CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117802

AN ORDINANCE relating to Freeway Park; authorizing an agreement between the City of Seattle and First Hill/Eighth Avenue LLC concerning connecting a private development to the Pigott Corridor portion of Freeway Park; and ratifying and confirming certain prior acts.

WHEREAS, the City owns, operates and maintains improved real property and appurtenant structures, improvements and landscaping, commonly known as Freeway Park ("Freeway Park"), with a designated street address at 700 Seneca Street, City of Seattle, King County, Washington; and

WHEREAS, in 1975, the City passed Ordinance No. 104768 defining jurisdiction over a portion of Lot 1, Block 105 A.A. Denny's Broadway Addition (the "Fire Lane") as being held for road purposes up to an elevation of 212 feet above mean sea level, City of Seattle datum; and for park, recreation and open space uses above that point; and

WHEREAS, in 1985, Horizon House, a Washington non-profit corporation, completed an improved above-grade pedestrian walkway connecting public streets to Freeway Park known as the Paul Pigott Memorial Corridor ("Pigott Corridor"), and granted to the City of Seattle a non-exclusive easement including the area of the Pigott Corridor structure, recorded in King County, Washington, King County Recording Number 8507230688 (the "Pigott Corridor Easement"), and ownership and control of the Pigott Corridor structure by bill of sale recorded in King County, Washington, King County Recording Number 8507230687; and

WHEREAS, since 1985 and continuing through the present, the City owns, operates and maintains the Pigott Corridor within the Pigott Corridor Easement. The Pigott Corridor Easement includes a provision stating: "no private building or buildings or other permanent structures shall be constructed or permitted to remain within the boundaries of said easement without written permission of the City;" and

WHEREAS, First Hill/Eighth Avenue LLC ("First Hill") is the fee owner of that certain real property located at the corner of Seneca Street and 8th Avenue, commonly known as 800 Seneca Street in the City of Seattle, King County, Washington (the "First Hill Property"); and

SEA CITY CLERK

WHEREAS, First Hill is pursuing construction approvals from the City for a residential development located on the First Hill Property and, in part, over or on the Pigott Corridor Easement and the Fire Lane property ("Project"). One feature of the Project is an open space plaza that will connect to the Pigott Corridor. The open space plaza (the "Connection") will be located atop a podium above a parking garage and is designed to improve public pedestrian access into and out of Freeway Park and to increase connectivity from downtown Seattle to the First Hill neighborhood and vice versa; and

WHEREAS, First Hill is acquiring from Horizon House easement rights for portions of the Connection to occupy the existing Pigott Corridor Easement area, known as the "Pigott Corridor Connection Strip;" and

WHEREAS, the Connection will have the effect of activating underused portions of Freeway Park and provide park users with nearby amenities not otherwise available; and

WHEREAS, Freeway Park Association and other neighbors of the Pigott Corridor have been consulted and agree that the proposed improvements are in the best interests of the community; and

WHEREAS, the Connection is to be constructed within portions of the First Hill Property, within portions of the Pigott Corridor Connection Strip, and within a small portion of the Fire Lane property; and

WHEREAS, in addition to construction approvals, First Hill requires City consent to physically connect the Connection to the Pigott Corridor, City permits for occupancy of a portion of the Fire Lane property by the Connection, and, under the terms of the Pigott Corridor Easement, City written consent to construct the Connection within the Pigott Corridor Connection Strip; and

WHEREAS, the Seattle Department of Parks and Recreation has reviewed First Hill's construction plans, is prepared to issue a Revocable Use Permit for construction activities in the Pigott Corridor Connection Strip, and recommends granting consent to the location of the Connection in the Pigott Corridor Connection Strip and consent to the physical connection between the Connection and the Pigott Corridor subject to the conditions contained in the Consent and Agreement to Connection and Public Use attached to this ordinance as Attachment 1; and

WHEREAS, the Seattle Department of Transportation ("SDOT") has jurisdiction over the Fire Lane property below an elevation of 212 feet above mean sea level, City of Seattle datum, and the Seattle Department of Parks and Recreation ("Parks") has jurisdiction over that portion of the Fire Lane property above an elevation of 212 feet above mean sea level, City of Seattle datum. The Fire Lane property is a public place as defined in Seattle Municipal Code 15.02.046.G. SDOT is prepared to issue an annual overhang

CITY CLERK

permit to First Hill for the Connection in the Fire Lane property and Parks is prepared to delegate authority to SDOT to include that portion of the Fire Lane property under Parks' jurisdiction in the annual overhang permit; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation, or his designee, is hereby authorized, on behalf of the City of Seattle, to sign an agreement with First Hill/Eighth Avenue LLC, a Washington limited liability company, substantially in the form of the "Consent and Agreement to Connection and Public Use" attached to this ordinance as Attachment 1, which affects the real property described in Attachment 1, including the City's Pigott Corridor, a portion of a non-exclusive easement from Horizon House to the City Recorded under Number 850723688 in the Office of the King County Recorder, and a portion of Lot 1, Block 105 A.A. Denny's Broadway Addition as described in Ordinance No. 104768.

Section 2. Any act consistent with the authority of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

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Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Consent and Agreement to Connection and Public Use
Exhibit A to Attachment 1: Legal Descriptions of City Property
Exhibit B to Attachment 1: Legal Description of First Hill Property
Exhibit C to Attachment 1: Legal Description and Depiction of Pigott Corridor Connection Strip
Exhibit D to Attachment 1: Legal Description and Depiction of Fire Lane Side Slope Triangle

DPS CITY CLERK

Terrance Dunning
DPR Pigott Corridor Agreement ORD ATT 1
May 16, 2013
Version #2

After Recording Return To:

Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104
Attention: Nancy Bainbridge Rogers

CONSENT AND AGREEMENT TO CONNECTION AND PUBLIC USE

Grantor: CITY OF SEATTLE, a municipal corporation; and FIRST HILL/EIGHTH AVENUE LLC, a Washington limited liability company

Grantee: CITY OF SEATTLE, a municipal corporation; and FIRST HILL/EIGHTH AVENUE LLC, a Washington limited liability company; and the public

Abbrev. Legal: LOT 1, BLOCK 105, A. A. DENNY'S BROADWAY ADDITION TO THE CITY OF SEATTLE, VOL 6 OF PLATS, PAGE 40.

LOTS 4, 5 AND 8, BLOCK 105, A.A. DENNY'S BROADWAY ADDITION TO THE CITY OF SEATTLE, VOL 6 OF PLATS, PAGE 40.

Full legal descriptions in Exhibit A and Exhibit B.

Tax Parcel No: 197820-0250-09, 197820-0020-08, 197820-0025-03, 197820-0027-01, 1978200005-07

Related Documents: 8507230688

2013 CITY CLERK

Terrance Dunning
DPR Pigott Corridor Agreement ORD ATT 1
May 16, 2013
Version #2

CONSENT AND AGREEMENT TO CONNECTION AND PUBLIC USE

THIS CONSENT AND AGREEMENT TO CONNECTION AND PUBLIC USE (the "**Agreement**") is entered into this ____ day of _____, 2013 ("**Effective Date**"), by and between the CITY OF SEATTLE, a municipal corporation (the "**City**"), and FIRST HILL/EIGHTH AVENUE LLC, a Washington limited liability company ("**First Hill**").

RECITALS

A. WHEREAS, the City owns, operates and maintains improved real property and appurtenant structures, improvements and landscaping, commonly known as Freeway Park ("**Freeway Park**"), with a designated street address at 700 Seneca Street, City of Seattle, King County, Washington.

B. WHEREAS, the City was party to a number of real estate transactions associated with Freeway Park. Among those transactions were:

In 1975, the City passed Ordinance No. 104768 defining jurisdiction over a portion of Lot 1, Block 105 A.A. Denny's Broadway Addition (the "**Fire Lane**") as being held for road purposes up to an elevation of 212 feet above mean sea level, City of Seattle datum; and for park, recreation and open space uses above that point.

