

When Recorded, Return to:
Michael D. Ross
Ross Law Advisors PLLC
1191 Second Avenue, Ste. 1800
Seattle, WA 98101



20180201000039

AGREEMENT Rec: \$85.00
2/1/2018 8:56 AM
KING COUNTY, WA

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor:	Bender Development, LP and Bender Equities, Inc., as tenants in common
<input type="checkbox"/> Additional on page _____	
Grantee:	City of Seattle
<input type="checkbox"/> Additional on page _____	
Legal Description (abbreviated):	Lot 5, Section 20, Township 25 North, Range 4
<input checked="" type="checkbox"/> Additional on :	Exhibit A
Assessor's Tax Parcel ID #:	Lot 5, Section 20, Township 25 North, Range 4
Reference Nos. of Documents Released or Assigned:	A: 202504-9039 B: 408880-2645 C: 202504-9038 D: 338390-0125

PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS INSTRUMENT is executed this date in favor of the City of Seattle, a municipal corporation (“City”), by BENDER DEVELOPMENT, LP, an Oregon limited partnership as to an undivided seventy-five percent (75%) interest and BENDER EQUITIES, INC., an Oregon corporation, as to an undivided twenty-five percent (25%) interest, and as tenants in common,

WHEREAS, Bender Development, LP, and Bender Equities, Inc., are vested in fee simple title in the real property situated in King County, Washington, described on Exhibit A (the “Property”); and

WHEREAS, Inhabit Eastlake LLC filed a petition in Clerk File 313430 for the subterranean vacation of a portion of East Howe Street between Eastlake Avenue East and Fairview Avenue East, described on Exhibit B, for the development of a mixed use residential/retail project on the above-described property, which petition was considered under Chapter 35.79 of the Revised Code of Washington and Chapter 15.62 of the Seattle Municipal Code; and

WHEREAS, on December 9, 2014, the Transportation Committee of the Seattle City Council held a public hearing on the vacation petition; and

WHEREAS, on December 14, 2014, the Seattle City Council granted preliminary approval of the vacation petition, subject to conditions; and

WHEREAS, executing a Property Use and Development Agreement (“PUDA”) is desired to ensure compliance with any on-going conditions of the subterranean vacation approval subsequent to passage of the vacation ordinance; and

WHEREAS, Bender Development, LP, and Bender Equities, Inc., are successors in interest and the current petitioners; and

NOW, THEREFORE, Bender Development, LP, and Bender Equities, Inc., covenant, bargain, and agree on behalf of themselves, their successors, and assigns:

Section 1. Addressed below are those conditions of the vacation approval that require on-going responsibility of Bender Development, LP, and Bender Equities, Inc., and could not, therefore, be met prior to passage of the vacation ordinance. The improvements in the East Howe Street right of way required as public benefit features for the subterranean vacation shall also require a Term Permit from the Seattle Department of Transportation (SDOT). The Term Permit authorizes Bender Development, LP and Bender Equities Inc. to construct, maintain, and operate a plaza within the East Howe Street right-of-way. The Term Permit addresses maintenance and repair, utility access, and indemnification, among other matters.

A. Bender Development, LP, and Bender Equities, Inc., has provided and shall maintain the following features that are installed as public benefits relating to the vacation (the “Public Amenities”, described on Exhibits C and D):

B.

1. Public Open Space at grade on East Howe Street

		Required	Total
i.	Hardscape		
	4’x4’, 4’x8’, 8’x8’ scored concrete		3,683 SF
	3’x12’ mortar-set pavers		348 SF
ii.	Landscape		
	Ground cover/in-ground	320 SF	428 SF
	planters		
	Street trees		4
iii.	Public Seating		
	2’ seat wall	+/- 36 seats @ 5 SF/person	183 SF
iv.	Lighting		
	Inset pavement up-lights at art		6
	Pedestrian scale pole lights		3
	Under seat lighting		8 LF

