

*When Recorded, Return to:*

**McCULLOUGH HILL PLLC**  
Attention: John C. McCullough  
701 Fifth Avenue, Suite 6600  
Seattle, Washington 98104

**PROPERTY USE AND DEVELOPMENT AGREEMENT**

<b>Grantor:</b> <input type="checkbox"/> Additional on page _____	<u>Ninth and Lenora LLC</u>
<b>Grantee:</b> <input type="checkbox"/> Additional on page _____	<u>City of Seattle</u>
<b>Legal Description</b> (abbreviated):	<u>Lots 10, 11 &amp; 12, Block 24, Heirs of Sarah A. Bell's Second Addition to City of Seattle, King County, Washington.</u>
<input checked="" type="checkbox"/> Additional on:	<u>Exhibit A</u>
<b>Assessor's Tax Parcel ID #:</b>	<u>0660000545</u>
<b>Reference Nos. of Documents Released or Assigned:</b>	<u>NA</u>

## PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS INSTRUMENT is executed on this date in favor of the City of Seattle, a municipal corporation ("City"), by Ninth and Lenora LLC ("Declarant" or "Owner").

WHEREAS, Declarant is vested in fee simple title and/or has a substantial beneficial interest in the real property situated in King County, Washington, described as set forth on Exhibit A attached hereto (herein called the "Property"); and

WHEREAS, Declarant's predecessor in interest filed petition C.F. 313843 for the vacation of the alley in Block 24, Heirs of Sarah A. Bell's Second Addition to the City of Seattle (the "Alley"), located in the triangular block bounded by Westlake Avenue, 9<sup>th</sup> Avenue and Lenora Street, which petition was considered under Chapter 35.79 of the Revised Code of Washington and Chapter 15.62 of the Seattle Municipal Code. The Petition was a joint petition with the Seattle Department of Parks and Recreation ("SPR"); and

WHEREAS, Declarant has developed a 42-story mixed-use residential and retail project on the Property (the "Project"); and

WHEREAS, Declarant and DPR reached agreement for the cooperative development of the alley area subject to vacation and the adjoining property owned by SPR (TPN 0660000485) (the "Park Property"). SPR intends to develop the Park Property as a public park for the citizens of Seattle; and

WHEREAS, on June 23, 2015 the Transportation Committee of the Seattle City Council held a public hearing on the vacation petition; and

WHEREAS, on June 29, 2015 the Seattle City Council granted 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 vacation approval applicable to Declarant after passage of the vacation ordinance;

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

Section 1. The following vacation approval conditions shall be satisfied by the Owner:

- a. Owner shall provide SPR with an indoor storage space within the Project and adjacent to the Park Property of approximately 240 square feet (the "Storage Space"), generally in the location shown on Exhibit B attached hereto and labeled as "Park Storage Room". The Storage Space shall be provided without rental charge for continuous and exclusive use by SPR for the storage of equipment and materials used in the operation and maintenance of Park Property. SPR shall maintain the interior of the Storage Space in a neat and clean condition and shall be responsible for the maintenance of the interior Storage Space and have unlimited access to the space. SPR shall not conduct any use of the Storage Space that is a nuisance or results in noise, odor, vibration, pest or other effects that adversely impact the Project. SPR may not make alterations to the Storage Space without written permission and agreement from the Owner. The Owner shall pay the cost of electrical service to the Storage Space based on ordinary loads, but SPR shall be responsible for any extraordinary electrical service charges. SPR and Owner may mutually agree to change the location of the Storage Space in the future. SPR shall have the option to upgrade and replace the exterior door and lock at its own cost.
- b. Owner is responsible for the maintenance of the exterior of the storage space, including exterior door (unless such door is replaced by SPR), walls, and lighting. Graffiti removal and exterior repair is the Owner's responsibility.

Status: *The Storage Space was constructed within the Project and its occupancy was delivered to SPR, which now occupies and manages the space.*

- c. Owner shall pay SPR the sum of \$25,000 to fund enhancements to the Park Property made by SPR.

