

When Recorded, Return to:

HILLIS CLARK MARTIN & PETERSON P.S.

Attn: Holly D. Golden

999 Third Avenue, Suite 4600

Seattle, WA 98104

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor:	Pike Place Market Preservation and Development Authority
Grantee:	City of Seattle
Legal Description (Official on Exhibit A and Exhibit B):	DENNYS AA 6TH ADD PORTIONS OF LOTS 5 THRU 12 & PORTIONS OF ADJACENT VACATED ALLEY & VACATED STREETS THAT PORTION OF ARMORY WAY (AS CONDEMNED BY ORDINANCE NO. 67125) RIGHT OF WAY, LYING WITHIN THE SE QUARTER OF SECTION 31, TOWNSHIP 25 N, RANGE 4 E, W.M.
Assessor's Tax Parcel ID #:	5160900000
Reference Nos. of Documents Released or Assigned:	N/A

This PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this _____ day of _____, 2018, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by PIKE PLACE MARKET PRESERVATION AND DEVELOPMENT AUTHORITY (the "Owner"), a City of Seattle Public Development Authority.

RECITALS

A. WHEREAS, Owner is vested in fee simple title and has a substantial beneficial interest in certain real property, which is legally described in EXHIBIT A (the "Property"); and

B. WHEREAS, Owner applied for and received approval of a Master Use Permit (Project No. 3015514) to develop the Property with the Pike Place Market Waterfront Entrance and has redeveloped the property in accordance with approvals (the "Development"); and

C. WHEREAS, in connection with the Development, a petition was filed under City of Seattle Clerk's File No 313716 pursuant to Chapter 35.79 of the Revised Code of Washington and Seattle Municipal Code Chapter 15.62, by the Owner to vacate a portion of Armory Way as legally described in EXHIBIT B; and

D. WHEREAS, the Transportation Committee of the Seattle City Council held a public hearing on the street vacation petition and recommended approval of the street vacation petition, subject to conditions; and

E. WHEREAS, the Seattle City Council granted preliminary approval of the street vacation petition, subject to conditions, on September 2, 2014, in City of Seattle Clerk's File No. 313716 ("Council Vacation Decision"), including the public benefit improvements listed in Section 1; and

F. WHEREAS, execution of a Property Use and Development Agreement is desired to ensure compliance with any conditions of vacation approval that will not be fully satisfied prior to passage of the ordinance vacating the above-referenced right-of-way; and

G. WHEREAS, the Owner now seeks final vacation of the portion of right-of-way as described in EXHIBIT B;

NOW, THEREFORE, the Owner agrees that if the ordinance vacating the above-referenced right-of-way is passed by the Seattle City Council and approved by the Mayor, then the Owner shall operate and maintain the Development in accordance with this Agreement:

AGREEMENT

Section 1. Public Benefit Improvements. Addressed below are those on-site and off-site public benefit improvements of the vacation approval that require ongoing maintenance during the operation of the Development, which shall be collectively referred to as the "Public Benefit Improvements" and which are depicted on EXHIBIT C.

A. Public Plaza

- i. Approximately 35,500 sf of public terraces and walkways located between Western Avenue and the western portion of the Development (see EXHIBIT C), including 110 lineal feet of built in seating elements.

B. Future Link to the Waterfront

- i. The project has been designed to allow a future pedestrian walkway connection to the improved waterfront. The connection is located on the southwestern portion of the Development. The future pedestrian walkway will be designed to fit with this connection; no further action is required by the Owner.

C. Art

- i. Western Tapestry by John Fleming: aluminum strips approximately 325 by 20 feet suspended in front of the Western Avenue wall.
- ii. Mosaic Tile Walls by Clare Donna: three walls at the central stairs have been designated for mosaic tile design and installation. The approximate size of the three mosaic tile walls are 90, 135, and 55 square feet.
- iii. Billie the Pig by Virginia Gerber: bronze pig sculpture located along Western Avenue with a bronze hoof print path containing approximately 500 hoof prints located throughout the Development within the property lines, with the exact location determined by the Owner.

Section 2: Maintenance. The Owner shall maintain all the Public Benefit Improvements in good repair for the life of the Development.

Section 3: Public Access. Public access shall be allowed 12 hours every day of the year to the following onsite Public Benefit Improvements such that the public can pass through or use the amenity regardless of whether such use by the public is associated with the Development: Public Plaza (as described in Section 1.A), as depicted on EXHIBIT D. The Owner may adopt reasonable rules and regulations regarding use of and access to the Public Benefit Improvements as are necessary to ensure the security of the users of the Public Benefit Improvements and the Development. The rules and regulations may not be inconsistent with the terms of this Agreement. A summary of the rules and regulations may be posted in visible locations in the Development.