2. Site Scaled Public Art

“Reunion”		1
Powder coated steel sculpture by Mike Phifer		

3. Voluntary Building Setbacks from East Howe Street

1823 Eastlake Ave. E.		
4’ setbacks at street level		73 LF
7’ setbacks at street level		12 LF
12’ setbacks at street level		5 LF
1903 Yale Pl. E.		
4-story building setbacks		61 LF
Street level setbacks		23 LF

4. Streetscape Enhancements

	Required	Total
Eastlake Ave. E.		
ROW landscaping	280 SF	800 SF
Bike spaces	1	2
Pedestrian signage		1
Yale Pl. E.		
ROW landscaping	300 SF	387 SF
Bike spaces	1	2

C. The replacement of any of the Public Amenities shall be of similar quality in design and materials as the original. Significant changes to the streetscape or public amenities provided shall require prior approval by the Seattle Department of Transportation.

Section 2. Bender Development, LP, and Bender Equities, Inc., shall have the right to temporarily close, obstruct, or limit access to the Public Amenities located in East Howe Street for: (1) construction; (2) maintenance and repair; or (3) other circumstances beyond Bender Development, LP, and Bender Equities, Inc., control.

Section 3. This Agreement may be amended or modified by agreement between Bender Development, LP, and Bender Equities, Inc., and the City; provided the amended Agreement shall be subject to approval by the City Council by ordinance. Nothing in the Agreement shall be construed as a surrender of the City's governmental powers.

Section 4. Bender Development, LP, and Bender Equities, Inc., may use the Public Amenities for any purpose which does not interfere with the public's use.

Section 5. Notwithstanding the covenants contained in this Agreement, nothing in the Agreement shall constitute a public dedication of any portion of the Property.

Section 6. The legal description of the where the Property is located is included in Exhibit A, which is incorporated by reference. An executed copy of this PUDA shall be recorded in the records of King County and the PUDA covenants shall to attach to and run with the Property.

Section 7. This PUDA is made for the benefit of the City and the public. The City may institute and prosecute any proceeding at law or in equity to enforce this PUDA.

Section 8. If any covenant, condition, or restriction in this instrument or any portion is invalidated or voided, the invalidity or voidness shall in no way affect any other covenant, condition, or restriction.

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 damages arising out of bodily injuries or death. The insurance policies obtained shall be issued by companies authorized to conduct business in Washington State and shall name the City as an additional insured. Owner shall provide evidence of insurance to the City Risk Manager at the City's reasonable request.

Section 10. Bender Development, LP, and Bender Equities, Inc., covenant and agree to defend, indemnify, and hold harmless the City of Seattle, its officials, officers, employees, and agents from all liabilities, claims, causes of action, judgments, or expenses, including reasonable

attorney fees and necessary litigation expenses, resulting from any actual or alleged bodily injury (including death) or actual or alleged damage to property arising out of or in connection with the use or occupation of the Public Benefit Improvements during the term of its ownership. Upon any transfer of ownership, this obligation will be binding on successors and assigns. The indemnification obligations under this Agreement do not apply to any liabilities, claims, causes of action, judgments or expenses resulting from bodily injury or property damage caused by the negligence or intentional acts of the public or the City, or its officers, employees, elected officials, agents, or subcontractors.

[Remainder of page intentionally left blank – Signature page follows]

DATED this 25th day of January, 2018.

BENDER DEVELOPMENT, LP
An Oregon limited partnership

By: Fred H Bender

Its: General Partner

BENDER EQUITIES, INC.
And Oregon Corporation

By: Kevin G. Bender

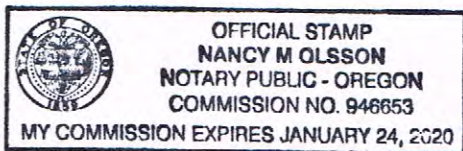
Its: Vice president

STATE OF OREGON)
)
COUNTY OF WASHINGTON)

SS.