Status: *Payment was made to SPR on April 18, 2015.*

- d. The Project includes a tenant space adjacent to the Park Property, as generally depicted in Exhibit B attached hereto (the "Tenant Space"). Owner shall use the Tenant Space, or lease the Tenant Space to tenants, for

street-activating uses. "Street-activating uses" shall mean any use that is a "street level use" under SMC 23.49.009 (or any successor legislation) or a use that otherwise enhances the pedestrian activation of the Park Property and the sidewalk areas adjacent thereto.

Status: *The Tenant Space was constructed and initially leased to Starbucks, a tenant whose uses include café, eating and drinking. The tenant activates the outdoor space adjacent to the park.*

- e. Owner shall develop the Project to include green street improvements on the 9<sup>th</sup> Avenue frontage of the Project in excess of Code requirements in the following amounts: 1,620 square feet of additional planting area and 650 square feet of additional paving area. These improvements have been completed as of the date hereof.

Status: *The described green street improvements in excess of Code requirements were installed and delivered with the occupancy of the Project.*

Section 2. Consistent with the Seattle City Council grant of approval of this vacation and at the request of the Owner, the allocation of the vacated Alley right-of-way shall be as follows: (i) Owner will receive Segment A (an area of 1,099 s.f.) located generally at the north end of the Alley and legally described in Exhibit D attached hereto; and (ii) SPR will receive Segment B (an area of 1,375 s.f.) located generally at the south end of the Alley and legally described in Exhibit E attached hereto. The locations of Segment A and Segment B are depicted on Exhibits D and E attached hereto.

Section 3. This Agreement may be amended or modified by agreement between the Owners and the City, provided the amended Agreements shall be subject to approval by the City Council by ordinance.

Section 4. Notwithstanding the covenants contained in this Agreement, nothing in this Agreement shall constitute a public dedication of any portion of the Property.

Section 5. The legal description of the Property is included in Exhibit A to this Agreement, which is incorporated herein by this reference. An executed copy of this Agreement shall be recorded in the records of King County and the PUDA covenants shall attach to and run with the Property.

Section 6. This Agreement is made for the benefit of the City of Seattle and the public. The City may institute and prosecute any proceeding at law or in equity to

enforce this Agreement. The Owners reserve the right to utilize the public benefit areas contained in Section 1.A of this Agreement for any purpose which does not interfere with the public's use of such areas, including but not limited to the right to use such areas and the right to grant easements within the area.

Section 7. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their successors and assigns. 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 herein contained.

Dated this 21<sup>st</sup> day of June, 2024.

*(Signature on following page)*

OWNER:

Ninth and Lenora LLC, a Delaware limited liability company

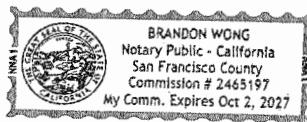
By: [Signature]

ELTON LEE  
VICE PRESIDENT

California  
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )  
San Francisco

06/21/2024 On this day personally appeared before me Brandon Wong, Notary Public, to me known to be the Elton Lee of Ninth and Lenora LLC, a Delaware limited liability company, the 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 21 day of June, 2024.



Brandon Wong  
(print or type name)  
NOTARY PUBLIC in and for the State of California  
Washington, residing at San Francisco  
My Commission expires: 10/02/2027

