

*When Recorded, Return to:*  
McCullough Hill Leary, P.S.  
Attn: Jessie Clawson  
701 5<sup>th</sup> Avenue, Suite 6600  
Seattle, WA 98104



**20181219000761**

AGREEMENT Rec: \$113.00  
12/19/2018 1:29 PM  
KING COUNTY, WA

**PROPERTY USE AND DEVELOPMENT AGREEMENT**

<b>Grantor:</b>	2026 Madison Corner, LLC; LMC 2026 Madison Holdings, LLC
<input type="checkbox"/> Additional on page	
<b>Grantee:</b>	City of Seattle
<input type="checkbox"/> Additional on page	
<b>Legal Description</b> (abbreviated):	Block 1, Witt's Addition to the City of Seattle, King County, Washington
<input checked="" type="checkbox"/> Additional on :	Exhibits A and B
<b>Assessor's Tax Parcel ID #:</b>	9497700010, 9497700011, 9497700020, 9497700030, 9497700035, 3497700045 and 9497700046
<b>Reference Nos. of Documents Released or Assigned:</b>	N/A

## PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS INSTRUMENT is executed this date in favor of the City of Seattle, a municipal corporation (“City”), by 2026 Madison Corner, LLC, a Washington limited liability company (“Madison Corner”) and LMC 2026 Madison, LLC, a Delaware limited liability company (“LMC”), collectively, the “Owners,” and individually, each “Owner.”

WHEREAS, LMC is vested in fee simple title in the real property situated in King County, Washington, described in Exhibit A and incorporated into this Agreement (the “LMC Property”); and

WHEREAS, Madison Corner is vested in fee simple title in the real property situated in King County, Washington, described in Exhibit B and incorporated into this Agreement (the “Madison Corner Property”); and

WHEREAS, the LMC Property and the Madison Corner Property are referred to collectively in this Agreement as the “Property”; and

WHEREAS, LMC’s predecessor in interest, DEF, Inc., filed a petition in Clerk File 306083 for the vacation of the alley in Block 1, Witt’s Addition to the City of Seattle, located between the eastern half of the area bounded by East Denny Way, East Madison Street, and 20<sup>th</sup> Avenue, 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 March 12, 2004, the Transportation Committee of the Seattle City Council held a public hearing on the vacation petition; and

WHEREAS, on April 5, 2004, the Seattle City Council granted preliminary approval of the vacation petition, subject to conditions; and

WHEREAS, on February 18, 2009 the Chairperson of the Transportation Committee of the Seattle City Council granted an extension of the time within which development activity must be completed pursuant to the alley vacation approval until April 4, 2014; and

WHEREAS, on May 22, 2013, the Chairperson of the Transportation Committee of the Seattle City Council granted an extension of the alley vacation approval until April 4, 2017; and

WHEREAS, on November 6, 2014, the Seattle Design Commission recommended approval of certain phasing of and modification to the public benefits associated with the vacation petition; and

WHEREAS, on November 7, 2014, LMC and Madison Corner executed a private agreement, recording number 20170825000643, stating each Owner's responsibilities with respect to the public benefit and requiring maintenance and repair of such public benefits to be at the sole expense of LMC; and

WHEREAS, LMC completed development activity authorized under the alley vacation approval and subsequent extensions of approval before April 4, 2017; and

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

NOW, THEREFORE, the Owners covenant, bargain, and agree on behalf of themselves, their successors, and assigns:

Section 1. The conditions passed by the City Council on April 5, 2004 specified the following conditions of approval:

- A. Owners shall provide and maintain the following features that are installed as public benefits relating to the vacation (the "Public Amenities,") described on Exhibit C and incorporated into this Agreement:
  1. A Public Plaza of approximately 11,700 square feet, including a water feature or an art element, benches, or café seating, stone finishes, and special treatments at the entries to invite the public to use the plaza.
  2. Retail located along East Madison Street and East Denny Way, widened sidewalks on those streets, and enhanced landscaping to emphasize the pedestrian character of the area.
  3. The Petitioner was required by the City Council to provide traffic mitigation as determined by SDOT and SDCI following review of the Master Use Permit. Following the review, LMC underwent SDOT's Street Improvement Permit permitting process. SDOT determined through that process that no further mitigation is required.
- B. 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 the required public amenities shall require prior approval by the Seattle Department of Transportation. Modified features shall maintain a substantially similar quality and character to the existing required design features.