In 1981, the City conveyed fee simple title to the R.C. Hedreen Company and Horizon House, Inc. for Lot 1, Block 105 A.A. Denny's Broadway Addition, less the Fire Lane, by Warranty Deed recorded in King County, Washington, King County Recording Number 8201110393, and the City reserved no rights to any of the air space above the portion of Lot 1 that was conveyed. R.C. Hedreen Company conveyed its interest in Lot 1, Block 105 A.A. Denny's Broadway Addition to Horizon House, Inc. via Quit Claim Deed recorded in King County, Washington, King County Recording Number 8201110394.

C. WHEREAS, in 1985, construction was completed of an improved above-grade pedestrian walkway connecting public streets to Freeway Park known as the Paul Pigott Memorial Corridor ("**Pigott Corridor**"), which is located upon a portion of Lot 1, Block 105 A.A. Denny's Broadway Addition. In 1985, Horizon House, a Washington non-profit corporation, granted to the City of Seattle a non-exclusive easement including the area of the Pigott Corridor structure, recorded in King County, Washington, King County Recording

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Number 8507230688 (the "**Pigott Corridor Easement**"), and ownership and control of the Pigott Corridor structure by bill of sale recorded in King County, Washington, King County Recording Number 8507230687. Since 1985 and continuing through the present, the City owns, operates and maintains the Pigott Corridor within the Pigott Corridor Easement. The Pigott Corridor Easement includes a provision stating: "no private building or buildings or other permanent structures shall be constructed or permitted to remain within the boundaries of said easement without written permission of the City."

D. WHEREAS, pursuant to the above described actions, the City owns the Pigott Corridor structure, controls non-exclusive easement rights to the Pigott Corridor Easement, and the City owns the Fire Lane property, all legally described on Exhibit A hereto.

E. WHEREAS, First Hill is the fee owner of that certain real property located at the corner of Seneca Street and 8th Avenue, commonly known as 800 Seneca Street in the City of Seattle, King County, Washington, legally described on Exhibit B hereto (the "**First Hill Property**").

F. WHEREAS, First Hill has obtained a Master Use Permit ("**MUP**") and revisions, MUP Nos. 3003307, 3012797, and 3014499, and is pursuing construction approvals from the City for a residential development located on the First Hill Property and, in part, over or on the Pigott Corridor Easement and the Fire Lane property ("**Project**"). One feature of the Project is an open space plaza that will connect to the Pigott Corridor. The open space plaza (the "**Connection**") will be located atop a podium above a parking garage and is designed to improve public pedestrian access into and out of Freeway Park and to increase connectivity from downtown Seattle to the First Hill neighborhood and vice versa. Such improved access and increased connectivity is highly desired by the community.

G. WHEREAS, First Hill is acquiring from Horizon House easement rights for portions of the Connection to occupy the existing Pigott Corridor Easement area, known as the "**Pigott Corridor Connection Strip**," and the aerial location of the Connection within the 12 foot wide Pigott Corridor Connection Strip is legally described and depicted on Exhibit C.

H. WHEREAS, the Connection is to be constructed within portions of the First Hill Property, within portions of the Pigott Corridor Connection Strip, and within a small portion of the Fire Lane property (the "**Fire Lane Side Slope Triangle**"), and the location of the Connection within the Fire Lane Side Slope Triangle is legally described and depicted on Exhibit D.

SEATTLE CITY CLERK

I. WHEREAS, the Seattle Department of Transportation ("**SDOT**") has jurisdiction over the Fire Lane property below an elevation of 212 feet above mean sea level, City of Seattle datum, and the Seattle Department of Parks and Recreation ("**Parks**") has jurisdiction over that portion of the Fire Lane property above an elevation of 212 feet above mean sea level, City of Seattle datum. The Fire Lane property is a public place as defined in Seattle Municipal Code 15.02.046.G. SDOT is prepared to issue an annual overhang permit to First Hill for the Connection in the Fire Lane Side Slope Triangle and Parks is prepared to delegate authority to SDOT to include that portion of the Fire Lane Side Slope Triangle under Parks' jurisdiction in the annual overhang permit.

NOW, THEREFORE, for and in consideration of the consents and covenants contained in this Agreement, the parties hereto agree as follows:

AGREEMENT

1. City Consent. In consideration of, and subject to, First Hill's grants, covenants and obligations under this Agreement, the City agrees and consents as follows:

1.1 To satisfy the requirement for the City's "written permission" under the Pigott Corridor Easement to connect to or otherwise construct structures within the Pigott Corridor Easement area, and for no other purpose, the City hereby consents to First Hill's construction of the Connection, substantially in conformance with the plans titled Final Record Set, prepared by KwanHenmi, dated March 6, 2013, ("**Plans**") retained in the files of Parks and available for inspection upon request and reasonable notice, over, through and across the Pigott Corridor Connection strip.

1.2 Parks hereby consents to First Hill's application to SDOT for an annual overhang permit covering the encroachment of the Connection into the Fire Lane Side Slope Triangle, including that portion under the jurisdiction of Parks.

1.3 The City hereby consents to modification of the Pigott Corridor and attachment of the Connection to the Pigott Corridor as shown on the Plans.

2. First Hill Grant of Public Access. First Hill shall construct the Connection substantially in conformance with the Plans. As shown on the Plans, in particular Sheet A1.00, the Connection extends across the Project site from the public sidewalks at the corner

THIS CITY CLERK

of 8th Avenue and Seneca Street to the Pigott Corridor. First Hill hereby grants, for so long as the Project is in existence, to the City public access over, through, and across the Connection, for the purpose of ingress, egress and pedestrian traffic and use. Except in case of emergency or during limited times when the Connection must be closed for cleaning, maintenance, repair, or reconstruction, public access shall be available during at least the hours that Freeway Park is open to the public.

3. First Hill Use Requirements.

3.1 Compliance with Law. First Hill shall comply with all applicable laws, codes and regulations when exercising any of the rights or performing any of the obligations described in this Agreement.

3.2 Maintenance and Repair. First Hill shall perform ordinary cleaning of and maintenance and repairs to the Connection as necessary to maintain the Connection in a clean and safe condition. All of the costs of the aforementioned cleaning, maintenance and repair responsibilities shall be paid solely by First Hill unless certain work is required by the negligent or intentionally wrongful act or omission of the City or its agent, in which case the City shall pay for said work.

3.3 Insurance. First Hill shall at all times during the duration of this Agreement maintain, at its own expense, the following insurance:

(i) Broad-form All Risk property insurance including but not limited to a) full replacement cost of the Connection and b) earthquake and flood coverage on the Connection for full replacement cost,

(ii) Commercial general liability ("**CGL**") insurance in an amount not less than $1,000,000 combined single limit bodily injury and property damage, $2,000,000 general aggregate and $2,000,000 products-completed operations written on an occurrence form, which shall include, without limitation, coverage for a) premises/operations, b) contractual liability, c) products and completed operations, d) personal injury, and e) independent contractors (indirect/contingent liability), based on the Insurance Services Office form CG 00 01 or equivalent, and

(iii) Umbrella/Excess Liability insurance in excess of the coverage above, with limits of not less than $4,000,000 per occurrence and annual aggregate, written on an occurrence form. The minimum total limits requirement may be satisfied with primary CGL or any combination of primary and excess/umbrella limits.