Section 4. Closures. The Owner shall have the right to temporarily close or modify the Public Benefit Improvements for: construction; maintenance and repair; temporary use for private functions directly related to the Development or the Owner; the maintenance of safety or security for the Development or persons using the Development; or other circumstances beyond the Owner's control.

Section 5. Binding Effect. An executed copy of 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. The Owner agrees that terms of this Agreement shall be binding on and benefit the Owner during the term of its ownership and subsequent to its ownership this Agreement shall be binding on and benefit its successors, heirs, and assigns.

Section 6. Modification. This Agreement may be amended or modified by mutual agreement between the City and Owner, according to the following procedure. Minor changes to this Agreement may be approved by SDOT, if the approved change is consistent with the purpose and intent of the conditions in the Council Vacation Decision. Any major changes to this Agreement, as reasonably determined by SDOT, shall require approval by the City Council by resolution or ordinance. SDOT shall provide the Owner with notice and the opportunity to comment on whether a change is considered minor or major, prior to SDOT making that determination.

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

Section 8. Insurance. 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 9. Indemnity. Owner covenants and agrees 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 the Owner's 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.

Section 10. Reservation. The Owner reserves the right to use the Public Benefit Improvements for any purpose that does not materially interfere with the public's use of the Public Benefit Improvements, including but not limited to the right to use the Public Benefit Improvements as described in Sections 1 and 3 of this Agreement and the right to grant easements within the Development, provided the easements do not unreasonably interfere with the public's use of the Public Benefit Improvements.

Section 11. No Dedication. Notwithstanding the covenants contained in this Agreement, nothing in this Agreement shall constitute a public dedication of any portion of the Property, Development, or Public Benefit Improvements.

Section 12. Severability. It is expressly agreed that in the event any covenant or condition or restriction in this instrument or any portion thereof is invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition, or restriction.

SIGNED this 13 day of September, 2018.

Pike Place Market
Preservation and Development Authority
a Seattle Preservation and Development Authority

By: Mary Bacarella
Its: Executive Director

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this day personally appeared before me Mary Bacarella, to me known to be the Executive Director, of Pike Place Market Preservation and Development Authority, a Seattle Preservation and Development Authority that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 13 day of September, 2018.

Jessica Carlson

Printed Name Jessica Carlson

NOTARY PUBLIC in and for the State of Washington, residing at Seattle, WA.

My Commission Expires 4/14/2019

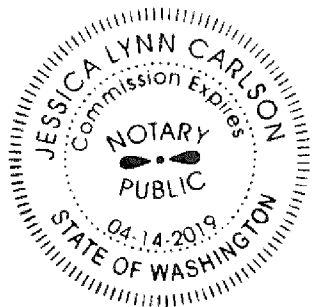


Exhibit A

Legal Description of Pike Place Market Waterfront Entrance Property

DENNYS AA 6TH ADD LOTS 2,3,6 & 7 & NELY 20 FT OF LOTS 1,4,5 & 8 BLK 35 TGW
VACATED ALLEY ADJOINING SD LOTS & TGW VACATED PORTION OF LENORA ST
ADJOINING SD LOT 2 & SD PORTION LOT 1 TGW PCL 1 CITY OF SEATTLE SHORT
SUBD NO 79-105 REC NO 8004110329 BEING PORTION BLKS 35 & 36 A.A. DENNY'S
6TH ADD & VACATED STREET & ALLEY

Exhibit B

Legal Description of Portion of Right of Way to be Vacated (CF 313716)

THAT PORTION OF ARMORY WAY (AS CONDEMNED BY ORDINANCE NO. 67125) RIGHT OF WAY, LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF VACATED STEWART STREET AND THE NORTHEASTERLY MARGIN OF SAID ARMORY WAY;

THENCE SOUTH 30°38'30" EAST ALONG SAID NORTHEASTERLY MARGIN, A DISTANCE OF 40.24 FEET;

THENCE CONTINUING ALONG SAID MARGIN SOUTH 59°24'35" WEST, A DISTANCE OF 2.58 FEET;

THENCE LEAVING SAID MARGIN, NORTH 30°38'06" WEST, A DISTANCE OF 104.84 FEET;

THENCE NORTH 42°22'55" WEST, A DISTANCE OF 200.47 FEET TO A POINT ON THE NORTHEASTERLY MARGIN OF SAID ARMORY WAY;

THENCE SOUTH 47°42'09" EAST, ALONG SAID NORTHEASTERLY MARGIN, A DISTANCE OF 62.88 FEET TO A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 566.05 FEET AND A CENTRAL ANGLE OF 17°04'41";

THENCE ALONG SAID CURVE, A DISTANCE OF 168.72 FEET;

THENCE SOUTH 30°38'30" EAST, A DISTANCE OF 34.52 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,358 SQUARE FEET OR 0.0312 ACRES, MORE OR LESS.

