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2 **ORDINANCE**

3 AN ORDINANCE vacating the alley in Block 48, Replat of Blocks 44-53, Mercer 2<sup>nd</sup> Addition,  
4 to North Seattle, on the petition of 500 Mercer Partners, LLC, a Washington limited  
5 liability company; and accepting a Property Use and Development Agreement  
(Clerk File 305398).

6 WHEREAS, 500 Mercer Partners, LLC (Mercer Partners) has filed a petition to vacate the alley in  
7 Block 48, Replat of Blocks 44-53, Mercer 2<sup>nd</sup> Addition to North Seattle, being the alley in  
8 the block bounded by Mercer Street, 5<sup>th</sup> Avenue North, Roy Street, and Taylor Avenue  
North, as described below; and

9 WHEREAS, the City of Seattle was a party to the vacation petition but subsequently sold its  
10 property to Mercer Partners subject to the conditions in Ordinance 120648; and

11 WHEREAS, following a May 20, 2003 public hearing, the petition was conditionally granted;  
12 and

13 WHEREAS, the City Council approved the petition subject to conditions that have subsequently  
14 been met; and

15 WHEREAS, a Property Use and Development Agreement that commits Mercer Partners and  
16 their successors to fulfill ongoing public benefit obligations as a result of the alley  
vacation has been recorded with the King County Recorder's Office; and

17 WHEREAS, as required by RCW 35.79.030 and Seattle Municipal Code 15.62, Mercer Partners  
18 has paid the City a vacation fee of \$498,400, which according to an appraisal obtained by  
19 the Director of Transportation, is the full appraised value of the property approved for  
20 vacation; NOW, THEREFORE,

21 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

22 Section 1. That

23 The alley bisecting Block 48, Replat of Blocks 44-53, inclusive, Mercer 2<sup>nd</sup> Addition to  
24 North Seattle, according to the plat thereof recorded in Volume 9 of Plats, page 54 in  
25 King County, Washington; EXCEPT that portion of Lots 7 through 9, said block, now  
26 included in 5<sup>th</sup> Avenue North as widened as provided by the City of Seattle Ordinance #  
100337.



1 Be and the same is hereby vacated;

2 OR in the alternative, to vacate any portion of said right-of-way so particularly described;

3 RESERVING to the City of Seattle the right to make all necessary slopes for cuts or fills

4 upon the above-described property in the reasonable original grading of any right-of-way abutting

5 upon said property after said vacation; and further,

6 RESERVING to the City of Seattle the right to reconstruct, maintain, and operate any

7 existing overhead or underground utilities in said rights-of-way until the beneficiaries of said

8 vacation arrange with the owner or owners thereof for their removal.

9 Section 2. The Property Use and Development Agreement, Recording Number

10 20100317000121, attached hereto as Attachment A, is hereby accepted.

11 Section 3. This ordinance shall take effect and be in force 30 days from and after its

12 approval by the Mayor, but if not approved and returned by the Mayor within ten days after

13 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.



Gretchen M. Haydel  
SDOT 500 Mercer Partners, LLC Vacation ORD  
August 17, 2010  
Version #2

1 Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2010, and  
2 signed by me in open session in authentication of its passage this  
3 \_\_\_\_\_ day of \_\_\_\_\_, 2010.

4  
5  
6 \_\_\_\_\_  
7 President \_\_\_\_\_ of the City Council

8 Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

9  
10  
11 \_\_\_\_\_  
12 Michael McGinn, Mayor

13 Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

14  
15  
16 \_\_\_\_\_  
17 City Clerk

18 (Seal)

19 Attachment A: Property Use and Development Agreement  
20  
21  
22  
23  
24  
25  
26  
27  
28



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



20100317000121

PACIFIC NORTHWEST TITLE AG 67.00  
PAGE-001 OF 008  
03/17/2010 11:00  
KING COUNTY, WA

20091124001396

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

**PROPERTY USE AND DEVELOPMENT AGREEMENT**

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

*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 2<sup>nd</sup> 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 5<sup>th</sup> Avenue N between Mercer Street and Roy Street and on the south side of Roy Street between 5<sup>th</sup> 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 5<sup>th</sup> Avenue;
3. Bicycle racks and upstanding planters along Roy Street and 5<sup>th</sup> Avenue;

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

5. Educational signage along the perimeter storefronts.

C. The plaza entry at 5<sup>th</sup> 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 5<sup>th</sup> 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 5<sup>th</sup> 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.

