

After recording, return to:

THE CITY OF SEATTLE  
Department of Finance and Administrative Services  
Attn: Director  
701 Fifth Avenue, Suite 5200  
Seattle, WA 98104  
PO Box 94689

**PERPETUAL EASEMENT FOR PUBLIC ACCESS**

GRANTOR: BOSA DEVELOPMENT US LLC

GRANTEE: THE CITY OF SEATTLE

SUMMARY LEGAL DESCRIPTION: Lots 1-8, Block 32, Volume 1 of Plats, Page 25

ADDITIONAL DESCRIPTION ON P. \_\_

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S): 094200-0855-07

## PERPETUAL EASEMENT FOR PUBLIC ACCESS

THIS PERPETUAL EASEMENT FOR PUBLIC ACCESS (this “Easement”) is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between BOSA DEVELOPMENT US LLC, a California limited liability company (“Grantor”) to the CITY OF SEATTLE, a first class charter city of the State of Washington (“City”).

### RECITALS

A. Grantor is the owner of real property legally described on Exhibit 1, hereto (“Grantor’s Property”). Grantor acquired Grantor’s Property from City pursuant to that certain Amended and Restated Purchase and Sale and Development Agreement between Grantor and City dated \_\_\_\_\_, 2017 (the “Agreement”).

B. Grantor is developing Grantor’s Property with a project comprising approximately \_\_\_\_\_ housing units, a parking garage, retail spaces and a public plaza (“Grantor’s Project”).

C. Grantor acquired Grantor’s Property from the City subject to use and development restrictions requiring that a portion of Grantor’s Property be used and developed only for public open space, in perpetuity.

D. Grantor’s Project will provide public open space and an eventual interface with Seattle City Hall from the eastern façade of Grantor’s Property via a public plaza on Grantor’s Project, as generally depicted on Exhibit 2.

E. Grantor is designing such plaza to satisfy the requirements of SMC 23.49.008.A. The final design of such plaza shall be approved in a Master Use Permit to be obtained by Grantor for Grantor’s Project (the “MUP”).

### GRANT OF RIGHTS AND COVENANTS

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor grants and agrees:

1. Grant and Purpose. Grantor hereby grants and conveys to the City the non-exclusive perpetual right to public access, limited to pedestrian and wheelchair travel on, across, over and through the surface of the plaza located and to be located on Grantor’s Property, throughout the entire area shown by hatch marks on Exhibit 2 (“Public Access Area”). For purposes of this Easement, “wheelchair” includes any device for mobility of persons with disabilities allowed from time to time on public sidewalks in the City of Seattle. Such rights (referred to herein as the “Public Access Rights”) shall include the City’s right to install in the Public Access Area any directional signage that the City deems appropriate for the convenience of the public using the Public Access Area and that Grantor approves, which approval shall not unreasonably be withheld, conditioned or delayed. Except during times when the Public Access Area may be closed to the public under the terms hereof, the public shall, commencing upon Substantial Completion of the Plaza (as such phrase is defined in the Agreement), but not earlier, have free, open and continuous pedestrian and wheelchair access to and through the Public Access Area free of charge every day of the year, at least during the period beginning at 7:00 AM and ending at 10:00 PM local time, subject to

compliance with rules of conduct under Paragraph 6 below and all other terms and conditions of this Easement; provided that City employees in the performance of their official duties related to public safety may use the Public Access Area at all times. Grantor reserves the right to undertake measures to prevent public access onto Grantor's Property and Grantor's Project outside of the Public Access Area and to install measures reasonably intended to prevent use of or access to the Public Access Area during any times when public access is not permitted hereunder.