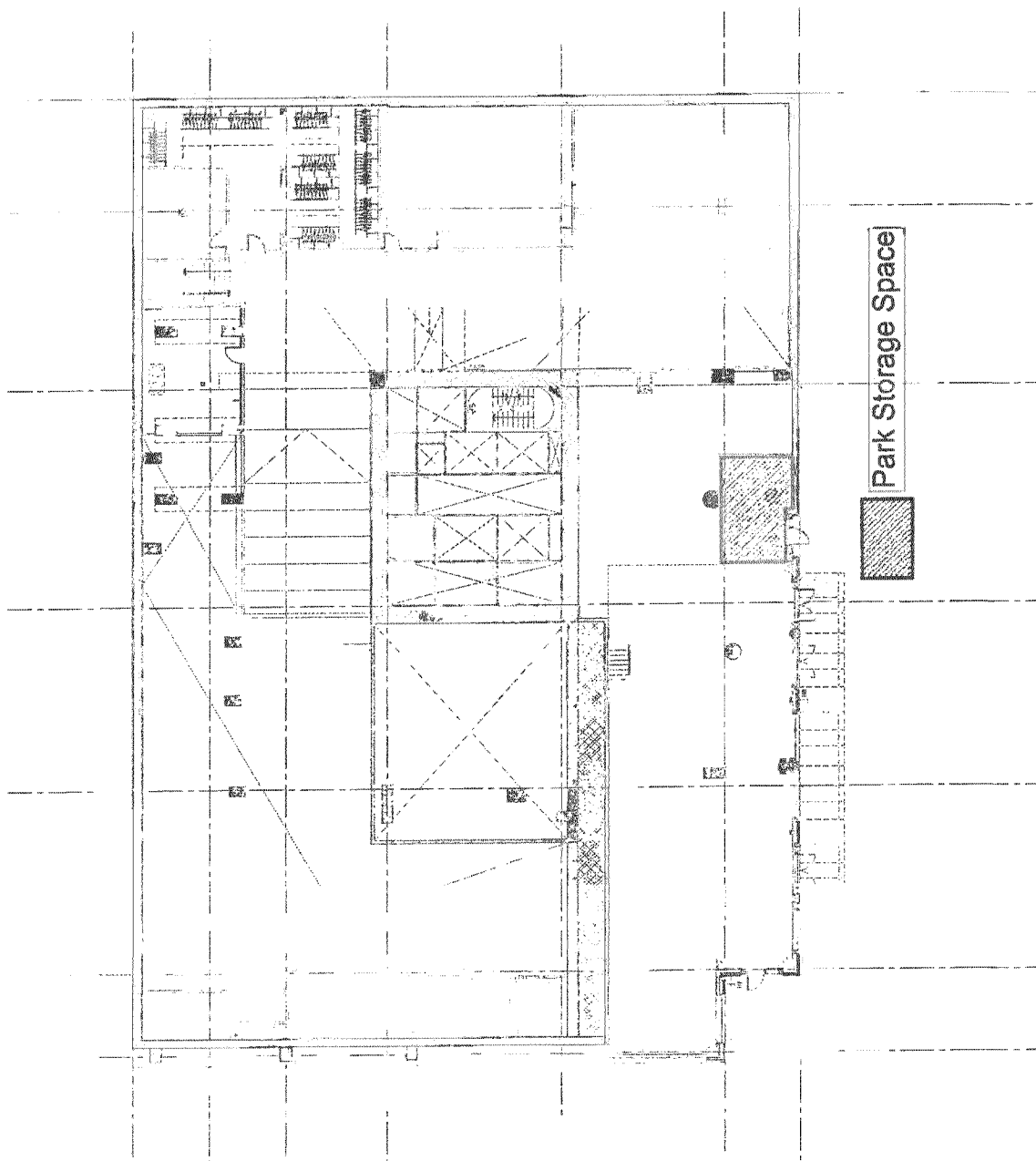
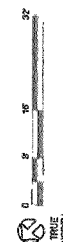
**EXHIBIT A**

**Legal Description of Declarant Property**

Lots 10, 11 and 12, Block 24, Heirs of Sarah A. Bell's Second Addition to the City of Seattle, Vol 1 of Plats, Page 121, King County, Washington (APN 066000-0545).

