

**Return Address:**

ROGER A. PEARLE  
FOSTER PEPPER PLLC  
111 3RD AVE #3400  
SEATTLE, WA 98101



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PAGE-001 OF 013  
06/01/2012 14:31  
KING COUNTY, WA

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 must be filled in)

1. PROPERTY USE & DEVELOPMENT  
AGREEMENT
2. \_\_\_\_\_  
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. CITY PLACE III LLC
2. \_\_\_\_\_

Additional names on page \_\_\_\_\_ of document.

**Grantee(s)** Exactly as name(s) appear on document

1. CITY OF SEATTLE
2. \_\_\_\_\_

Additional names on page \_\_\_\_\_ of document.

**Legal description** (abbreviated: i.e. lot, block, plat or section, township, range)

LOTS 1-4, 8-10, & 11-14, BLK 103, D.T. DALBY'S 1ST ADDN. TO NORTH  
SEATTLE, VOL. 1, PG 79, EXCEPT PTNS CONVEYED FOR STREETS

Additional legal is on page \_\_\_\_\_ of document.

**Assessor's Property Tax Parcel/Account Number**

Assessor Tax # not yet

assigned

1983200325, 1983200360, 1983200375

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:**

Roger A. Pearce  
Foster Pepper PLLC  
1111 3<sup>rd</sup> Avenue, Suite 3400  
Seattle, Washington 98101

**PROPERTY USE AND DEVELOPMENT AGREEMENT**

Grantor(s): CITY PLACE III LLC

Grantee(s): CITY OF SEATTLE

**Abbreviated Legal Description:**

Lots 1-4, 8-10, and 11-14, Block 103, David T. Denny's First Addition  
to North Seattle, Vol. 1, Pg. 79; except ptns conveyed for streets  
Official legal description on Exhibit A.

Assessor's Property Tax Parcel or Account Nos:

1983200325, 1983200360, 1983200375

Reference Number of Related Documents: N/A

## PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made this date in favor of the CITY OF SEATTLE, a municipal corporation of the State of Washington ("City") by CITY PLACE III LLC, a Washington limited liability company, owner of the Property described herein ("Owner").

### WITNESSETH

WHEREAS, the Owner is vested in fee simple title and has a substantial beneficial interest in the property located in King County, Washington, as legally described in Exhibit A hereto (the "Property");

WHEREAS, the Owner has redeveloped the Property with new office buildings (the "Development") pursuant to City of Seattle Department of Planning and Development Project Nos. 3007492 and 3007493; and

WHEREAS, in connection with the Development, a petition was filed in 2007 under City of Seattle Clerk's File No. 308958 pursuant to RCW Ch. 35.79 and Seattle Municipal Code Ch. 15.62, by the Owner to vacate a portion of the alley in Block 103, D. T. Denny's 1<sup>st</sup> Addition to North Seattle as legally described in Exhibit B; and

WHEREAS, the City Council granted preliminary approval of the vacation subject to conditions, including the public benefit features listed in Exhibit C, which include the condition that a certain amount of surface plaza area of the Development on the Property (the "Plaza Area") be accessible to the public as described in this Agreement. The surface plaza area open to the public is depicted on Exhibit D; and

WHEREAS, the Owner now seeks final vacation of the portion of the alley in Block 103, D. T. Denny's 1<sup>st</sup> Addition to North Seattle as described in Exhibit B;

**NOW, THEREFORE**, the Owner covenants, bargains, and agrees on behalf of itself, its successors, and assigns to the following:

Section 1. The Plaza Area in compliance with the Council conditions in City of Seattle Clerk's File No. 308958 shall not be developed with buildings at grade level, and shall be developed with a plaza, landscaping, benches, lighting, signs and other open space and pedestrian amenities as shown on Exhibit D hereto. The Plaza Area shall be open to the public to pass through or use the plaza during all hours regardless of whether such use by the public is associated with the Development. Public use of the Plaza Area is, however, subject to the conditions contained in this Agreement.

The Owner shall provide signage in the Plaza Area indicating the Plaza Area is open for public use in accordance with the terms of this Agreement. The signage and any changes to the signage shall be approved by the Seattle Department of Transportation.

The Plaza Area does not include: below-grade or subsurface areas, which are occupied by the subsurface parking garage for the Development; or portions of structures that may extend over the ground surface of the Plaza Area, provided the portions of structures located over the Plaza Area do not restrict the public's use of the Plaza Area.

The areas identified as "Restricted Public Use Areas" on **Exhibit D** 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.

**Section 2.** The Plaza Area shall include the following public amenities on the Property as shown on the **Exhibit D** drawing: special pavers, seating, lighting and landscaping. The amount or types of amenities may be modified by the Owner after receiving the written consent of the Director of the Department of Transportation; provided, the quality of the amenities shall not be diminished and the modified amenities shall be designed to continue to activate the Plaza Area with public uses and pedestrian activity.