2. Grantor to Construct and Maintain Public Access Area. Grantor, at its sole expense, shall construct the Public Access Area and all improvements to be located within the Public Access Area consistent with the MUP and the Agreement and in full compliance with all laws, codes and regulations as they apply to public facilities, including without limitation standards under the Americans with Disabilities Act ("ADA"). Grantor, at its sole expense, shall maintain the Public Access Area in a safe, clean, and sanitary condition; shall promptly make any necessary repairs; shall not allow obstructions or debris to remain in the Public Access Area; and shall not cause or permit any structure or condition to exist on or adjacent to the Public Access Area that could be hazardous or dangerous to persons using the Public Access Area, with all of the foregoing being done to a standard at least commensurate with the standard to which the City and King County maintain their facilities in the neighborhood surrounding Grantor's Property. Notwithstanding the foregoing sentence, Grantor may locate and relocate from time to time obstructions to pedestrian or wheelchair travel or both (for example, artwork, planters, and other amenities) in the Public Access Area but shall always provide an unobstructed and improved pathway suitable for pedestrian and wheelchair travel. Grantor shall not be required to provide any direct access from the Public Access Area to the Downtown Seattle Transit Tunnel or the entrances thereto on 3<sup>rd</sup> Avenue. Following construction of the Public Access Area by Grantor, the parties shall amend Exhibit 2 to set forth the precise legal description for the as-built Public Access Area, which shall not extend beyond the boundaries indicated in Exhibit 2. Grantor shall pay any survey costs incurred in determining the precise legal description of the as-built Public Access Area.

3. Closure of Public Access Area. If the Public Access Area is opened to the public prior to completion of construction of other improvements being made at the time of construction of the Public Access Area and as part of the overall development of Grantor's Property or if, after completion of construction of all such improvements, Grantor redevelops portions of Grantor's Property other than the Public Access Area, Grantor may close the Public Access Area for such periods of time as may be reasonably required to accommodate on-going construction activities relating to the other improvements to Grantor's Property. At all other times, Grantor may close the Public Access Area for up to ten (10) calendar days per calendar year for routine maintenance or special events scheduled to occur on Grantor's Property. With the City's prior consent (except in cases of emergency), Grantor may also close the Public Access Area for periods reasonably necessary to complete necessary major non-routine maintenance upon Grantor's Property or the Public Access Area. From time to time, Grantor may use portions of the Public Access Area for purposes of maintenance of the Public Access Area or Grantor's Project. Grantor may also close the Public Access Area if activity in or around the Public Access Area poses a potential threat of injury to person or property, including Grantor's Project.

4. City Maintenance Rights. If Grantor fails to comply in a timely manner with its obligation under Paragraph 2 above to maintain any portion of the Public Access Area, the City shall have the right, but not the obligation, after at least five (5) days' notice of default to Grantor

(except in the case of emergencies, when advance notice shall not be required) to take such actions as the City deems necessary to maintain, repair, reconstruct, or alter the Public Access Area, all at the expense of Grantor, and Grantor shall reimburse the City promptly on demand for the costs of such actions. For the period, and to the extent, that the City requires access to Grantor's Property to exercise its rights under this paragraph, Grantor grants and conveys to the City the non-exclusive right to access on, across, over, under and through such portions of Grantor's Property as are reasonably necessary, for all purposes necessary, incidental, or related to construction, operation, repair, replacement, alteration, inspection, monitoring, and maintenance of the Public Access Areas, provided that Grantor may restrict access through Grantor's Project ("Public Access Area Maintenance Rights"). The City shall not modify the design or location of the Public Access Area, nor any portion of Grantor's Project, without Grantor's consent. Air rights, and the right to maintain, repair and replace all necessary supports, foundations and structural elements are included in the foregoing grant. The City, its contractors, agents, officers and employees, shall have free, open and continuous access on, across, over, under and through such portions of Grantor's Property as are reasonably necessary for the purposes described above, which shall include the right to operate any necessary motorized and non-motorized equipment and vehicles for such purposes. The City shall cause any portion of Grantor's Property disturbed by activities of the City, its contractors, agents, officers and employees undertaken pursuant to this paragraph to be restored as nearly as practicable to its condition prior to such activities, but shall not be liable for loss or damage to fixtures or installations that could not reasonably be avoided, despite reasonable efforts by the City to avoid damage.

5. Special Events. City may schedule use of the Public Access Area for public celebrations ten (10) times per calendar year or a total of thirty (30) hours (whichever occurs first); provided, that such uses shall not include social services, political demonstrations or protests.

6. Rules of Conduct.

A. Grantor may adopt and enforce reasonable rules of conduct in the Public Access Area for the safety and convenience of the public using the Public Access Area, pedestrian and wheelchair travel through the Public Access Area, and to prevent injury to persons or damage to property, provided such rules do not unreasonably interfere with the rights granted under this Agreement and are consistent with applicable law. Grantor shall provide reasonable advance written notice and a copy of the proposed rules to the City before they take effect. Grantor may require any person who does not comply with rules in effect under this Paragraph 6 to leave the Public Access Area and may take such other actions as Grantor deems reasonably necessary to enforce such rules.