3.3.1 General Insurance Requirements:

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A. Providing evidence of coverage for these stated minimums limits of liability shall not relieve First Hill or any of its respective insurers from liability for claims in excess of such stated minimum limits of liability should higher limits of liability be placed. Such insurance shall be maintained with an insurer (1) authorized to do business in the state of Washington and maintain a current AM Best's Rating of at least "A-VII," or an equivalent industry rating, "The City of Seattle" shall be included as an additional insured for primary and non-contributory basis as respects insurance coverages specified above. Such additional insured status shall (1) be evidenced by an ISO endorsement form CG 20 12 endorsement or equivalent, (2) be primary and non-contributory as respects the City's insurance, and (3) contain a "separation of insureds" provision.

B. Any policy which provides the insurance required under this Subsection 3.3 shall: (a) be endorsed to be primary to any insurance maintained by the City, (b) contain a severability of interest provision in favor of the insured, and (c) contain a waiver of any rights of subrogation against the City. Neither the insurance required to be carried hereunder, nor the granting of the Connection rights or any other right exercised by First Hill hereunder, nor anything in this Agreement shall limit First Hill's or other person's or entity's responsibility under the law or under this Agreement to City for damage to persons, land, buildings or property.

C. Coverage shall not be reduced or canceled without thirty (30) days prior written notice to the City, except ten (10) days with respect to cancellation for non-payment of premium, unless a longer notice period is required under RCW 48.18.290.

D. The City reserves the right to alter minimum coverages and/or limits of liability upon periodical review of the appropriateness of such limits in view of inflation and/or changing industry conditions and to require an increase in such coverages or limits upon ninety (90) days prior written notice.

3.3.2 Evidence of Insurance

A. First Hill shall deliver to the City certification of insurance no later than the Effective Date. The certification of insurance must include the following:

DNS CITY CLERK

(1) An ACORD certificate or equivalent form fully disclosing all coverages and limits of liability maintained; and (2) a copy of the additional insured endorsement or blanket additional insured language to the Commercial General Liability documenting that the City of Seattle is an additional insured for primary and non-contributory limits of liability and Products and Completed Operations Additional Insured.

B. At any time upon the City's request, First Hill shall forward to the City a true and certified copy of any insurance policy(s).

C. Certification of insurance shall be delivered to: Seattle Department of Finance and Administrative Services, Director Risk Management Division, P.O. Box 94669, Seattle, WA 98124-4669, with a copy to: Seattle Department of Parks and Recreation, Director Property Management Division, 100 Dexter Avenue N, Seattle, WA 98109.

3.4 Indemnification. First Hill shall indemnify, defend and hold the City, its officials, officers, employees and agents harmless from and against any loss, claim, suit, damage or injury sustained as a result of the acts or omissions of First Hill or its employees, agents or contractors on or about the Connection to the extent permitted by RCW 4.24.115. Solely to give full force and effect to First Hill's indemnity obligation contained herein and not for the benefit of any person, First Hill specifically and expressly waives any immunity it may have under the Washington State Industrial Insurance Act, Title 51 RCW or any other industrial insurance, workers' compensation or similar laws and acknowledges that this waiver was mutually negotiated by the parties as part of the consideration for this Agreement. This provision shall not be interpreted or construed as a waiver of First Hill's right to assert such immunity, defense or protection directly against any of its own employees. In no event shall First Hill's indemnification obligations under this Agreement be limited to the extent of any insurance available to or provided by First Hill.

4. Pigott Corridor Easement. Nothing in this Agreement is intended to modify the City's rights under the Pigott Corridor Easement, including, without limitation, the City's right to enter the Pigott Corridor Easement area for all purposes described in the Pigott Corridor Easement. In connection with its maintenance, repair, alteration, reconstruction and operation of the Pigott Corridor, the City shall exercise all due care in the area of the Connection, and, to the extent applicable, shall comply with applicable laws, codes, regulations and the terms of this Agreement.

THIS CITY CLERK

5. Notice and Cure; Remedies. Neither party shall exercise any rights against the other with regard to this Agreement unless the other is in default of this Agreement beyond applicable cure periods. Neither party shall be in default of this Agreement unless the non-defaulting party has first provided written notice of the default and has allowed the defaulting party 30 days to cure the default or, in the event that more than 30 days are required to cure the default, 30 days to begin performance necessary to cure the default. In addition, City shall provide a copy of any notice of default delivered to First Hill to any lender holding a lien upon the First Hill Property (each, a "**Lender**") whose address has been provided to City. City shall provide any such Lender a reasonable opportunity to cure any default on the part of First Hill, and shall accept the performance by Lender of any obligation of First Hill hereunder. In addition to remedies at law, the parties are entitled to pursue equitable remedies, including specific performance.

6. Notices. Notices delivered with regard to this Agreement shall be sent to the applicable address included under the signature line of each party to this Agreement, unless otherwise provided in this Agreement. Notices that are delivered in person shall be effective when delivered. Notices that are sent by overnight courier shall be effective on the next business day after delivery to the courier with charges therefor prepaid or credit extended by the courier to the sender. Notices that are mailed as provided in this Section shall be effective on the earlier of delivery (or first attempted delivery) or three (3) business days after deposit in the mail.

7. Damage or Destruction. In the event of partial or total destruction of the Freeway Park or the Pigott Corridor, whether by earthquake or other casualty, the City, in its sole discretion, may elect not to repair or replace Freeway Park and/or the Pigott Corridor or to permanently close one, even if not damaged, because of destruction of or damage to the other; provided, however, that First Hill may seek City approval to repair or replace the same (as applicable) at its sole cost and expense.

In the event of partial or total destruction of the Connection, whether by earthquake or other casualty, First Hill's obligations shall be determined as follows: (a) If the Project is not destroyed and will continue in existence after repair, then First Hill's obligation to provide public open space under City of Seattle permits for the Project shall continue in full force and effect, but the type and design of the public open space shall be subject to further agreement unless the City or First Hill elects to repair or replace the Pigott Corridor and/or Freeway Park (if damaged or destroyed), in which case First Hill shall repair or reconstruct the Connection in substantial conformance with the Plans and this Agreement shall remain in full force and effect; or (b) if the Project is destroyed or damaged to the point that First Hill elects to build a

SEA CITY CLERK

new project, then this Agreement shall terminate and the parties shall have no further rights or obligations under this Agreement.

8. Successors and Assigns. This Agreement and the benefits and obligations shall run with the land and shall be binding on the parties' successors and assigns. First Hill may collaterally assign its rights hereunder to any Lender.

9. Subordination. The undersigned Lender has joined in the execution of this Agreement to evidence the subordination of the lien of that certain Construction to Permanent Deed of Trust, Financing Statement and Security Agreement (with Assignment of Rents and Fixture Filing), granted by First Hill to Lender and recorded in the official public records of King County, Washington, on March 21, 2013, under King County Recording number 20130321002445. The initial address for notices to Lender for purposes of Section 5 of this Agreement is:

Pacific Life Insurance Co.
700 Newport Center Drive
Newport Beach, California 92660
Attention: Vice President
Facsimile: (949) 718-5852
Portfolio Management, Real Estate Division
Loan No.: 212620201

With a copy to:

Pacific Life Insurance Company
Email: REDocumentManagement@pacificlife.com

10. Miscellaneous

10.1 Exhibits. Exhibits A through D attached hereto are incorporated herein.

10.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

10.3 Recording. Upon mutual execution of this Agreement, either party may record same.

SEA CITY CLERK

10.4 Amendment; Modification. This Agreement may be changed, modified or amended in whole or in part only by a written and recorded agreement executed by the City and First Hill and approved by City of Seattle ordinance.

10.5 Waiver. A party may, at any time or times, at its election, waive any of its rights or any of the other party's obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by the party to be bound by the waiver. No waiver shall be deemed a waiver of any other right or obligation or of a subsequent occurrence of the same or similar breach or other circumstance with respect to which the waiver was given. Additionally, no delay or omission on the part of a party in exercising any rights, power or remedy provided in this Agreement shall be construed as a waiver of or acquiescence in any breach of the terms and conditions set forth herein.