The Plaza Area is contiguous with improvements outside the Plaza Area that were required and constructed as part of the permitting for the Development, including sidewalk improvements, street trees and pedestrian enhancements in the rights-of-way of Republican Street, Terry Avenue North and Boren Avenue North.

**Section 3.** The Owner shall have the right to temporarily close or obstruct the Plaza Area for: (1) construction; (2) maintenance and repair; (3) temporary use for private functions directly related to the Development or the Owners; (4) the maintenance of security for the Development or persons using the Development, or (5) other circumstances beyond the Owner's control.

**Section 4:** The Owner may adopt reasonable rules and regulations regarding the use of and access to the Plaza Area as are necessary to ensure the security of the users of the Plaza Area and the Development. The rules and regulations shall be consistent with the terms of this Agreement. A summary of the current rules and regulations may be posted in visible locations in the Plaza Area.

Section 5. The Owner and the City through its Parks Department, Department of Neighborhoods, or other City agency, may coordinate programming of community and public events or other public functions in the Plaza Area. Any such events shall be coordinated between the City and Owner not less than six months in advance.

Section 6. This Agreement shall be recorded in the records of King County and the covenants of this Agreement shall attach to and run with the Property and shall be binding upon the Owner, its heirs, successors, and assigns.

Section 7. This Agreement may be amended or modified by agreement between the Owner and the City; provided the amended Agreement shall be approved by the City Council by ordinance. Nothing in the Agreement shall be construed as a surrender of the City's governmental powers.

Section 8. 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 9. 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 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 10. Owner shall indemnify, hold harmless, and defend the City and its officers, agents and employees, from any and all claims, losses, liabilities, liens, costs, or expenses including attorney's fees, resulting from or arising out of public use of the Plaza Area, except to the extent resulting from the negligence or intentional acts of the City.

Section 11. The Owner reserves the right to use the Plaza Area for any purpose which does not interfere with the public's use of the Plaza Area, including but not limited to the right to use the Plaza Area as described in this Agreement and the right to grant easements within the Plaza Area, provided the easements are consistent with the public's use of the Plaza Area.

Section 12. Notwithstanding the covenants contained in this Agreement, nothing in this Agreement shall constitute a public dedication of any portion of the Property.

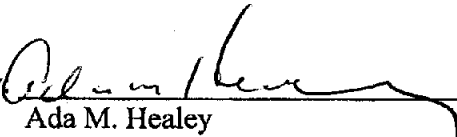
**Section 13.** In the event any covenant or condition or any portion thereof in this Agreement is judicially determined to be invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition or restriction contained in this Agreement.

Dated this 29<sup>th</sup> day of May, 2012.

**OWNER:**

CITY PLACE III LLC,  
a Washington limited liability company

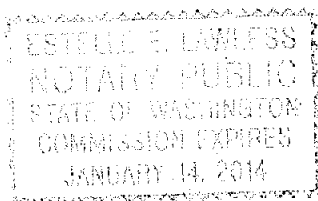
By: CITY INVESTORS LLC  
a Washington limited liability company  
Its: Manager

By:   
Ada M. Healey  
Its: Vice-President

STATE OF WASHINGTON )  
  ) ss.  
COUNTY OF KING      )

On this day personally appeared before me ADA M. HEALEY to me known to be the Vice-President of City Investors LLC, a Washington limited liability company and Manager of CITY PLACE III LLC, a Washington 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 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 company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 29<sup>th</sup> day of May, 2012.



Estelle E Lawless  
ESTELLE E LAWLESS  
(print or type name)  
NOTARY PUBLIC in and for the State of  
Washington, residing at Renton  
My Commission expires: 1/14/2014

## **EXHIBIT A**

### **Legal Description of the City Place III LLC Property**

#### **PARCEL A:**

LOTS 1, 2, 3 AND 4, BLOCK 103, DAVID T. DENNY'S FIRST ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 79, IN KING COUNTY, WASHINGTON;  
EXCEPT THE NORTH 11.36 FEET OF SAID LOT 1 DEEDED TO THE CITY OF SEATTLE FOR STREET PURPOSES BY DEED RECORDED UNDER RECORDING NUMBER 97060;

AND EXCEPT THAT PORTION OF THE SOUTH 20 FEET OF SAID LOT 4 DEEDED TO THE CITY OF SEATTLE FOR ALLEY PURPOSES BY DEED RECORDED UNDER RECORDING NUMBER 20090630000100..