B. The parties acknowledge that the Public Access Area is not being dedicated as a public street or sidewalk, and that the nature and limited purpose of the Public Access Rights are such that various activities traditionally permitted in public streets and sidewalks would not be appropriate for the Public Access Area. Compliance with rules in effect under this Easement is a condition of the right of any person to use the Public Access Area, except City employees performing activities related to public safety. Without limiting the generality of the foregoing provision, the parties specifically agree that the activities on Exhibit 3 shall be prohibited in the Public Access Area.

7. Rights and Remedies. The City shall have the right without prior institution of any suit or proceeding of law to exercise the rights afforded it at such times and to the extent provided in this Easement. In addition, the City shall have all remedies that may be available at law or in equity. The rights granted to the City are not obligations of the City and may be exercised at the City's discretion. The City shall not be liable or responsible for any injury, loss or damage caused by members of the public in exercising the rights of access granted hereunder, except to the extent that such injury, loss or damage is caused by the negligence of the City for which it has liability under applicable law, not including any City negligence regarding any condition that Grantor shall have caused or permitted contrary to this Easement or any agreement with the City. The City shall not be subject to any obligation under any security instrument or other agreement executed by Grantor regarding any part of the Grantor Property. The rights of the City and obligations of the Grantor are in addition to, and not in substitution for, the rights and obligations under any other agreement.

8. Indemnification.

A. Grantor Indemnification. To the fullest extent permitted by law, Grantor shall indemnify, defend (using counsel acceptable to City) and hold City, its officers, agents, employees and elected officials (collectively, "City Indemnified Parties") harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) of any kind whatsoever arising out of Grantor's construction and operation of Grantor's Project, including, but not limited to, claims resulting from, arising out of, or connected with (i) the negligent acts or omissions of Grantor, its employees, agents, officers, affiliates, contractors, guests or invitees in constructing Grantor's Project, or (ii) Grantor's violation of any term or condition of this Easement.

B. City Indemnification. To the fullest extent permitted by law, City shall indemnify, defend (using counsel acceptable to Grantor) and hold Grantor, its employees, agents, officers, contractors, guests or invitees (collectively, "Grantor Indemnified Parties") harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Grantor's actual and reasonable attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) of any kind whatsoever resulting from, arising out of, or connected with City's use of the Public Access Area or Grantor's Property or City's exercise of its rights hereunder, to the extent attributable to the negligent acts or omissions by City, its agents, contractors or employees (but expressly excluding the negligent or intentional acts or omissions of members of the general public who are not acting on behalf of City).

C. Limited Waiver of Industrial Insurance Immunity; Indemnities Negotiated. City and Grantor agree that the foregoing indemnities specifically include, without limitation, claims brought by any of their respective employees against any other such party. THE FOREGOING INDEMNITIES ARE EXPRESSLY INTENDED TO CONSTITUTE A "WAIVER OF EACH PARTY'S IMMUNITY UNDER WASHINGTON'S INDUSTRIAL INSURANCE ACT, RCW TITLE 51, TO THE EXTENT NECESSARY TO PROVIDE ANY OTHER SUCH PARTY WITH A FULL AND COMPLETE INDEMNITY FROM CLAIMS MADE BY EACH SUCH PARTY AND ITS EMPLOYEES, TO THE EXTENT OF THEIR NEGLIGENCE. CITY AND GRANTOR ACKNOWLEDGE THAT THE INDEMNIFICATION

PROVISIONS OF THIS ARTICLE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

9. Duration; Modification or Release.

A. The rights granted hereunder, and the covenants and servitudes in this Easement, shall inure to the benefit of the City, shall bind Grantor and each of its successors, transferees and assigns, including, without limitation, tenants, and the burden of this Easement shall run with the land described in Exhibit 1.

B. The terms herein may be modified only by a written instrument signed by an authorized officer of the City and by Grantor, or their respective successors and assigns, and not otherwise. The City may release, in whole or in part, the rights granted herein by recording an instrument executed by an authorized officer of the City.

