

When Recorded, Return to:
HILLIS CLARK MARTIN & PETERSON P.S.
Attn: T. Ryan Durkan
999 Third Avenue, Suite 4600
Seattle, WA 98104

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor:	<u>Acorn Development LLC</u>
Grantee:	<u>City of Seattle</u>
Legal Description (abbreviated):	<u>Alley in Block 19, Heirs of Sarah A. Bell's Second Addition to the City of Seattle</u>
Assessor's Tax Parcel ID #:	<u>066000-0220; 066000-0215; 066000-0205; 066000-0195; 066000-0176; 066000-0165</u>
Reference Nos. of Documents Released or Assigned:	<u>N/A</u>

This PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 16th day of October, 2018, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by ACORN DEVELOPMENT LLC (the "Owner"), a Delaware limited liability corporation.

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. 3013154, revised under 3015022) to develop a commercial tower on the above-described property 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. 312261 pursuant to Chapter 35.79 of the Revised Code of Washington and Seattle Municipal Code Chapter 15.62, by the Owner and its predecessor in interest, Clise

Properties, Inc., to vacate the alley in Block 19 of Sarah A. Bell's Second Addition of Seattle 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 November 5, 2012, in City of Seattle Clerk's File No. 312261 ("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 alley vacation approval that will not be fully satisfied prior to passage of the ordinance vacating the above-referenced alley; and

G. WHEREAS, the Owner now seeks final vacation of the alley in Block 19 of Sarah A. Bell's Second Addition as described in EXHIBIT B;

NOW, THEREFORE, the Owner agrees that if the ordinance vacating the above-referenced alley 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 alley 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. Blanchard Street Voluntary Building Setback

- i. Approximately 2,230 sf of voluntary 10' building setback to allow for widened sidewalk, additional landscape, and use by adjacent retail.

B. Other Voluntary Building Setbacks

- i. Approximately 3,355 sf of voluntary building setbacks within the property line to allow for landscape and sidewalk improvements (excluding Blanchard Street).

C. Enhanced Right-of-Way Improvements

- i. 11 additional trees as part of a double row of trees on 7th Avenue. The location and quantity of trees will be determined by SDOT and local utilities.

- ii. One offsite wayfinding sign per the City Center Wayfinding Plan at the corner of 6th Avenue and Blanchard Street.
- iii. One onsite wayfinding signature element.

D. Art

- i. Integrated art in the right-of-way.

E. Additional Overhead Protection

- i. 1,200 sf of overhead canopy connecting buildings at the mid-block.

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

Section 3. Public Access. Public access shall be allowed to the following on-site 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: Blanchard Street Voluntary Building Setback and Other Voluntary Building Setbacks (as described in Section 1.A and 1.B), 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. Nothing in this Agreement shall be construed as a surrender of the City's governmental powers.

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 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 materially 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 16 day of October, 2018.

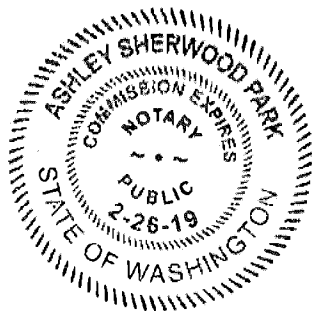
Acorn Development LLC
a Delaware limited liability company

By: [Signature]
John Schoettler
Its Vice President

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this day personally appeared before me John Schoettler, to me known to be the Vice President, of Acorn Development LLC, a Delaware limited liability company 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 16 day of October, 2018.



[Signature]

Printed Name Ashley Sherwood Park

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

My Commission Expires 2-26-19

Exhibit A

Legal Description of Acorn Development LLC Property (Block 19)

ALL OF BLOCK 19, SECOND ADDITION TO THE TOWN OF SEATTLE AS LAID OF BY THE HEIRS OF SARAH A. BELL, DECEASED (COMMONLY KNOWN AS HEIRS OF SARAH A. BELL'S SECOND 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 THOSE PORTIONS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 193437 AS PROVIDED BY ORDINANCE NUMBER 50890 OF THE CITY OF SEATTLE.

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

Exhibit B

Legal Description of Alley to be Vacated (CF 312261)

ALLEY IN BLOCK 19, CLERK FILE 312261: ALLEY IN BLOCK 19, 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 SECOND ADDITION TO THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF, RECORDED IN VOL. 1 OF PLATS, PAGE 121, IN KING COUNTY, WASHINGTON. THE BLOCK IS BOUNDED BY LENORA STREET, 6TH AVENUE, BLANCHARD STREET, AND 7TH AVENUE.

Exhibit C

Public Benefit Improvements

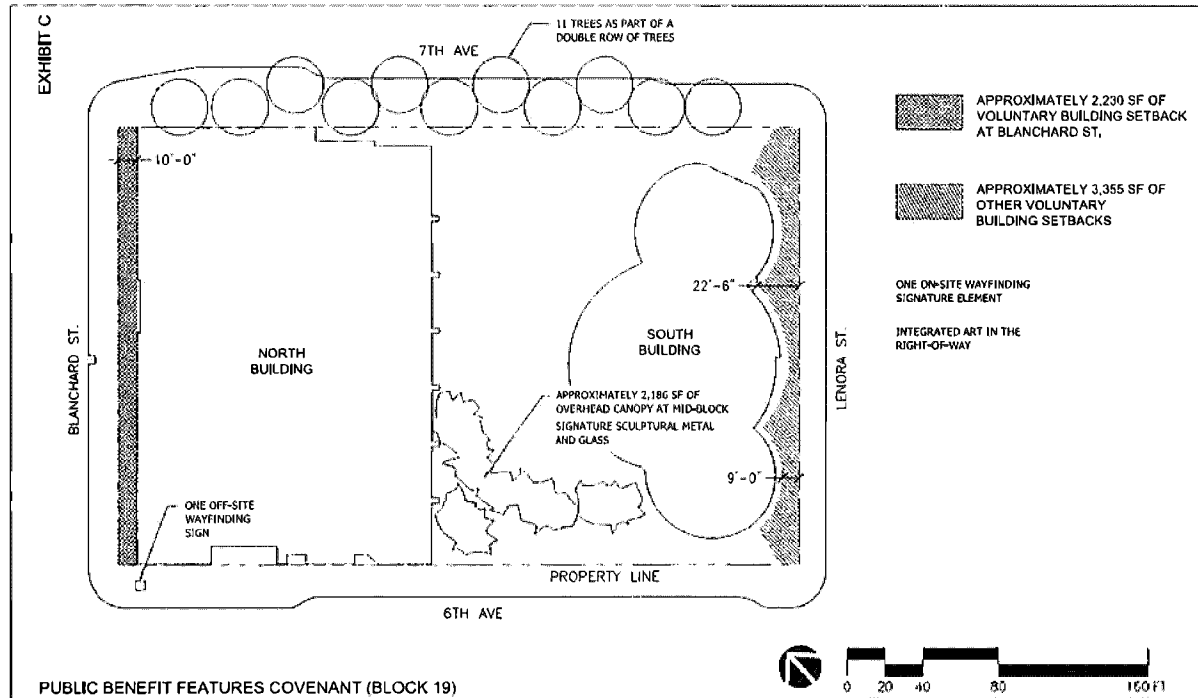


Exhibit D

Public Benefit Improvements Available for Public Access