#### **PARCEL B:**

LOTS 8, 9 AND 10, BLOCK 103, DAVID T. DENNY'S FIRST ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 79, IN KING COUNTY, WASHINGTON;  
EXCEPT THE WEST 5 FEET THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 162246 FOR TERRY AVENUE NORTH, PURSUANT TO ORDINANCE NO. 43560 OF THE CITY OF SEATTLE;  
ALSO EXCEPT A RIGHT OF WAY FOR RAILWAY SPUR TRACKS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF LOT 8, BLOCK 103;  
THENCE NORTH ALONG THE EAST BOUNDARY OF SAID LOTS 8, 9 AND 10, A DISTANCE OF 180 FEET, MORE OR LESS TO THE NORTHEAST CORNER OF SAID LOT 10;  
THENCE WEST ALONG THE NORTH BOUNDARY THEREOF, 17 FEET;  
THENCE SOUTH AND PARALLEL TO SAID EAST BOUNDARY 120 FEET, MORE OR LESS, TO THE NORTH BOUNDARY OF SAID LOT 8;  
THENCE SOUTH 11°25' WEST 61.2 FEET, MORE OR LESS, TO THE SOUTH BOUNDARY OF SAID LOT 8;  
THENCE EAST THERE ALONG 29.1 FEET, MORE OR LESS, TO THE PLACE OF COMMENCEMENT;

AND EXCEPT THAT PORTION OF THE EAST 2 FEET OF SAID LOTS 8, 9 AND 10 DEEDED TO THE CITY OF SEATTLE FOR ALLEY PURPOSES BY DEED RECORDED UNDER RECORDING NUMBER 20090630000100..



**PARCEL C:**

THE EAST 17.0 FEET OF LOTS 9 AND 10, BLOCK 103, DAVID T. DENNY'S FIRST ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 79, IN KING COUNTY, WASHINGTON, AND THAT PORTION OF LOT 8, SAID BLOCK 103, LYING EAST OF A LINE DRAWN FROM A POINT ON THE NORTH LINE OF SAID LOT 8 DISTANT 17.0 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 8, TO A POINT ON THE SOUTH LINE OF SAID LOT 8 DISTANT 29.1 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT, BEING ALL OF THE REMAINING PORTIONS OF SAID LOTS 8, 9 AND 10, SAID BLOCK 103, LYING EAST OF THE EASTERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN WARRANTY DEED FROM GREAT NORTHERN RAILWAY COMPANY TO THAD R. PERRY, ET AL, DATED JANUARY 10, 1947, AND LYING SOUTH OF THAT CERTAIN STRIP OF LAND DESCRIBED IN QUIT CLAIM DEED FROM BURLINGTON NORTHERN RAILROAD COMPANY TO OWEN E. STRECKER, SR. FILED FOR RECORD NOVEMBER 21, 1996, UNDER RECORDING NUMBER 9611211365, IN KING COUNTY, WASHINGTON.

**PARCEL D:**

LOTS 11, 12, 13 AND 14, BLOCK 103, DAVID T. DENNY'S FIRST ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 1 OF PLATS, PAGE 79, IN KING COUNTY, WASHINGTON; EXCEPT THE NORTH 11.36 FEET OF SAID LOT 14 CONVEYED TO THE CITY OF SEATTLE BY DEED RECORDED UNDER RECORDING NUMBER 97060; AND EXCEPT THE WEST 5 FEET OF LOTS 11, 12, 13 AND 14 AS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 162246 UNDER ORDINANCE NO. 43560 OF THE CITY OF SEATTLE;

AND EXCEPT THAT PORTION OF THE EAST 2 FEET OF THE SOUTH 20 FEET OF SAID LOT 11 DEEDED TO THE CITY OF SEATTLE FOR ALLEY PURPOSES BY DEED RECORDED UNDER RECORDING NUMBER 20090630000100..

## **EXHIBIT B**

### **Legal Description of Portion of Alley to be Dedicated (C.F. 308958)**

That portion of the alley adjoining Lots 1 through 3 inclusive and Lots 12 through 14 inclusive, and that portion of the alley adjoining Lots 4 and 11, except the southern 20 feet thereof, all in Block 103, D.T. Denny's First Addition to North Seattle, according to the plat thereof, recorded in Volume 1 of Plats, page 79, in King County, Washington.

## EXHIBIT C

### List of Public Benefit Features Provided as Required by Council File No. 308958

#### **Plaza accessible to the Public**

**(completed and to be maintained on the Property pursuant to this Agreement)**

16,383 SF of open space plaza available to the public 24 hours/day.  
The plaza will incorporate landscaping, seating, lighting, special paving, art elements and lighting.

#### **Terry Avenue North Improvements**

**(completed and accepted by the City)**

Improvements consistent with the Terry Avenue Design Guidelines including:  
31-foot wide sidewalk width paved with a combination of colored concrete unit pavers and architectural concrete,  
Back-in angle parking,  
Street trees and understory planting areas,  
Ornamental street lights,  
Fixed benches, and  
Bicycle racks.

