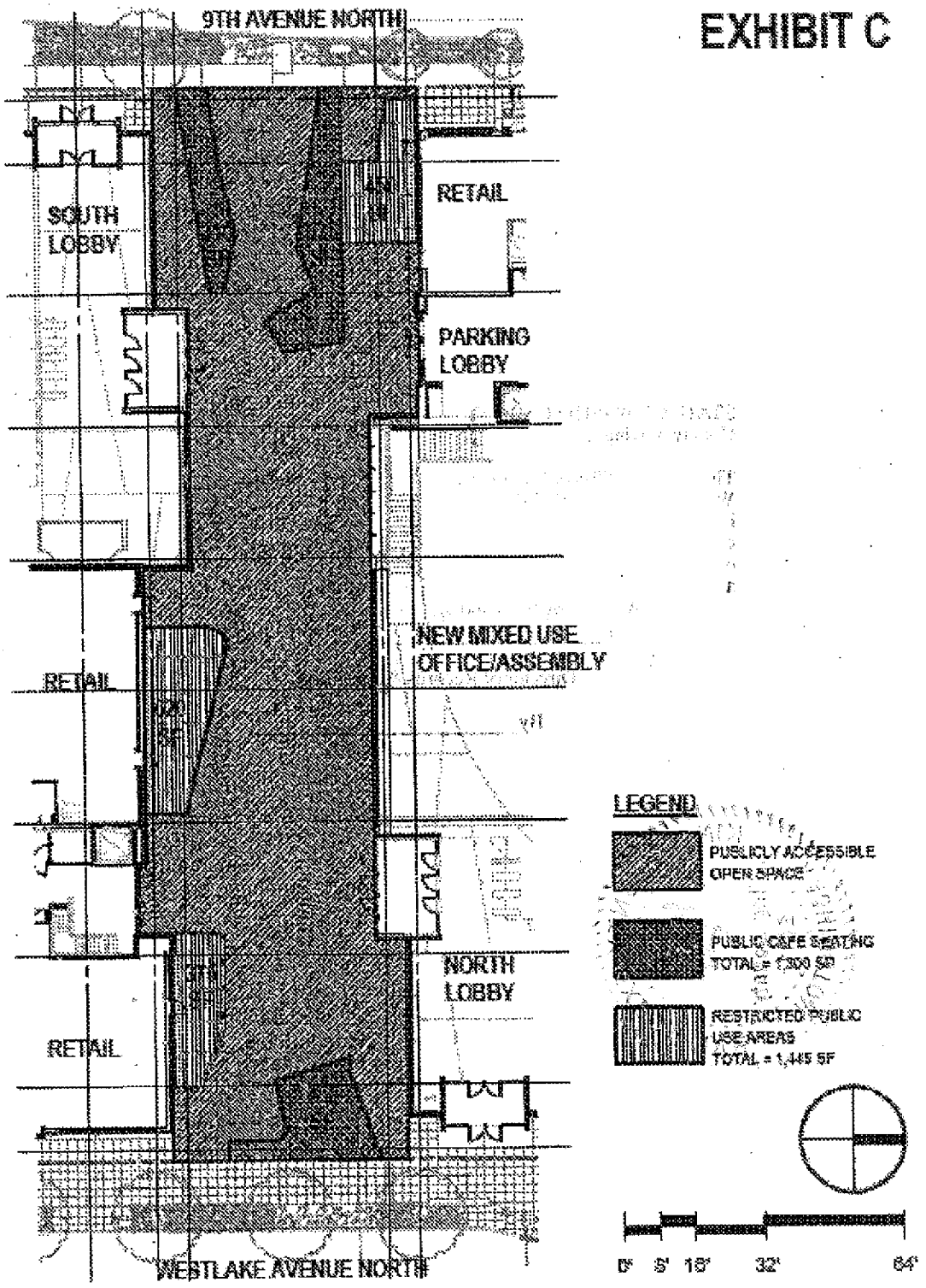
EXCEPT THE SOUTH 20.00 FEET OF LOT 5, CONVEYED TO THE CITY OF SEATTLE JUNE 4, 2013, RECORDING NO. 20130604001006.

EXHIBIT B

LEGAL DESCRIPTION OF PARTIAL ALLEY VACATION

All of that portion of the alley as shown in Block 93 D.T. Denny's 1st Addition to North Seattle, according to the plat recorded in Volume 1, page 79, Records of King County, Washington, lying north of a line drawn 20.00 feet north of the south line of Lot 10 of said plat projected east; said alley being bounded by Mercer Street, Westlake Avenue North, Republican Street, and 9th Avenue North.

EXHIBIT C


9TH AVENUE NORTH
SOUTH LOBBY
RETAIL
PARKING LOBBY
NEW MIXED USE OFFICE/ASSEMBLY
RETAIL
NORTH LOBBY
RETAIL
WESTLAKE AVENUE NORTH
LEGEND
PUBLICLY ACCESSIBLE OPEN SPACE
PUBLIC CAFE SEATING TOTAL = 1,300 SF
RESTRICTED PUBLIC USE AREAS TOTAL = 1,445 SF
0' 8' 16' 32' 64'

STATE OF WASHINGTON }
County of King

The Director of Records & Licensing, King County, State of Washington and exofficio Recorder of Deeds and other instruments, do hereby certify the foregoing copy has been compared with the original instrument as the same appears on file and of record in the office and that the same is a true and perfect transcript of said original and of the whole thereof,

Witness my hand and official seal this _____ day of OCT 26 2015 20____

Director of Records & Licensing

By _____ Deputy
Lisa Huynh

KING COUNTY EXECUTIVE
WASHINGTON
2011
King County