Section 2. The development project currently on-site, permitted under Master Use Permit numbers 3009856 and 3018081, and building permit 6418877, has constructed the Public Amenities outlined in Section 1 in the following manner:

- A. A portion of the development site was undergoing environmental remediation and therefore a large open space element at the corner of East Denny Way and East Madison Street currently exists as part of the development project on-site. The open space element is not part of the required Public Amenities but is considered an interim condition. There exists on the project site a 13,600 square foot parcel (Witt's Addition, Block 1, Lots 4, 5, 6) that could be developed in the future, and must be developed in substantial conformance with the development proposal approved by the City Council in 2004, which is consistent with the private agreement recorded in King County records under recording number 20170825000643, notwithstanding that the Public Amenities as implemented by 3009856 and 3018081, and building permit 6418877, shall be maintained in perpetuity, or as modified pursuant to Section 1.B of this Agreement.
- B. The Public Amenities, as implemented by Master Use Permit numbers 3009856 and 3038081, and building permit number 6418877, include:
1. 11,700 square feet of public open space, which is not required to be open to the sky, but must be open to the public;
  2. 2,316 square feet of overhead weather protection along East Madison Street;
  3. 38 lineal feet of seating benches;
  4. 802 square feet of public café seating;
  5. 574 square feet of upgraded/specialty finishes within the public open space area;
  6. 4 pedestrian light fixtures;
  7. Building setback of 955 total square feet from the back of sidewalk for potential retail spill out along East Madison Street;
  8. Building setback of 355 total square feet from the back of the north/south alley for potential retail spill out; and
  9. 1,500 square feet public art/lighting installation.

Section 3. The Owners shall install and maintain signage facing East Madison Street and East Denny Way that identifies the public open space. The signage shall clearly identify that public access and allowed free speech activities is required at the public open space elements. The signage shall be reviewed and approved by the Seattle Department of Transportation Street Vacations staff. Signage shall be consistent with signage provided for public amenity spaces.

Section 4. The Owners shall have the right to temporarily close, obstruct, limit access, or establish temporary hours of public access to the Public Amenities for: (1) construction, including, specifically to temporarily remove Public Amenities in order to construct a project on the 13,600 s.f. parcel referenced in Section 2.A above, provided that any Public Amenities removed or closed shall be replaced by the developer of the 13,600 s.f. parcel to the satisfaction of the City upon completion of the construction; (2) maintenance and repair; (3) temporary use for private functions directly related to the development; (4) the maintenance

of or security for the development or persons using the development; or (5) other circumstances beyond the Owners' control.

Section 5. The Owners may adopt reasonable rules and regulations regarding the use of and access to the Public Amenities and the development. The rules and regulations shall be consistent with this Agreement. A summary of the current rules and regulations, if rules are adopted, shall be posted in several visible locations.

Section 6. Free speech activities such as hand billing, signature gathering, and holding signs; all without obstructing access to the space, the building, or other adjacent amenity features, and without unreasonably interfering with the enjoying of the space by others shall be allowed within these vacation public benefit features. While engaged in allowed activities, members of the public may not be asked to leave because of their involvement with the allowed activities. Any violation of this Section may be enforced through Chapter 23.90 of the Seattle Municipal Code.

Section 7. This Agreement may be amended or modified by agreement between the Owners 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 8. The Owners reserve the right to use the Public Amenities for any purpose which does not interfere with the public's use, including but not limited to the right to use the areas as described in the Agreement for the Owners' purposes, and the right to grant easements, provided the easements are consistent with the public's use of the areas.

Section 9. Notwithstanding the covenants in this Agreement, nothing in the Agreement shall constitute a public dedication of any portion of the Property.

Section 10. The legal description of the where the Property is located is included in Exhibits A and B to this Agreement, which are incorporated to this Agreement. 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 11. 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 12. 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 13. Upon the effective date of the vacation ordinance, the Owners 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. Owners shall provide evidence of insurance to the City Risk Manager at the City's reasonable request.

Section 14. Owners 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 Benefits (Public Amenities) during the term of its ownership. Upon any transfer of ownership, this obligation shall be binding on all 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 the City's officers, employees, elected officials, agents, or subcontractors.

Section 15. This Agreement shall be binding on the Owners' successors and assigns.

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

DATED this 30 day of November, 2018.

OWNER:

2026 Madison Corner, LLC, a Washington limited liability company

By: DN Madison, LLC  
Title: Manager



By: Tom Marvin  
Title: Manager

LMC 2026 Madison Holdings, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Brod A Reisinger  
Vice President

DATED this 28th day of November, 2018.

OWNER:

2026 Madison Corner, LLC, a Washington limited liability company

By: DN Madison, LLC  
Title: Manager

By: Tom Marvin  
Title: Manager

LMC 2026 Madison Holdings, LLC, a Delaware limited liability company

By: 


Brod A Reisinger  
Vice President



STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF KING        )

On this day personally appeared before me, Tom Marvin, to me known to be the Manager of the Manager of 2026 Madison Corner, LLC, a Washington 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 30 day of Nov, 2018.