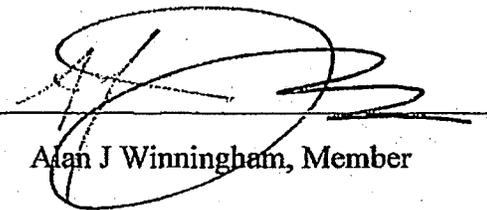
Section 5: The Owner shall indemnify and hold the City harmless for any and all claims, losses, liabilities, liens, costs or expenses resulting from or arising out of public use of the Public Amenities, except to the extent such claims, losses, liabilities, liens, costs or expenses resulting from the 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 )

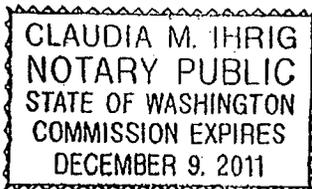
ss.)

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 5<sup>th</sup> 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.**



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Seattle Department of Transportation	Beverly Barnett/684-7564	Stephen Barham/733-9084

**Legislation Title:**

AN ORDINANCE vacating the alley in Block 48, Replat of Blocks 44-53, Mercer 2<sup>nd</sup> Addition to North Seattle, on the petition of 500 Mercer Partners, LLC, a Washington limited liability company; and accepting a Property Use and Development Agreement (Clerk File 305398).

**Summary of the Legislation:**

This Council Bill completes the vacation process for the alley in Block 48, Replat of Blocks 44-53, Mercer 2<sup>nd</sup> Addition to North Seattle, on the petition of 500 Mercer Partners, LLC, a Washington limited liability company (Mercer Partners), and accepts a Property Use and Development Agreement in connection with the alley vacation.

**Background:** (Include a brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable.)

Mercer Partners, the development partner for MTS, Inc., and the City of Seattle that owned a portion of the site, sought a vacation of the alley to allow a full-block mixed-use development project to be built in the Uptown neighborhood of Queen Anne. At the time the vacation petition was filed, the City owned three-fourths of one block of the development site and MTS owned the southwest one-quarter of the block, together with a portion of the alley previously vacated in Ordinance 46050. The City subsequently sold its property to allow the project to proceed.

On June 9, 2003, the City Council voted to conditionally grant the petition to vacate the alley. Mercer Partners subsequently constructed the development that consists of two floors of retail, three floors of residential use containing approximately 92 units, two levels of below-grade parking providing a total of 306 retail and residential parking spaces, along with public amenities and art elements as the required public benefit.

In addition, this legislation accepts a Property Use and Development Agreement that permanently requires public amenities including a rain garden water feature, public seating, landscaping, and bicycle racks.

Please check one of the following:

- This legislation does not have any financial implications.**  
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Gretchen M. Haydel  
SDOT 500 Mercer Partners, LLC Vacation FISC  
August 17, 2010  
Version #2

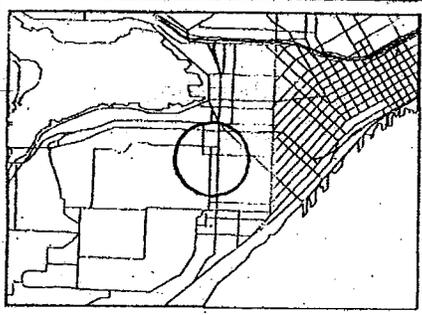
Although this legislation does not accept or appropriate funds, the Seattle Department of Transportation received a vacation fee of \$498,400 in 2009 of which 50 percent was deposited in the CRS Unrestricted Subaccount and 50 percent in the CRS Street Vacation Subaccount.

Attachment A: Vacation Area Map.





Scale: 1" = 150'