10.6 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.

10.7 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

10.8 Attorneys' Fees. In the event either party hereto shall institute any action or proceeding against the other relating to the provisions hereof, then the substantially prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees, paralegal fees, consultant fees and court costs incurred, including on appeal.

[*Signatures Follow.*]

SDS CITY CLERK

Signature Page of Consent and Agreement to Connection and Public Use

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

CITY OF SEATTLE, a municipal corporation

By: _____
Christopher Williams
Acting Superintendent of Parks and Recreation

Address: 100 Dexter Avenue North
Seattle, WA 98109

FIRST HILL/EIGHTH AVENUE LLC,
a Washington limited liability company

By: FIRST HILL/EIGHTH AVENUE II HOLDINGS LLC,
a Delaware limited liability company,
its Sole Member

By: LACONIA RESIDENTIAL ONE LLC,
a Delaware limited liability company,
its Administrative Member

By: LACONIA DEVELOPMENT LLC,
a California limited liability company,
its Manager

By: _____
Name: Paul D. Menzies
Title: Manager

Address: 1981 N Broadway, Suite 415
Walnut Creek, CA 94596

SEA CITY CLERK

Joined for Purposes of Section 9 by:

LENDER:

PACIFIC LIFE INSURANCE COMPANY,
a Nebraska corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

CITY CLERK

NOTARY ACKNOWLEDGEMENTS

CITY:

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this day personally appeared before me _____ of _____the _____ that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said _____, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

GIVEN under my hand and official seal this __ day of _____, 20__.

_____
NOTARY PUBLIC in and for the State of Washington, residing at _____
My commission expires: _____

CITY CLERK

FIRST HILL:

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2013, before me, _____, personally appeared Paul D. Menzies, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

DOS CITY CLERK

LENDER:

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2013, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2013, before me, _____, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

DIG CITY CLERK

EXHIBIT A

LEGAL DESCRIPTIONS OF CITY PROPERTY

DESCRIPTION OF PIGOTT CORRIDOR EASEMENT:

The Easement and Ownership rights reflected in that certain Bill of Sale and Easement recorded July 23, 1985, in the records of King County under Assessor's File Nos. 8507230687 and 8507230688.

DESCRIPTION OF FIRE LANE:

THAT PORTION OF LOT 1, BLOCK 105, A.A. DENNY'S BROADWAY ADDITION TO THE CITY OF SEATTLE, RECORDED IN VOLUME 6 OF PLATS, PAGE 40, RECORDS OF KING COUNTY, WASHINGTON, ALSO BEING THAT PORTION OF CITY OF SEATTLE TRANSFER JURISDICTION ORDINANCE NUMBER 104768.

SDS CITY CLERK

EXHIBIT B

LEGAL DESCRIPTION OF FIRST HILL PROPERTY

That real property, situated in the County of King, State of Washington, described as follows:

LOT 4 IN BLOCK 105 OF A.A. DENNY'S BROADWAY ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 6 OF PLATS, PAGE 40, RECORDS OF KING COUNTY;

THE WEST 60 FEET OF LOTS 5 AND 8 IN BLOCK 105 OF A.A. DENNY'S BROADWAY ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 6 OF PLATS, PAGE 40, RECORDS OF KING COUNTY AUDITOR;

LOTS 5 AND 8 OF BLOCK 105 OF A.A. DENNY'S BROADWAY ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 6 OF PLATS, PAGE 40, RECORDS OF KING COUNTY AUDITOR; EXCEPT THE WEST 60 FEET THEREOF.

THAT PORTION OF LOT 1 IN BLOCK 105 OF A. A. DENNY'S BROADWAY ADDITION TO THE CITY OF SEATTLE AS PER PLAT RECORDED IN VOLUME 6 OF PLATS, PAGE 40, RECORDS OF KING COUNTY, LYING SOUTHEASTERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT 1;
THENCE NORTH 30°35'30" WEST 0.65 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 59°17'45" WEST
112.23 FEET;
THENCE NORTH 30°42'15" WEST 0.35 FEET;
THENCE SOUTH 59°17'45" WEST 1.92 FEET;
THENCE SOUTH 30°42'15" EAST 0.35 FEET;
THENCE SOUTH 59°17'45" WEST TO THE WESTERLY LINE OF SAID LOT 1 AND THE TERMINUS OF THIS LINE DESCRIPTION.

THAT PORTION OF LOT 1, BLOCK 105, A. A. DENNY'S ADDITION TO THE CITY OF SEATTLE, RECORDED IN VOLUME 6 OF PLATS, PAGE 40, RECORDS OF KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT A POINT MEASURED AT RIGHT ANGLES 33.00 FEET NORTHEASTERLY OF THE CENTERLINE OF 8TH AVENUE AND 33.00 FEET NORTHWESTERLY OF THE CENTERLINE OF SENECA STREET; ALSO BEING THE SOUTHERLY MOST CORNER OF LOT 8, BLOCK 105 OF SAID PLAT; THENCE NORTH 30°36'37" WEST, ALONG THE EAST RIGHT OF WAY MARGIN OF 8TH

FILED CITY CLERK

AVENUE, A DISTANCE OF 180.01 FEET TO THE SOUTHERLY MOST CORNER OF LOT 1, BLOCK 105 OF SAID PLAT; THENCE CONTINUING NORTH 30°36'37" WEST, ALONG SAID MARGIN A DISTANCE OF 0.47 FEET; THENCE DEPARTING SAID MARGIN,
NORTH 59°17'05" EAST, A DISTANCE OF 10.60 FEET TO A POINT ON THE EAST LINE OF CITY OF SEATTLE TRANSFER JURISDICTION ORDINANCE NUMBER 104768, ALSO BEING A NON-TANGENT CURVE CONCAVE TO THE EAST, HAVING A CENTER TO WHICH BEARS
NORTH 89°09'29" EAST, AND A RADIUS OF 973.00 FEET, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE NORTHERLY ALONG SAID CURVE, AN ARC DISTANCE OF 23.61 FEET, THROUGH A CENTRAL ANGLE OF 01°23'24";
THENCE DEPARTING SAID EAST LINE OF ORDINANCE NUMBER 104768,
NORTH 59°21'50" EAST, A DISTANCE OF 105.46 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 1, BLOCK 105, SAID LINE BEING 20.83 FEET NORTHWESTERLY AND PERPENDICULAR TO THE SOUTH LINE OF LOT 1, BLOCK 105 OF SAID PLAT;
THENCE SOUTH 30°37'23" EAST, ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 20.18 FEET TO A POINT BEING 0.65 FEET NORTHWESTERLY FROM THE EASTERLY MOST CORNER OF SAID LOT 1, BLOCK 105;
THENCE SOUTH 59°17'05" WEST, A DISTANCE OF 112.23 FEET;
THENCE NORTH 30°42'55" WEST, A DISTANCE OF 0.35 FEET;
THENCE SOUTH 59°17'05" WEST, A DISTANCE OF 1.92 FEET;
THENCE SOUTH 30°42'55" EAST, A DISTANCE OF 0.35 FEET;
THENCE SOUTH 59°17'05" WEST, A DISTANCE OF 3.28 FEET TO THE POINT OF BEGINNING;

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

APN No. 197820-0020-08, 197820-0025-03, 197820-0027-01, 1978200005-07

EXHIBIT C

LEGAL DESCRIPTION AND DEPICTION OF PIGOTT CORRIDOR CONNECTION STRIP

LEGAL DESCRIPTION

THE SOUTHEASTERLY 12.00 FEET OF PARCEL Y AS SHOWN ON LOT BOUNDARY ADJUSTMENT NUMBER 3014638, RECORDED UNDER RECORDING NUMBER 20130430900009, RECORDS OF KING COUNTY, STATE OF WASHINGTON;