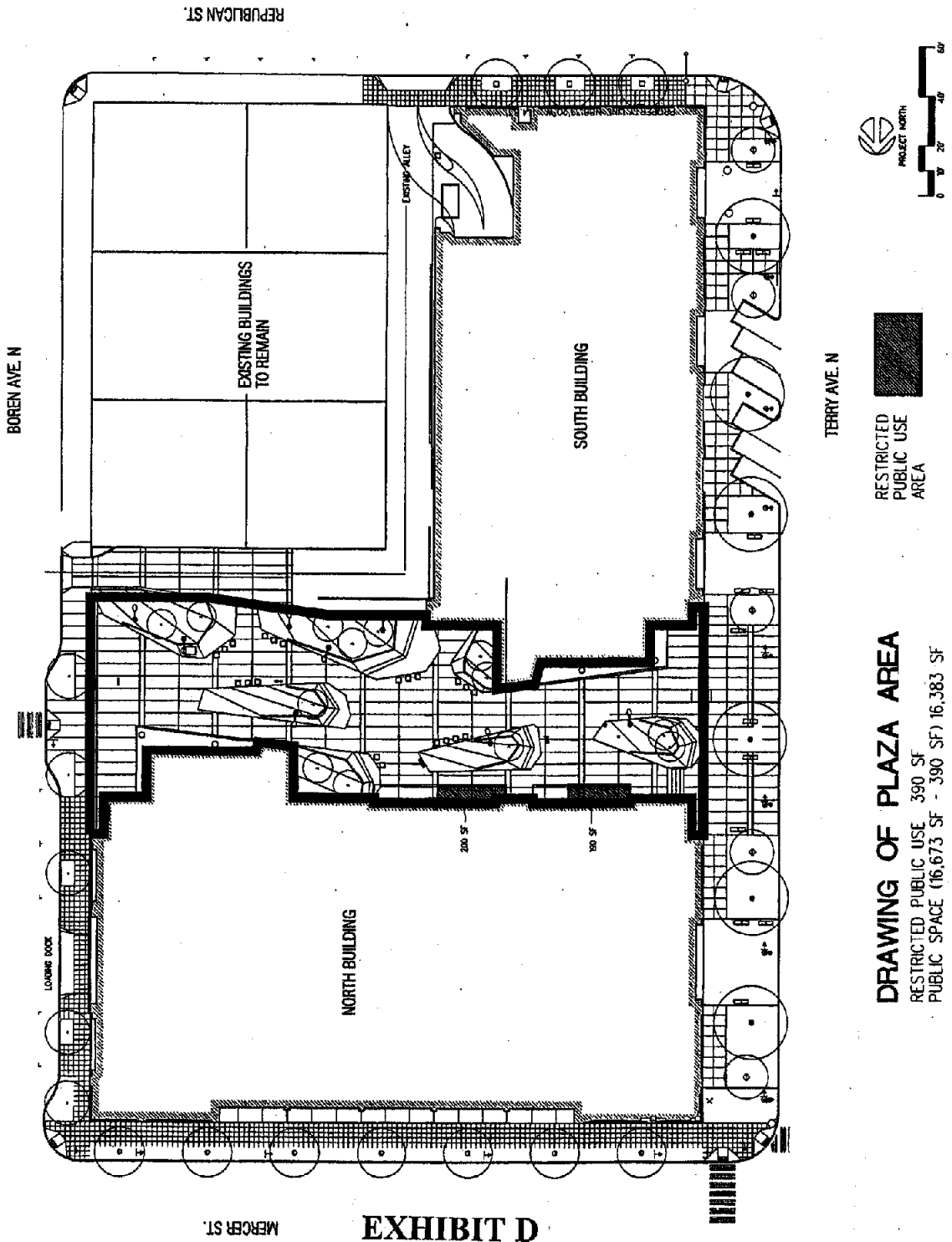
#### **Other Rights-of-Way Designed to City Standards**

**(completed and accepted by the City except as noted)**

Curb bulbs and widened sidewalks on Mercer Street, as coordinated with the Mercer Corridor project. (There is currently a temporary 6-foot wide sidewalk approved by SDOT – once Mercer is complete, there will be curb bulbs and a widened sidewalk on Mercer, as coordinated with the Mercer Corridor Project.)  
Street trees, sidewalk improvements and pedestrian enhancements, and retail frontage, as practicable on Republican Street and Boren Avenue North.

**EXHIBIT D**

**Drawing of Plaza Area  
(See following page)**



### EXHIBIT D

**DRAWING OF PLAZA AREA**  
RESTRICTED PUBLIC USE 390 SF  
PUBLIC SPACE (16,673 SF - 390 SF) 16,383 SF