On this day personally appeared before me Fred H. Bender, to me known to be the General Partner, of BENDER DEVELOPMENT, LP, and Kevin G. Bender, to be known to be the Vice President, of BENDER EQUITIES, INC., and the entity that executed the foregoing document, and acknowledged the foregoing document to be the free and voluntary act and deed of the entity for uses and purposes addressed in the document, and on oath stated that the person signing this declaration was duly authorized to execute the document on behalf of the entity.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 25th day of January, 2018.



Nancy M. Olsson
Nancy M. Olsson

(print or type name)
NOTARAY PUBLIC in and for the State of Oregon,
Residing at 20285 NW Amberwood Dr.
My Commission Expires 1/24/20

EXHIBIT A

**LEGAL DESCRIPTION OF BENDER DEVELOPMENT, LP, AND BENDER
EQUITIES, INC. PROPERTY**

PARCEL A:

THAT PORTION OF GOVERNMENT LOT 5, SECTION 20, TOWNSHIP 25 NORTH,
RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON DESCRIBED AS FOLLOWS:

COMMENCING NORTH 61°43'43" WEST, 65.0 FEET FROM A POINT 585.12 FEET WEST
OF SOUTHEAST CORNER OF SAID GOVERNMENT LOT 5;
THENCE NORTH 61°43'43" WEST, 106.6 FEET;
THENCE SOUTH 28°16'17" WEST, 61.25 FEET TO THE SHORE OF LAKE UNION,
BEING THE NORTHEASTERLY BOUNDARY OF BLOCK 61, LAKE UNION SHORE
LANDS, ACCORDING TO THE UNRECORDED PLAT THEREOF;
THENCE SOUTHEASTERLY, ALONG SAID SHORE LINE, 13.4 FEET;
THENCE NORTH 85°02'27" EAST, 111.7 FEET TO THE TRUE POINT OF BEGINNING;

TOGETHER WITH THE VACATED SOUTHWESTERLY 15 FEET IN WIDTH OF YALE
PLACE NORTH, NOW YALE PLACE EAST, ADJOINING THE ABOVE DESCRIBED
PREMISES, WHICH PORTION OF YALE PLACE NORTH WAS VACATED BY
ORDINANCE NO. 52992 OF THE CITY OF SEATTLE.

PARCEL B:

THAT PORTION OF BLOCK 61, LAKE UNION SHORE LANDS, IN KING COUNTY,
WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT OF THE SOUTH LINE OF SAID BLOCK 78.292 FEET EAST
OF THE SOUTHWEST CORNER OF SAID BLOCK, SAID POINT BEING THE
SOUTHEAST CORNER OF THAT CERTAIN TRACT OF LAND CONVEYED TO DESIGN
SERVICES BY DEED RECORDED UNDER RECORDING NO. 5620480;
THENCE EAST ALONG SAID SOUTH LINE, 17.274 FEET;
THENCE NORTH 40°58'5.5" EAST, TO THE SHORE LINE;
THENCE NORTHWESTERLY, ALONG SAID SHORE LINE, TO A POINT NORTH
40°58'5.5 " EAST OF THE POINT OF BEGINNING;
THENCE SOUTH 40°58'5.5" WEST, TO THE POINT OF BEGINNING.

PARCEL C:

THAT PORTION OF GOVERNMENT LOT 5 IN SECTION 20, TOWNSHIP 25 NORTH,
RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING 585.12 FEET WEST OF THE SOUTHEAST CORNER OF SAID GOVERNMENT LOT 5;
THENCE NORTH 61°43'43" WEST, 65.00 FEET;
THENCE SOUTH 85°02'27" WEST, 111.7 FEET MORE OR LESS, TO THE SHORE OF LAKE UNION, BEING THE NORTHEASTERLY LINE, BLOCK 61, LAKE UNION SHORE LANDS;
THENCE SOUTHEASTERLY ALONG, SAID LINE, TO A POINT WEST OF THE POINT OF BEGINNING;
THENCE EAST, 129 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;
TOGETHER WITH THE VACATED SOUTHWESTERLY 15 FEET IN WIDTH OF YALE PLACE NORTH ADJOINING.