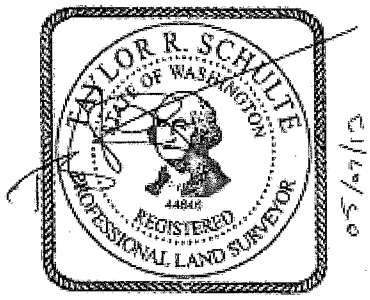
THE LOWER LIMIT OF VERTICAL SPACE CONTAINED WITHIN SAID 12.00 FOOT AREA SHALL BE AN ELEVATION OF 224.45 FEET;

THE UPPER LIMIT OF VERTICAL SPACE CONTAINED WITHIN SAID 12.00 FOOT AREA SHALL BE AN ELEVATION OF 256.50 FEET;

SAID ELEVATIONS DESCRIBED HEREIN ARE EXPRESSED IN TERMS OF THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88) AS OF THE DATE OF THIS INSTRUMENT ARE BASED UPON THE CITY OF SEATTLE BENCHMARK NUMBER SNV-2626, BEING A DOMED BRASS DISC 4 FEET NORTH OF THE INTERSECTION OF BACK OF SIDEWALK AT THE NORTHEAST CORNER OF MADISON STREET AND 7TH AVENUE, HAVING AN ELEVATION OF 250.64 FEET.

(SAID BENCHMARK HAVING AN OLD CITY OF SEATTLE DATUM ELEVATION = 240.98, BASED ON BENCHMARKS SHOWN ON CITY OF SEATTLE FIELD BOOK 2325, PAGES 2 AND 7);

SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON.

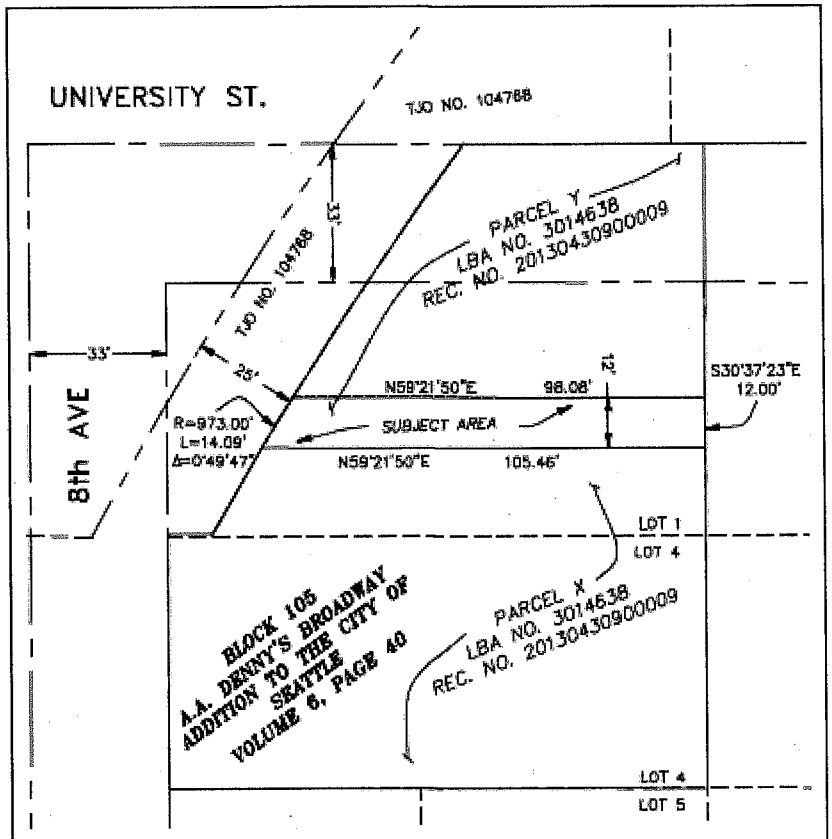


5/7/13

FIRST HILL/8TH AVE. LLC
800 SENECA
TAYLOR R. SCHULTE, P.L.S. 44646
BRH JOB NO. 2005266.31
MAY 07, 2013

BUSH, ROED & HITCHINGS, INC.
2009 MINOR AVENUE EAST
SEATTLE, WA 98102
(206) 323-4144

ENS CITY CLERK



*NOTE:

BENCHMARK "SNV-2626" - 2 INCH DOMED BRASSIE "CITY OF SEATTLE 2626" 4 FEET NORTH OF INTERSECTION OF BACK OF WALK AT NORTHEAST CORNER OF MADISON STREET AND 7TH AVENUE, BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).
ELEVATION = 250.64(NAVD88)
ELEVATION = 240.98(OLD CITY OF SEATTLE DATUM)

THE UPPER LIMIT ELEVATION = 256.50'(NAVD88)
THE LOWER LIMIT ELEVATION = 224.45'(NAVD88)

THE UPPER LIMIT ELEVATION = 246.84'(OLD CITY)
THE LOWER LIMIT ELEVATION = 214.79'(OLD CITY)

0 15 30 60

(IN FEET)
1 inch = 30 ft.

5/7/13

TAYLOR R. SCHULTE
STATE OF WASHINGTON
44648
REGISTERED
PROFESSIONAL LAND SURVEYOR

BUSH, ROED & HITCHINGS, INC.
CIVIL ENGINEERS & LAND SURVEYORS
2009 MINOR AVE. EAST, SEATTLE, WA 98102
(206) 323-4144 FAX (206) 323-7135

LEGAL DESCRIPTION EXHIBIT
FIRST HILL/EIGHTH AVE., LLC
800 SENECA
CITY OF SEATTLE, WASHINGTON

JOB NO	2005286.31
SCALE	1" = 30'
DRAWN	TRS
CHECKED	DAB
DATE	01/24/13

DPD CITY CLERK

EXHIBIT D

LEGAL DESCRIPTION AND DEPICTION OF FIRE LANE SIDE SLOPE TRIANGLE

LEGAL DESCRIPTION

THAT PORTION OF LOT 1, BLOCK 105, A.A. DENNY'S BROADWAY ADDITION TO THE CITY OF SEATTLE, RECORDED IN VOLUME 6 OF PLATS, PAGE 40, RECORDS OF KING COUNTY, WASHINGTON, ALSO BEING THAT PORTION OF CITY OF SEATTLE TRANSFER JURISDICTION ORDINANCE NUMBER 104768, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE WESTERN MOST CORNER OF PARCEL X OF CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NUMBER 3014638, RECORDED UNDER RECORDING NUMBER 20130430900009, RECORDS OF KING COUNTY, WASHINGTON;
THENCE NORTH 17°19'29" EAST, A DISTANCE OF 30.40 FEET TO THE NORTHWESTERLY MOST CORNER OF SAID PARCEL X, ALSO BEING THE SOUTHWESTERLY MOST CORNER OF PARCEL Y OF SAID LOT BOUNDARY ADJUSTMENT, ALSO BEING A POINT ON A NON TANGENT CURVE, CONCAVE TO THE EAST, HAVING A CENTER TO WHICH BEARS SOUTH 89°27'06" EAST, AND A RADIUS OF 973.00 FEET;
THENCE SOUTHERLY ALONG SAID CURVE, BEING A WESTERLY LINE OF SAID PARCEL X, AN ARC DISTANCE OF 23.61 FEET, THROUGH A CENTRAL ANGLE OF 01°23'24", TO AN ANGLE POINT OF SAID NEW PARCEL X;
THENCE ALONG A LINE OF SAID PARCEL X,
SOUTH 59°17'05" WEST, A DISTANCE OF 10.60 FEET TO THE POINT OF BEGINNING;

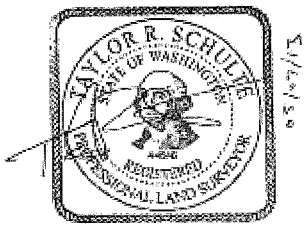
THE LOWER LIMIT OF VERTICAL SPACE CONTAINED WITHIN THE ABOVE DESCRIPTION SHALL BE AN ELEVATION OF 224.45 FEET;

THE UPPER LIMIT OF VERTICAL CONTAINED WITHIN THE ABOVE DESCRIPTION SHALL BE AN ELEVATION OF 256.50 FEET;

SAID ELEVATIONS DESCRIBED HEREIN ARE EXPRESSED IN TERMS OF THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88) AS OF THE DATE OF THIS INSTRUMENT ARE BASED UPON THE CITY OF SEATTLE BENCHMARK NUMBER SNV-2626, BEING A DOMED BRASS DISC 4 FEET NORTH OF THE INTERSECTION OF BACK OF SIDEWALK AT THE NORTHEAST CORNER OF MADISON STREET AND 7TH AVENUE, HAVING AN ELEVATION OF 250.64 FEET.