VICINITY MAP

2665

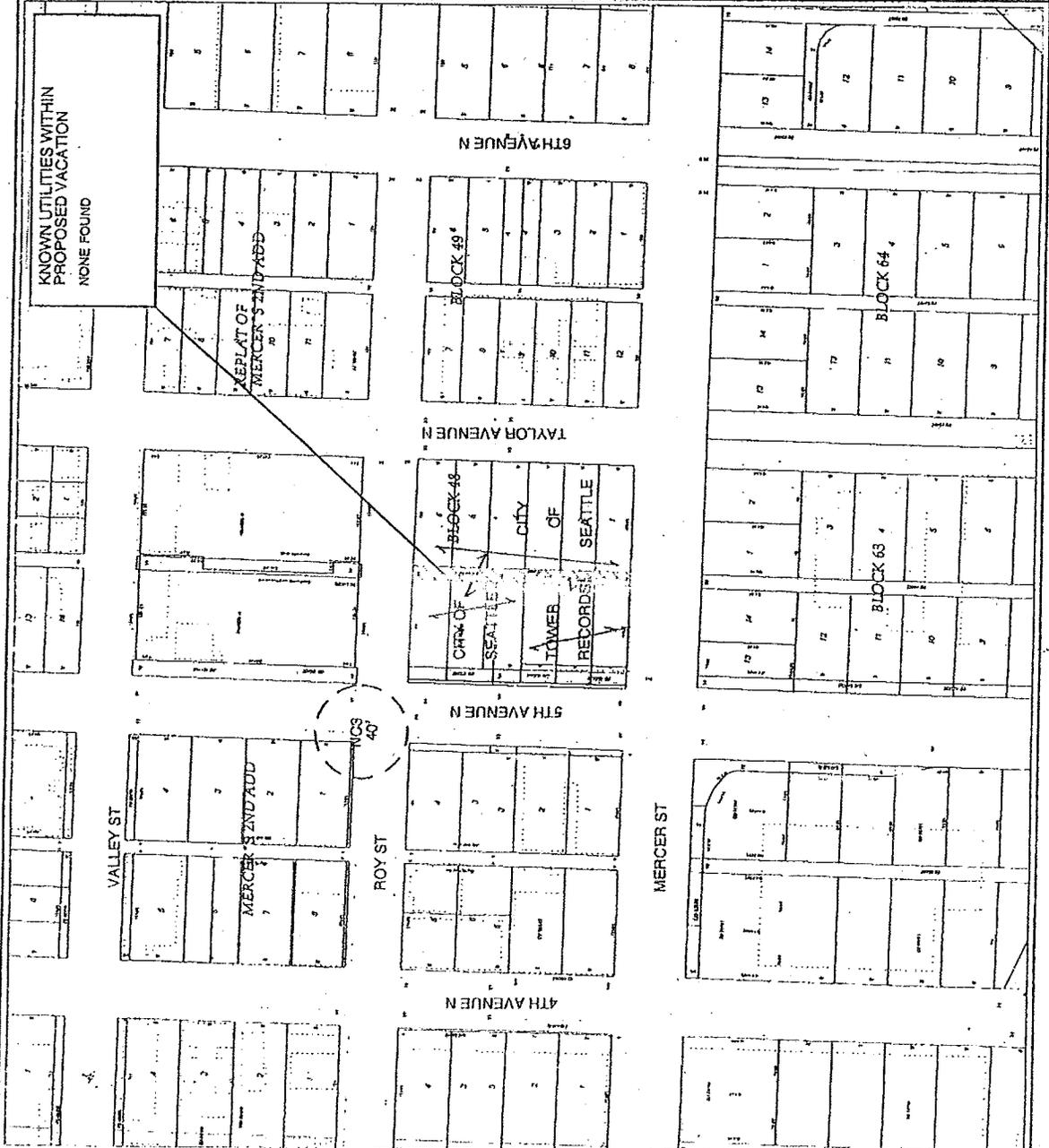
PROPOSED VACATION AREA

VACATION AREA = 2,928 SQ. FT

SCALE 1"=150' KROLL 35W 1/4 SECTION W 1/2 30-25-4

**VACATION SKETCH**

CITY CLERK FILE NO. 305368  
 VACATION PETITION NO. 3825  
 VALID SIGNATURES INDICATED BY \_\_\_\_\_  
 DISPOSITION: APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ TERMINATED \_\_\_\_\_  
 INCOMPLETE SIGNATURES INDICATED BY \_\_\_\_\_  
 VACATION ORDINANCE NO. \_\_\_\_\_ DATE \_\_\_\_\_  
 MADE BY CM \_\_\_\_\_ CHECKED BY MLS \_\_\_\_\_ DATE 10-2-02





City of Seattle  
Office of the Mayor

September 7, 2010

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

I am transmitting the attached proposed Council Bill that completes an alley vacation for 500 Mercer Partners, LLC (Mercer Partners) and allows for a full-block mixed-use project. In addition, this legislation accepts a Property Use and Development Agreement which provides for public amenities including a rain garden water feature, public seating, landscaping, and bicycle racks.

Mercer Partners sought to vacate the alley to consolidate property and allow a full-block project. On June 9, 2003, the Council voted to conditionally grant Mercer Partners' petition to vacate the alley. The City previously sold its other non-alley property on the block to the developer and acquired a permanent easement as a condition of the property sale to provide space for a future multi-purpose trail. This project provides approximately 71,500 square feet of retail space, 92 residential units, and 306 below-grade parking spaces.

Thank you for your support of this legislation. If you have any questions please feel free to contact Beverly Barnett at (206) 684-7564.

Sincerely,

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