Exhibit C

Public Benefit Improvements

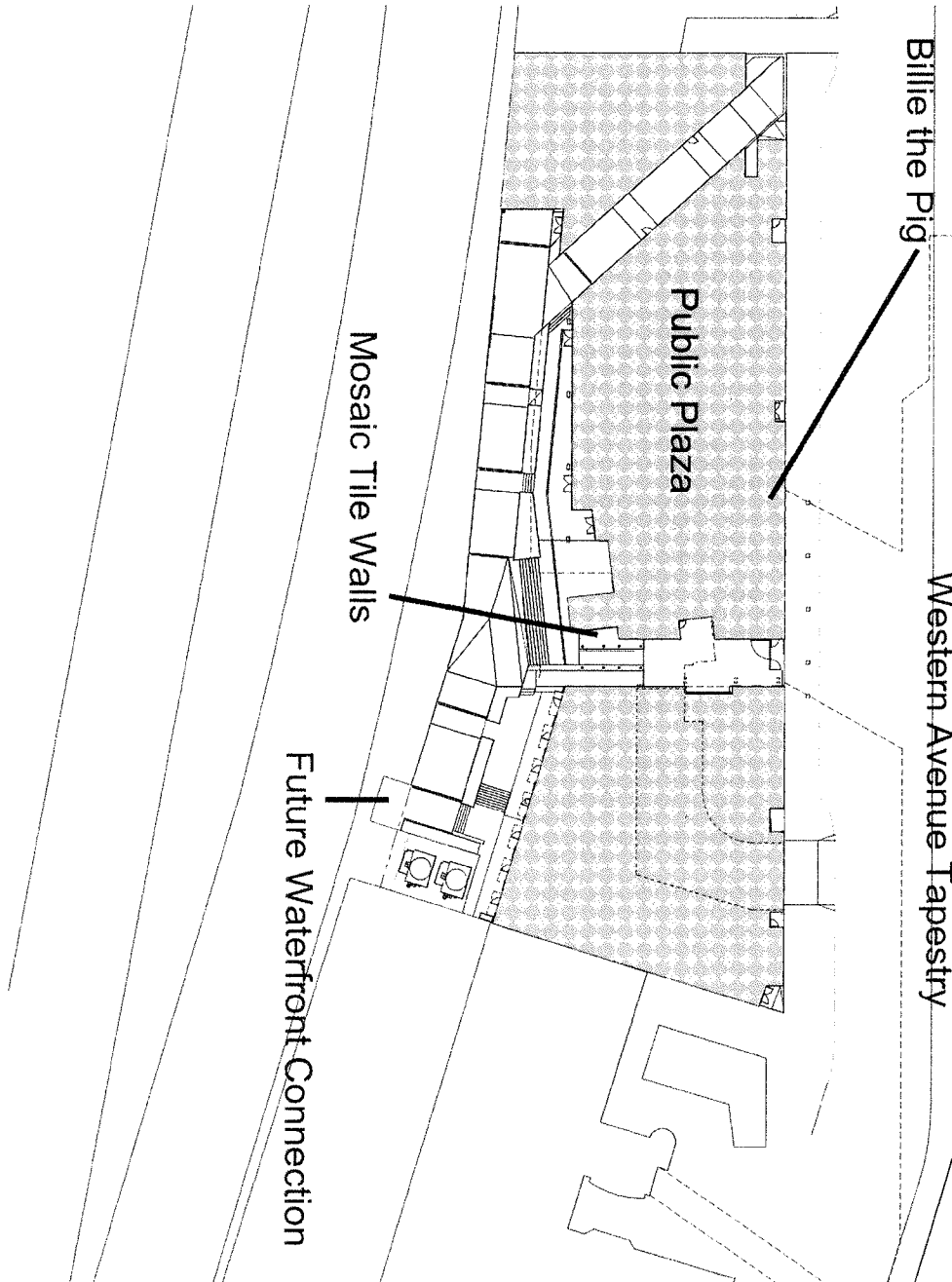


Exhibit D

On-site Public Benefit Improvements Available for Public Access