(SAID BENCHMARK HAVING AN OLD CITY OF SEATTLE DATUM ELEVATION = 240.98, BASED ON BENCHMARKS SHOWN ON CITY OF SEATTLE FIELD BOOK 2325, PAGES 2 AND 7);

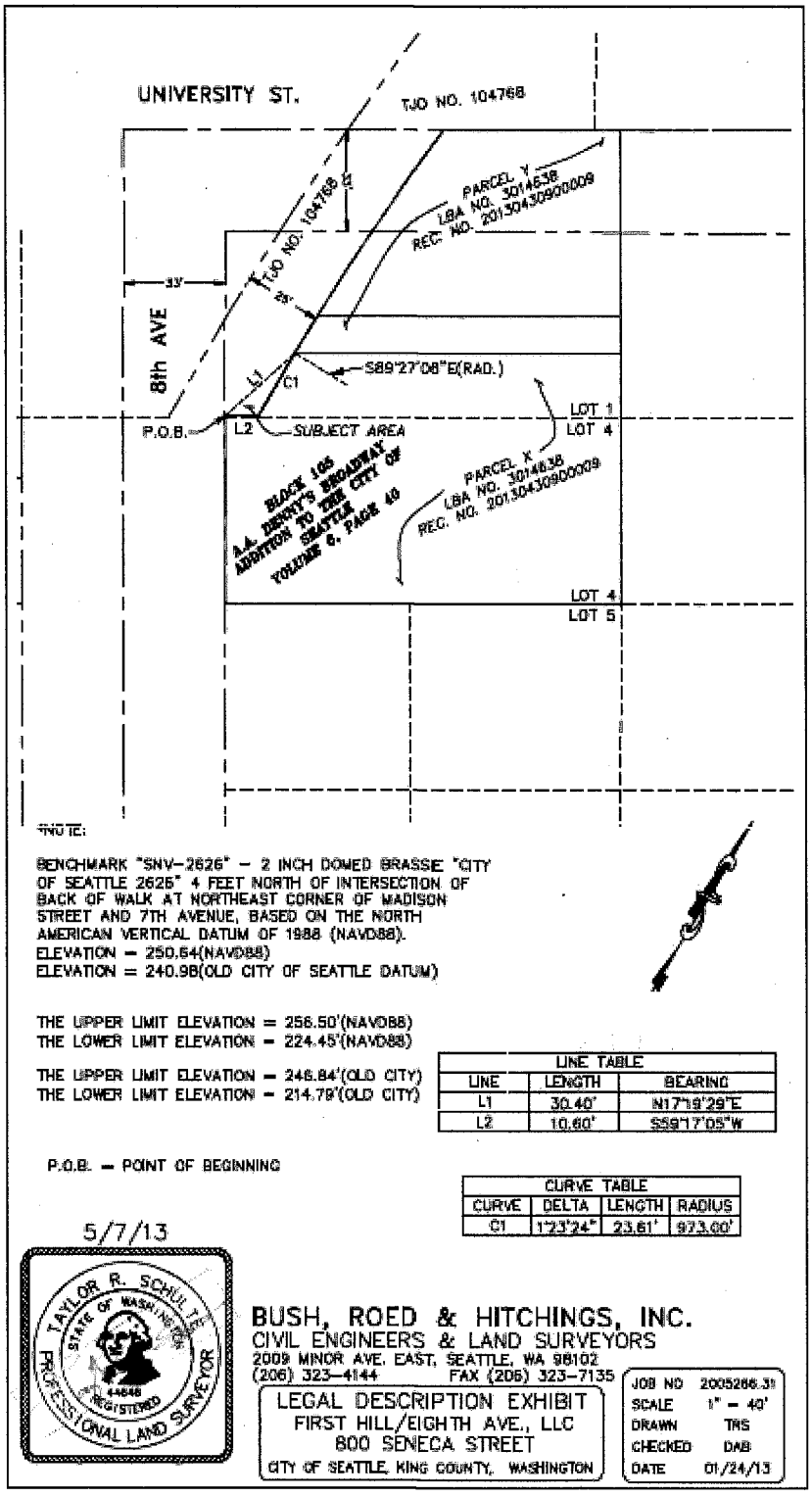
SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON.



FIRST HILL / EIGHTH AVE. LLC
800 SENECA STREET
TAYLOR R. SCHULTE, P.L.S. 44646
BRH JOB NO. 2005266.31
MAY 07, 2013

BUSH, ROED & HITCHINGS, INC.
2009 MINOR AVENUE EAST
SEATTLE, WA 98102
(206) 323-4144

THIS CITY CLERK



SDS CITY CLERK

Terrance Dunning
DPR Pigott Corridor Agreement FISC
May 22, 2013
Version #2

Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Terry Dunning/684-4860	Jeff Muhm/684-8049

Legislation Title: AN ORDINANCE relating to Freeway Park; authorizing an agreement between the City of Seattle and First Hill/Eighth Avenue LLC concerning connecting a private development to the Pigott Corridor portion of Freeway Park; and ratifying and confirming certain prior acts.

Summary of the Legislation: This legislation authorizes the Superintendent of Parks and Recreation to execute a "Consent Agreement to Connection and Public Use" between First Hill/Eighth Avenue LLC (First Hill) and the City. The agreement authorizes First Hill to construct and operate certain improvements within the easement area surrounding the improvement known as Pigott Corridor, a portion of Freeway Park.

Background: Freeway Park, and especially the Pigott Corridor, has had a complicated history. Many of the details of prior real estate transactions leading to the current legal status of the Pigott Corridor are recited in the preamble of the proposed ordinance. Pigott Corridor (an elevated walkway) is owned by the City but exists in a non-exclusive easement area (Horizon House Easement) that burdens the lands of Horizon House, the adjacent senior living facility. First Hill is developing a 500 foot building at the corner of Eighth and Seneca, next to the Horizon House property. Those two neighbors have entered into a Lot Boundary Adjustment that results in First Hill becoming a direct neighbor of the Pigott Corridor and makes part of their development, located in the Horizon House Easement area, subject to City permission for a permanent structure in the easement area.

First Hill has negotiated an agreement with the City in order to gain the consent necessary for their project. The project, as it connects to park property, is shown in the attached Exhibit A (8 page rendering) to the Fiscal note and titled Connection Drawing. The plaza overlaying the First Hill parking garage connects to the Pigott Corridor structure and two cuts will be made in the wall of the Corridor to allow free movement of pedestrians to and from the development's open plaza area and the Pigott Corridor. Further, the vertical walls of the garage/pedestrian plaza will be supported in part by a cantilevered structure, which also attaches to the base of the Pigott Corridor. This arrangement is better described in the attached drawing, Exhibit A.