10. Representations and Warranties of Grantor. Grantor represents and warrants it holds fee simple title to the Grantor Property, which is subject to no liens, encumbrances, defects, leases, options or other interests except as set forth in Exhibit 4 hereto ("Permitted Encumbrances"), and that the rights granted hereunder are not and shall not be subject to any lien, encumbrance, defect, lease, option or other interest except for the Permitted Encumbrances.

11. Reserved Rights. Grantor reserves (a) the use of the airspace in and above the Public Access Area for the purpose of crane swing and for other purposes associated with the construction and operation of Grantor's Project, (b) the use of the Public Access Area as required for the construction, maintenance, repair, reconstruction and redevelopment of Grantor's Project, subject to the terms stated herein, and (c) all rights in and to Grantor's Property not inconsistent with the rights granted herein. In addition, Grantor may install, use, maintain and repair limited improvements in the Public Access Area as reasonably necessary to operate Grantor's Project, provided that such improvements are approved by the City as not substantially interfering and being consistent with the public use and enjoyment of the Public Access Area as provided herein.

12. Successors and Assigns. This Easement shall inure to the benefit of and be binding upon the parties and their successors and assigns, and shall run with the land.

EXHIBITS:

Exhibit 1 - Legal Description of Grantor Property

Exhibit 2 - Depiction of Public Access Areas

Exhibit 3 - Prohibited Uses

Exhibit 4 - Permitted Encumbrances

[signatures on following page]







EXHIBIT 1

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

LOTS 1, 2, 3, 4, 5, 6, 7 AND 8, BLOCK 32, ADDITION TO THE TOWN OF SEATTLE AS LAID OUT ON THE CLAIMS OF C. D. BOREN AND A. A. DENNY AND H. L. YESLER (COMMONLY KNOWN AS C. D. BOREN'S ADDITION TO THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE(S) 25, IN KING COUNTY, WASHINGTON;

TOGETHER WITH THE VACATED ALLEY IN SAID BLOCK ADJOINING SAID LOTS;

EXCEPT THE SOUTHWESTERLY 9 FEET OF LOTS 1, 4, 5 AND 8, CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 54135 FOR THE WIDENING OF THIRD AVENUE, AS PROVIDED BY ORDINANCE NUMBER 14345 OF THE CITY OF SEATTLE; AND

EXCEPT THE NORTHEASTERLY 9 FEET OF LOTS 2, 3, 6 AND 7, CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 50320 FOR THE WIDENING OF FOURTH AVENUE, AS PROVIDED BY ORDINANCE NUMBER 13074 OF THE CITY OF SEATTLE.

EXHIBIT 2  
DEPICTION OF PUBLIC ACCESS AREA

EXHIBIT 3  
PROHIBITED USES

- Camping or sleeping
- Placement or storage of materials, including personal belongings
- Pets off-leash
- Smoking
- Carrying handguns or weapons (except by licensed officers or security)
- Violation of any law or regulation
- Posting of signs or notices (but not holding signs, signature gathering or hand billing)
- Possession of alcoholic beverages
- Urinating, defecating or engaging in personal hygiene activities
- Use of amplified sound
- Maintaining a fire
- Loitering
- Damage or vandalism to any plaza improvements or the project
- Abusive, intimidating or harassing behavior
- Operating a vehicle or propulsion device of any kind, regardless of source of power
- Possession of illegal drugs
- Sexual activities or misconduct
- Assault or fighting
- Use of on-site water or electricity by the public
- Use of drones or any remote control device
- Any other activity which may cause injury to persons or damage to property, which unreasonably interferes with the enjoyment of the Plaza by others or which obstructs access to or public or private use and enjoyment of the Plaza or the Project

## EXHIBIT 4

### PERMITTED ENCUMBRANCES

1. Liens for taxes and assessments not yet due and payable.
2. Matters contained in that certain document  
  
Entitled: Transit Way Station Entrance Easement and Construction Agreement  
Executed by: The King County Department of Metropolitan Services and the City of Seattle  
Recording Date: August 31, 1995  
Recording No.: 9508310887
3. Lien and special assessments created under City of Seattle Ordinance Nos. 124175 and 124235, establishing a Downtown Parking and Business Improvement Area, and any amendments, renewals or replacements thereof (to the extent not yet due and payable).