**EXHIBIT B**

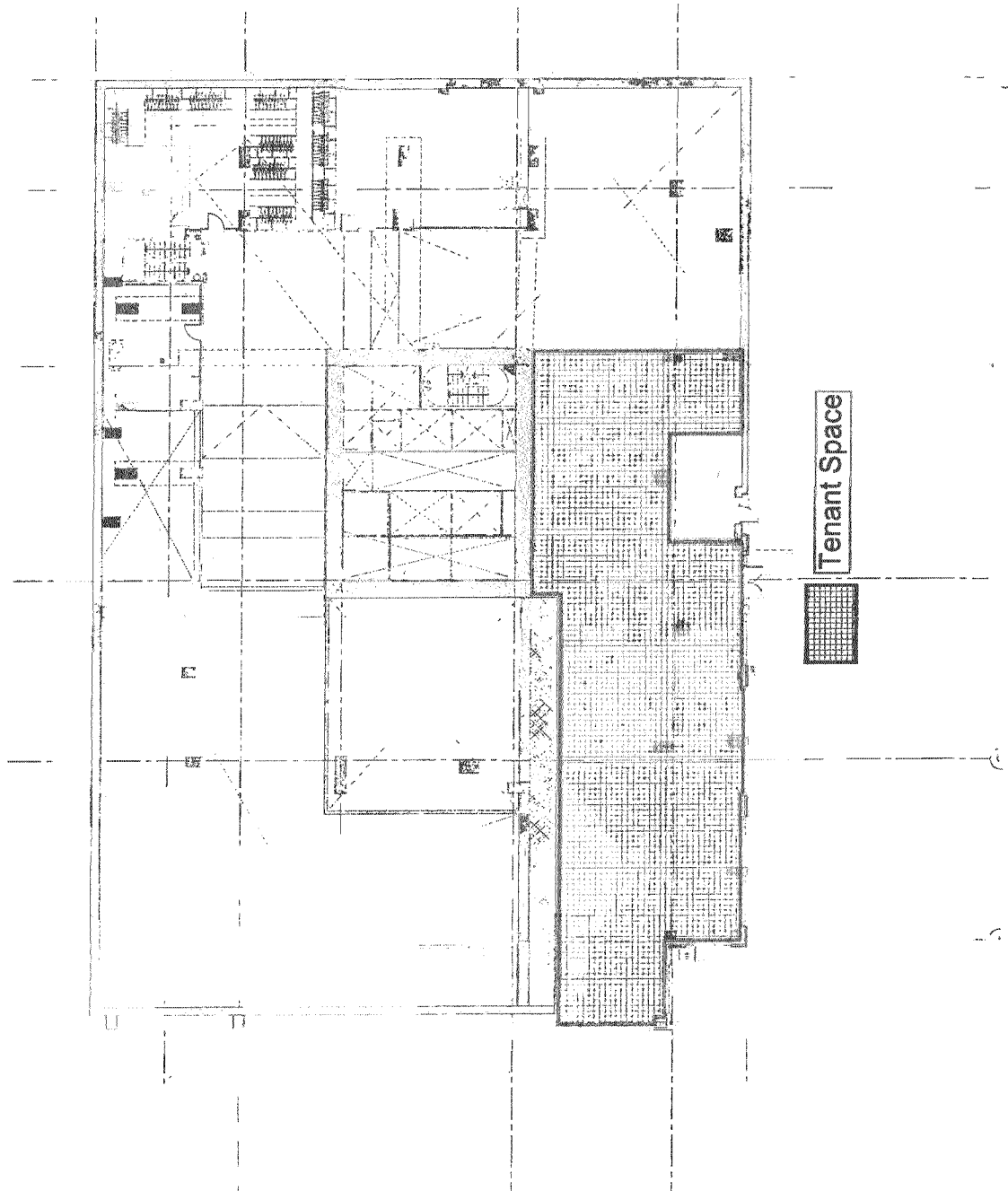
LOCATION OF PARK STORAGE SPACE





## EXHIBIT C

### LOCATION OF TENANT SPACE



**EXHIBIT D**

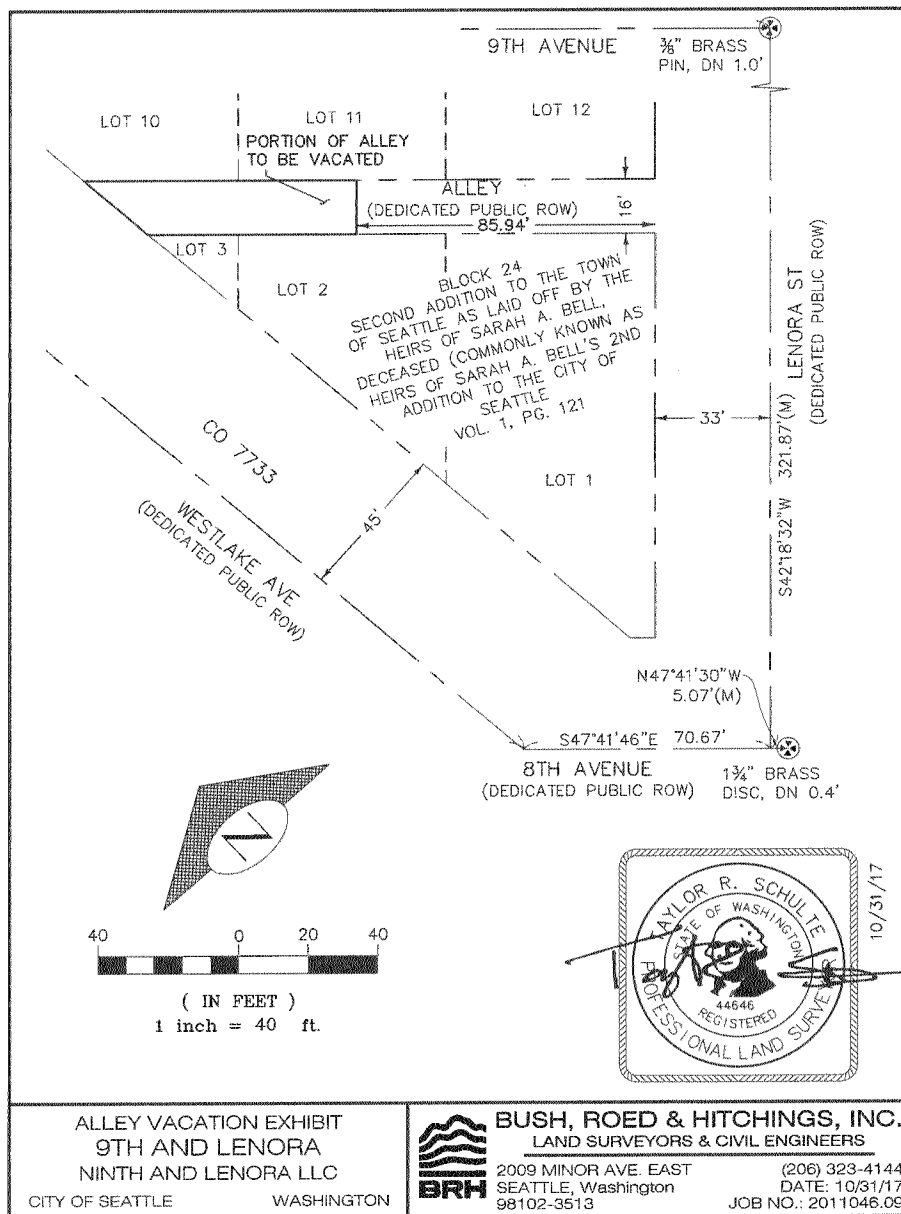
**Legal Description of Segment A**

THE ALLEY LYING WITHIN BLOCK 24, SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OFF BY THE HEIRS OF SARAH A. BELL, DECEASED (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S 2ND ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 121, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THE SOUTHEASTERLY 85.94 FEET AND ANY PORTION OF ALLEY LYING NORTH OF WESTLAKE AVENUE;

CONTAINING AN AREA OF 1,099 SQUARE FEET;

SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON.



**EXHIBIT E**

**Legal Description of Segment B**

THE SOUTHEASTERLY 85.94 FEET OF THE ALLEY LYING WITHIN  
BLOCK 24, SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID  
OFF BY THE HEIRS OF SARAH A. BELL, DECEASED (COMMONLY  
KNOWN AS HEIRS OF SARAH A. BELL'S 2ND ADDITION TO THE CITY  
OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN  
VOLUME 1 OF PLATS, PAGE 121, RECORDS OF KING COUNTY,  
WASHINGTON;

CONTAINING AN AREA OF 1,375 SQUARE FEET;

SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON.