Once installed, the new improvements will allow free access to and from the adjacent plaza area to the Pigott Corridor. The plaza will be improved with a variety of commercial amenities that likely will include at least one restaurant. These publicly accessible, commercial facilities will

SEA CITY CLERK

draw foot traffic to the area and to the adjacent Pigott Corridor. The developer will also install plaza lighting and some supplemental lighting on the Pigott Corridor, which will replace and improve lighting lost by the removal of Corridor walls at the connection points. The improved lighting, together with the increased foot traffic, is predicted to activate the Pigott Corridor and supplant some of the less savory behavior often seen along the Corridor. Parks staff believes that traffic along the Pigott Corridor could increase significantly changing it from a dank, somewhat foreboding public space into the vibrant, heavily used public amenity as originally intended.

__X__ **This legislation does not have any financial implications.**

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?** Increased use and activity along the Pigott Corridor will result in increased maintenance, particularly refuse disposal and general clean up obligations for Parks.

b) **What is the financial cost of not implementing the legislation?** The neighboring property will develop without connection to the Pigott Corridor. That development, a tower 500 feet tall, will engulf the Pigott Corridor in shade and enhance the already gloomy conditions prevailing in this part of the park, and lead to decreased public traffic and increased illicit activity. The costs of these impacts are impossible to quantify, but it is clear they will occur.

c) **Does this legislation affect any departments besides the originating department?** No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None currently known.

e) **Is a public hearing required for this legislation?** No.

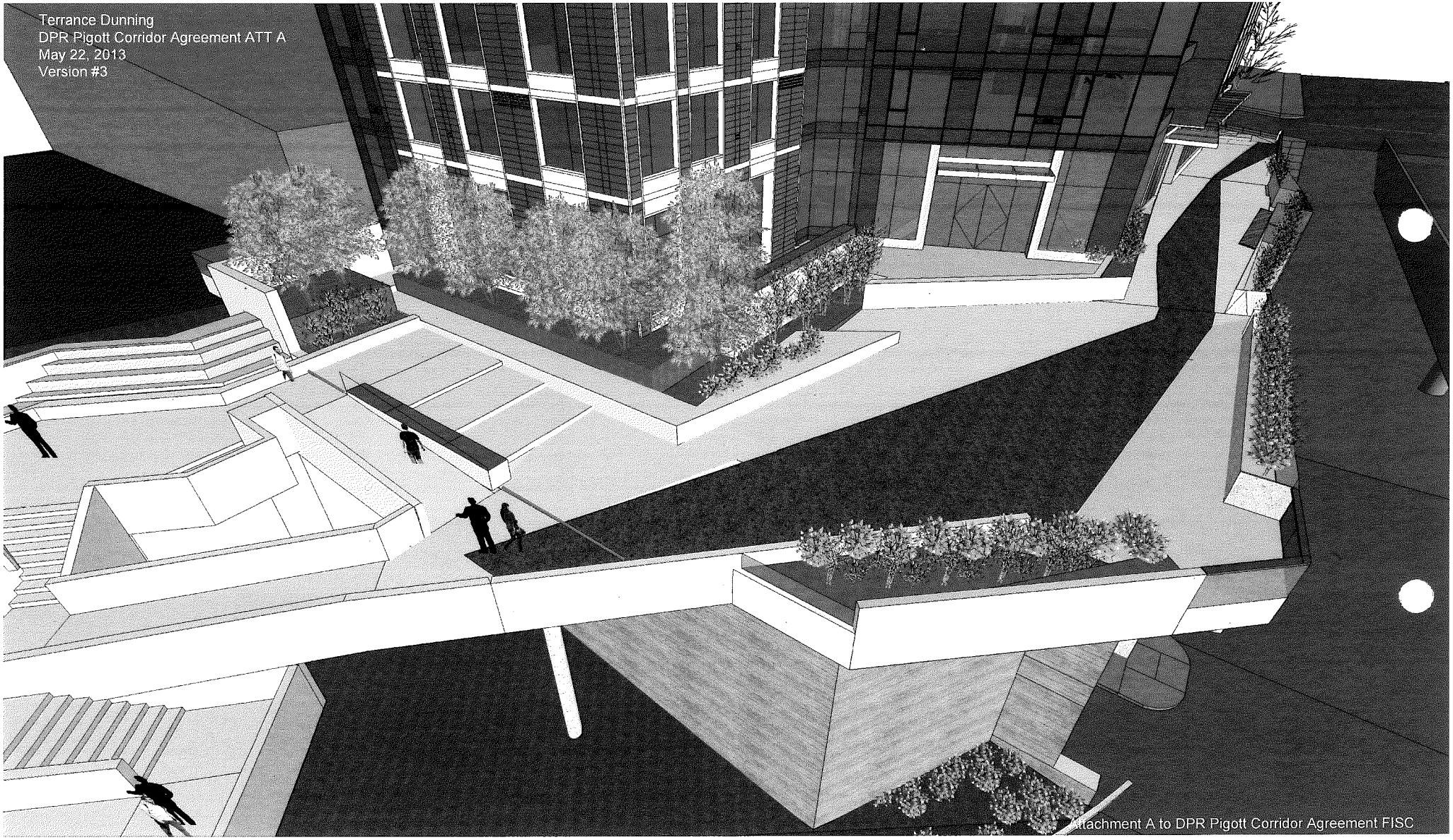
f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No.

g) **Does this legislation affect a piece of property?** Yes, the Pigott Corridor at Freeway Park.

h) **Other Issues:** None

List attachments to the fiscal note below:
Exhibit A – Connection Drawing

Terrance Dunning
DPR Pigott Corridor Agreement ATT A
May 22, 2013
Version #3
Attachment A to DPR Pigott Corridor Agreement FISC


Terrance Dunning
DPR Pigott Corridor Agreement ATT A
May 22, 2013
Version #3
Attachment A to DPR Pigott Corridor Agreement FISC

Attachment A to DPR Pigott Corridor Agreement FISC

Terrance Dunning
DPR Pigott Corridor Agreement ATT A
May 22, 2013
Version #3
handrail only:
no guardrail required

Terraine Planning
DPR Pigott Corridor Agreement ATT A
May 22, 2013
Viewpoint #3
Attachment A to DPR Pigott Corridor Agreement FISC