PARCEL D:

LOTS 1, 2, 3 AND 4, BLOCK 3, HILTON ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 3 OF PLATS, PAGE(S) 157, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT ANY PORTION WITHIN LAKE UNION SHORE LANDS.

ALL SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

EXHIBIT B

LEGAL DESCRIPTION OF SUBTERRANEAN STREET TO BE VACATED

THAT PORTION OF EAST HOWE STREET, ALSO KNOWN AS BLOOMFIELD STREET, HILTON ADDITION TO THE CITY OF SEATTLE, RECORDED IN VOLUME 3 OF PLATS, PAGE 157, RECORDS OF KING COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT A PUNCHED 5/8" BRASS PLUG IN CONCRETE IN CAST IRON CASE, DOWN 0.80' FEET, 5.00 FEET SOUTHERLY OF THE CENTERLINE OF EAST HOWE STREET, AS IT RUNS EAST, AND THE CENTERLINE OF EASTLAKE AVENUE EAST;

THENCE SOUTH 12°48'31" EAST, ALONG THE CENTERLINE OF EASTLAKE AVENUE EAST, A DISTANCE OF 10.46 FEET TO THE CENTERLINE OF EAST HOWE STREET AS IT RUNS WEST;

THENCE NORTH 88°58'36" WEST, ALONG THE CENTERLINE OF SAID EAST HOWE STREET, A DISTANCE OF 40.44;

THENCE SOUTH 12°48'35" WEST, A DISTANCE OF 15.45 FEET TO THE NORTH LINE OF LOT 1, BLOCK 3, OF SAID HILTON ADDITION, BEING 1.82' WEST OF THE NORTHEAST CORNER OF SAID LOT 1, ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE NORTH 88°58'36" WEST, A DISTANCE OF 76.86 FEET;

THENCE NORTH 60°27'03" WEST, A DISTANCE OF 62.82 FEET TO THE NORTH LINE OF SAID EAST HOWE STREET;

THENCE SOUTH 88°58'36" EAST, ALONG SAID LINE, A DISTANCE OF 124.67 FEET;

THENCE SOUTH 12°48'35" WEST, A DISTANCE OF 30.90 FEET TO THE TRUE POINT OF BEGINNING;

