

CONFORMED COPY

Return Address:

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SEATTLE, WA 98104

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PAGE-001 OF 007
08/16/2010 14:06 68.00

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

Document Title(s) (or transactions contained therein): (all areas applicable to your document <u>must</u> be filled in) 1. <u>PROPERTY USE AND DEVELOPMENT AGREEMENT</u> 3. _____ 4. _____	
Reference Number(s) of Documents assigned or released: Additional reference #'s on page _____ of document	
Grantor(s) Exactly as name(s) appear on document 1. <u>EPIPHANY SCHOOL</u> 2. _____ Additional names on page _____ of document.	
Grantee(s) Exactly as name(s) appear on document 1. <u>CITY OF SEATTLE</u> 2. _____ Additional names on page _____ of document.	
Legal description (abbreviated: i.e. lot, block, plat or section, township, range) <u>LOTS 3-5, BLOCK 9, WADDELL'S MADRONA PARK ADD.</u> <u>VOLUME 11 OF PLATS, PG 2, IN KING CO., WASHINGTON</u> Additional legal is on page _____ of document.	
Assessor's Property Tax Parcel/Account Number assigned <u>9103000615, 9103000620, 9103000625</u>	<input type="checkbox"/> Assessor Tax # not yet assigned
The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.	

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

Signature of Requesting Party

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

AFTER RECORDING RETURN DOCUMENT TO:

John C. McCullough
McCullough Hill, PS
701 Fifth Avenue, Suite 7220
Seattle, WA 98104

Reference Number of Related Document: N/A

Grantor(s): EPIPHANY SCHOOL

Grantee(s): CITY OF SEATTLE

Abbreviated Legal Description: Lots _ through _, Block 9, Waddel's Madrona
Park Addition, Vol. 11 of Plats, p. 2, King County, WA

Additional Legal Description is on pages 1 and 2 of Document

Assessor's Property Tax Parcel or Account No.: #9103000615, 9103000620,
#9103000625.

PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT is made this date in favor of the CITY OF SEATTLE, a municipal corporation of the State of Washington (herein, the "City") by EPIPHANY SCHOOL, a Washington non-profit corporation, owners of the within described property (herein, the "Owner").

WITNESSETH:

WHEREAS, Owner is vested in fee simple title and/or has a substantial beneficial interest in the real property situated in King County, Washington, described as follows (herein called the "Property"):

Lots 3 through 5 inclusive, Block 9, Waddel's Madrona Park Addition, according to the Plat thereof, recorded in Volume 11 of Plats, page 2, in King County, Washington;

and

WHEREAS, the Owner is redeveloping the Property with new school buildings (the "Development"); and

WHEREAS, in connection with the Development, a petition was filed in 200_ (C.F. No. 309199) pursuant to RCW Ch. 35.79 and Seattle Municipal Code Ch. 15.62, by the Owner to vacate the alley in Block 9, Waddel's Madrona Park Addition; and

WHEREAS, the Seattle City Council granted preliminary approval of the vacation subject to conditions, including the conditions that the pocket park area of the Development (the "Pocket Park"), which is depicted on Exhibit A hereto, be accessible to the public; and

WHEREAS, the Owner now seeks final vacation of the alley in Block 9, Waddel's Madrona Park Addition;

NOW, THEREFORE, the Owner hereby covenants, bargains and agrees on behalf of itself, its successors and assigns as follows:

Section 1. The Pocket Park shall be developed with landscaping, seating, special paving and an art element, all as approved by the Seattle Design Commission. The Pocket Park shall be open to the public 24 hours per day, subject to the conditions set forth herein. As used herein, "Pocket Park" does not include below-grade or subsurface areas (which areas are occupied by the subsurface parking garage for the Development) or portions of the Property outside the boundaries depicted on Exhibit A. All landscaping and other amenities shall be maintained and kept in good repair. Landscaping and other amenities may be replaced as necessary but must be replaced with similar landscaping or amenities. Significant changes to the amenities provided in the Pocket Park shall require the prior approval of Seattle Department of Transportation.

Section 2. The Owner shall have the right from time to time to temporarily close or obstruct the Pocket Park for construction, required maintenance and repair or because of circumstances beyond the Owner's control. The Owner shall also have the right from time to time to temporarily close or obstruct the Pocket Park as necessary to maintain the safety and security of the Development or the persons associated therewith. The Owner may adopt such reasonable rules and regulations regarding the use of and access to the Pocket Park as are necessary to ensure the safety or security of the users of the Pocket Park or the Development.

Section 3. This Agreement shall be recorded in the records of King County and the covenants hereof shall be deemed to attach to and run with the Property and shall be binding upon the Owner, its heirs, successors and assigns.

Section 4. This Agreement may be amended or modified by agreement between the Owner and the City; provided such amended agreement shall be approved by the legislative authority of the City by ordinance. Nothing in the agreement shall be construed as a surrender of the City's governmental powers.

Section 5. This Agreement is made for the benefit of the City and the public, and the City may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 6. Upon the effective date of the vacation ordinance, Owner shall provide and thereafter maintain in full force and effect, commercial general liability insurance providing for a limit of not less than \$1,000,000 per occurrence for all damages arising out of bodily injuries or death. The insurance policies obtained shall be approved as to form by the City Risk Manager, and shall name the City as an additional insured.

Section 7. Owner shall indemnify and hold the City harmless from any and all claims, losses, liabilities, liens, costs, or expenses resulting from or arising out of public use of the Pocket Park. If any claim covered by this paragraph is asserted against the City, Owner, upon notice thereof from the City, shall defend the same at its sole cost and expense, and shall pay any final judgment rendered upon such claim.

Section 8. The Owner reserves the right to use the Pocket Park for any purpose which does not interfere with the public's use of the Pocket Park, including but not limited to the right to use the Pocket Park as described herein and the right to grant easements within the Pocket Park.

Section 9. Notwithstanding the covenants contained herein, nothing in this Agreement shall constitute a public dedication of any portion of the Property.

Section 10. In the event any covenant or condition hereinabove contained or any portion thereof is invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition or restriction herein contained.

Dated this 16 day of August, 2010.

OWNER:

EPIPHANY SCHOOL,
a Washington non-profit corporation

By: Matt Neely
Its: Head of school

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me Matt Neely, to me known to be the Head of School of EPIPHANY SCHOOL, a Washington non-profit corporation, the corporation that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute said instrument on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16 day of ~~July~~, 2010.
August

Adrienne L Parrish

(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at Seattle, WA
My Commission expires: March 16, 2013

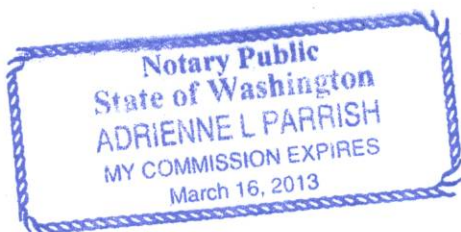


EXHIBIT A EPIPHANY SCHOOL PUBLIC BENEFIT AREA