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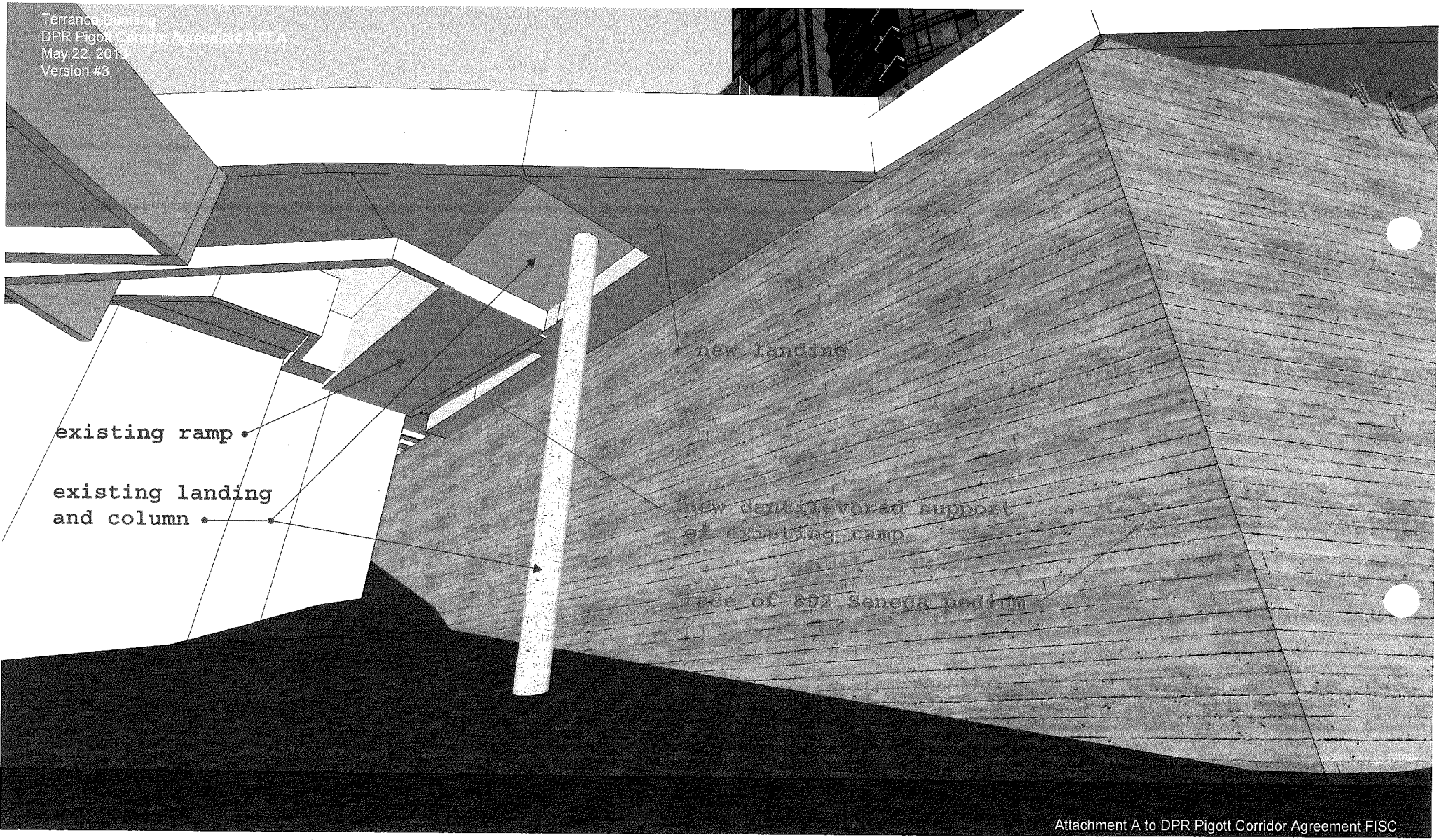
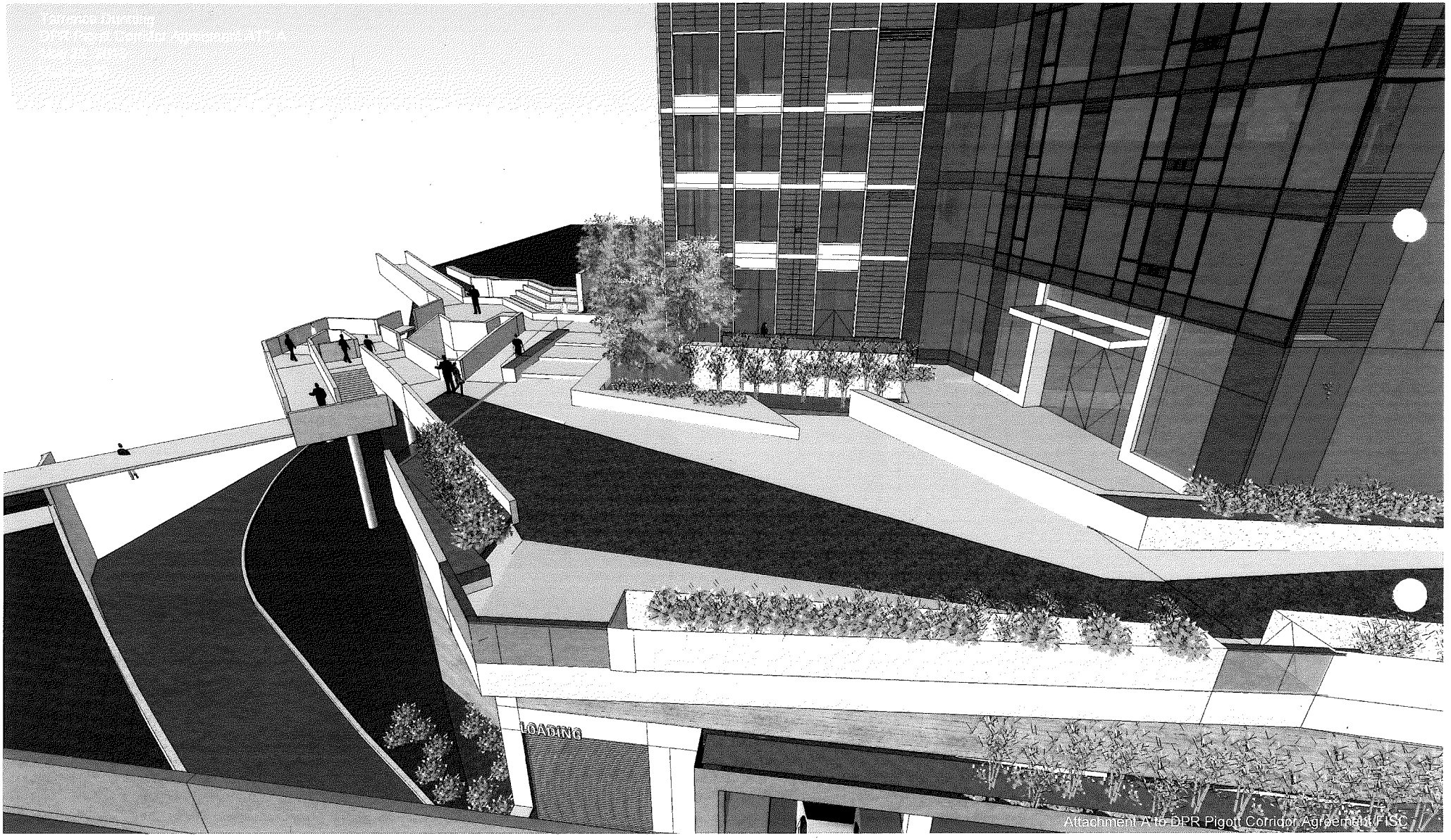

new landing
existing ramp
existing landing
and column
new cantilevered support
of existing ramp
face of 602 Seneca podium



Attachment A to DPR Pigott Corridor Agreement FISC

City of Seattle
Office of the Mayor

May 28, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark,

I am pleased to transmit the attached proposed Council Bill that authorizes the Superintendent of Parks and Recreation to execute a Consent Agreement with First Hill/Eighth Avenue LLC consenting to the development of a connection, by the private developer, to the Pigott Corridor (part of Freeway Park) and providing for long term maintenance of the connection. This connection, highly sought by the First Hill Neighborhood, will allow for the free flow of pedestrians from the development's open pavilion to the Pigott Corridor and will also allow direct access by Freeway Park users to the commercial establishments being developed as first floor amenities in the new building being constructed at 802 Seneca Street.

In 1985, Horizon House granted the City a non-exclusive easement for the Pigott Corridor. This easement requires City permission for any permanent development within the easement area. The proposed development at 802 Seneca Street calls for the construction of a publicly accessible pedestrian plaza on the roof of the development's parking structure. The plaza will be connected at two points to Pigott Corridor and facilitate travel to and from the plaza area and Pigott Corridor. The new connection will increase pedestrian traffic and access to nearby commercial facilities and is anticipated to activate the Pigott Corridor and Freeway Park and provide a more enjoyable park experience for visitors and those passing through.

Approval of this legislation will improve access to Freeway Park and increase activity on the Pigott Corridor, both public benefits for the City. Thank you for your consideration of this legislation. Should you have any questions, please contact Donald Harris at 684-8018.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

CITY CLERK