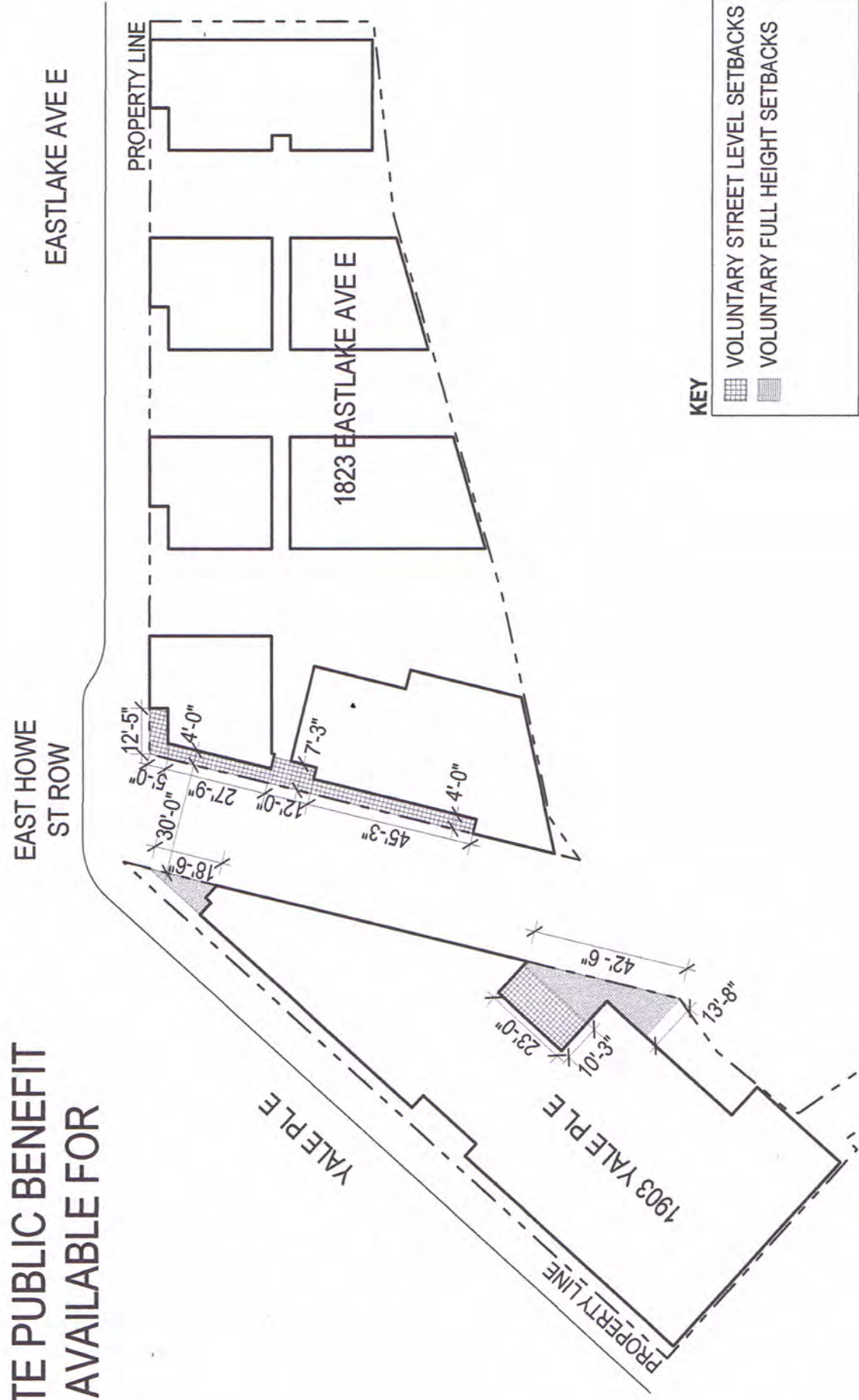
THE UPPER LIMIT OF VERTICAL SPACE CONTAINED WITHIN THIS DESCRIPTION SHALL BE AN ELEVATION OF 50.00 FEET;

THE LOWER LIMIT OF VERTICAL SPACE CONTAINED WITHIN THIS DESCRIPTION SHALL BE TO THE LOWEST LIMIT OF LEGAL OWNERSHIP;

SAID ELEVATIONS DESCRIBED HEREIN ARE EXPRESSED IN TERMS OF THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD D88) AS OF THE DATE OF THIS INSTRUMENT AND ARE BASED ON CITY OF SEATTLE BENCHMARK NUMBER "SNV-5117", BEING A 2" BRASS CAP, 0.5' SOUTH AND EAST OF THE INTERSECTION OF BACK OF SIDEWALKS AT THE SOUTHWEST QUADRANT OF THE INTERSECTION OF EASTLAKE AVENUE EAST AND FAIRVIEW AVENUE EAST, HAVING AN ELEVATION OF 37.54 FEET; SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON;

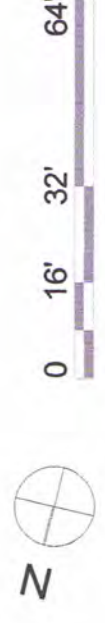
The subterranean street proposed for vacation includes approximately 3,023 square feet beginning six feet (+) below grade.

EXHIBIT D: ON SITE PUBLIC BENEFIT IMPROVEMENTS AVAILABLE FOR PUBLIC ACCESS



KEY

- VOLUNTARY STREET LEVEL SETBACKS
- VOLUNTARY FULL HEIGHT SETBACKS



**EXHIBIT D
ON-SITE PUBLIC BENEFIT IMPROVEMENTS AVAILABLE FOR PUBLIC ACCESS**