  
\_\_\_\_\_  
Nasir Ali

(print or type name)

NOTARY PUBLIC in and for the State of Washington,  
residing at 2630 BELLEVUE WAY NE  
My Commission expires: 7/18/21

*Bellevue, WA  
98004*





## EXHIBIT A

### Legal Description of LMC Property

#### PARCEL I:

THAT PORTION OF LOT 1, BLOCK 1, WITT'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 42, RECORDS OF KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID LOT 1; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE THEREOF 104.267 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT; THENCE SOUTHWESTERLY ALONG THE SOUTHERLY LINE THEREOF 24.268 FEET TO THE ANGLE POINT IN SAID LINE; THENCE WEST 17.667 FEET; THENCE NORTHWESTERLY, PARALLEL WITH THE NORTHEASTERLY LINE OF SAID LOT TO THE WEST LINE THEREOF; THENCE NORTH ALONG SAID WEST LINE 70 FEET TO THE POINT OF BEGINNING.

#### PARCEL II:

ALL THAT PORTION OF LOT 2, BLOCK 1, WITT'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 42, RECORDS OF KING COUNTY, WASHINGTON, LYING WEST OF A LINE DRAWN 10 FEET EAST FROM AND PARALLEL WITH THE WEST LINE OF LOT 2 IN SAID BLOCK 1.

#### PARCEL III:

THAT PORTION OF LOT 7, BLOCK 15, HALL'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 86, RECORDS OF KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING ON THE EAST LINE OF SAID LOT AT A POINT WHICH IS 31.362 FEET NORTH OF THE SOUTHEAST CORNER THEREOF; THENCE NORTHWESTERLY ON A LINE AT RIGHT ANGLES TO THE NORTH LINE OF EAST MADISON STREET TO THE WEST LINE OF SAID LOT 7; THENCE NORTH ALONG SAID WEST LINE 57 FEET, MORE OR LESS, TO THE PRODUCED SOUTHERLY LINE OF THE ALLEY IN BLOCK 1, WITT'S ADDITION TO THE CITY OF SEATTLE; THENCE NORTHEASTERLY ALONG SAID PRODUCED LINE TO THE EAST LINE OF SAID LOT 7; THENCE SOUTH ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

#### PARCEL IV:

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 25 NORTH, RANGE 4 EAST W.M., RECORDS OF KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH SIDE OF EAST MADISON STREET WHERE THE SAME IS INTERSECTED BY SECTION LINE BETWEEN SECTIONS 28 AND 33;

THENCE SOUTHWESTERLY ALONG THE NORTH SIDE OF SAID STREET 15 FEET;

THENCE NORTHWESTERLY AT RIGHT ANGLES TO SAID STREET 9.33 FEET, MORE OR LESS, TO SAID SECTION LINE; THENCE EAST 17.667 FEET, MORE OR LESS, TO BEGINNING.

PARCEL V:

LOTS 2 AND 3, BLOCK 1, WITT'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 42, RECORDS OF KING COUNTY, WASHINGTON; EXCEPT THE SOUTHWESTERLY 10 FEET OF SAID LOT 2.

PARCEL VI:

LOTS 7 AND 8, BLOCK 1, WITT'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 42, RECORDS OF KING COUNTY, WASHINGTON.

PARCEL VII:

THE NORTH 72 FEET OF LOT 9, BLOCK 1, WITT'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 42, RECORDS OF KING COUNTY, WASHINGTON;

AND THE NORTH 72 FEET OF LOT 7, BLOCK 15, HALL'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 86, RECORDS OF KING COUNTY, WASHINGTON;

TOGETHER WITH LOT 9, BLOCK 1, WITT'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 42, RECORDS OF KING COUNTY, WASHINGTON;

AND THAT PORTION OF LOT 7, BLOCK 15, HALL'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS, PAGE 86, RECORDS OF KING COUNTY, WASHINGTON, LYING NORTH OF THE FOLLOWING LINE:

BEGINNING AT A POINT IN THE EAST LINE OF SAID LOT 7 WHICH IS THE SOUTHWEST CORNER OF SAID LOT 9;

THENCE NORTH 89°22'43" WEST TO THE WEST LINE OF SAID LOT 7;

EXCEPT THE NORTH 72 FEET OF SAID LOTS 9 AND 7.

## **EXHIBIT B**

### **Legal Description of Madison Corner Property**

LOTS 4, 5 AND 6, BLOCK 1, WITT'S ADDITION TO THE CITY OF SEATTLE,  
ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 42,  
RECORDS OF KING COUNTY, WASHINGTON.

## EXHIBIT C PUBLIC BENEFIT IMPROVEMENTS

**PUBLICLY ACCESSIBLE OPEN SPACE** with enhanced landscaping, open plaza areas, large turf area, and retail access.

1. Hardscape Areas
2. Landscape Areas

**PEDESTRIAN AMENITIES** including security lighting, cafe seating, bench seating, and seatwalls

3. Overhead Weather Protection
4. Bench Seating
5. Public Seating
6. Specialty Finishes
7. Pedestrian Lighting

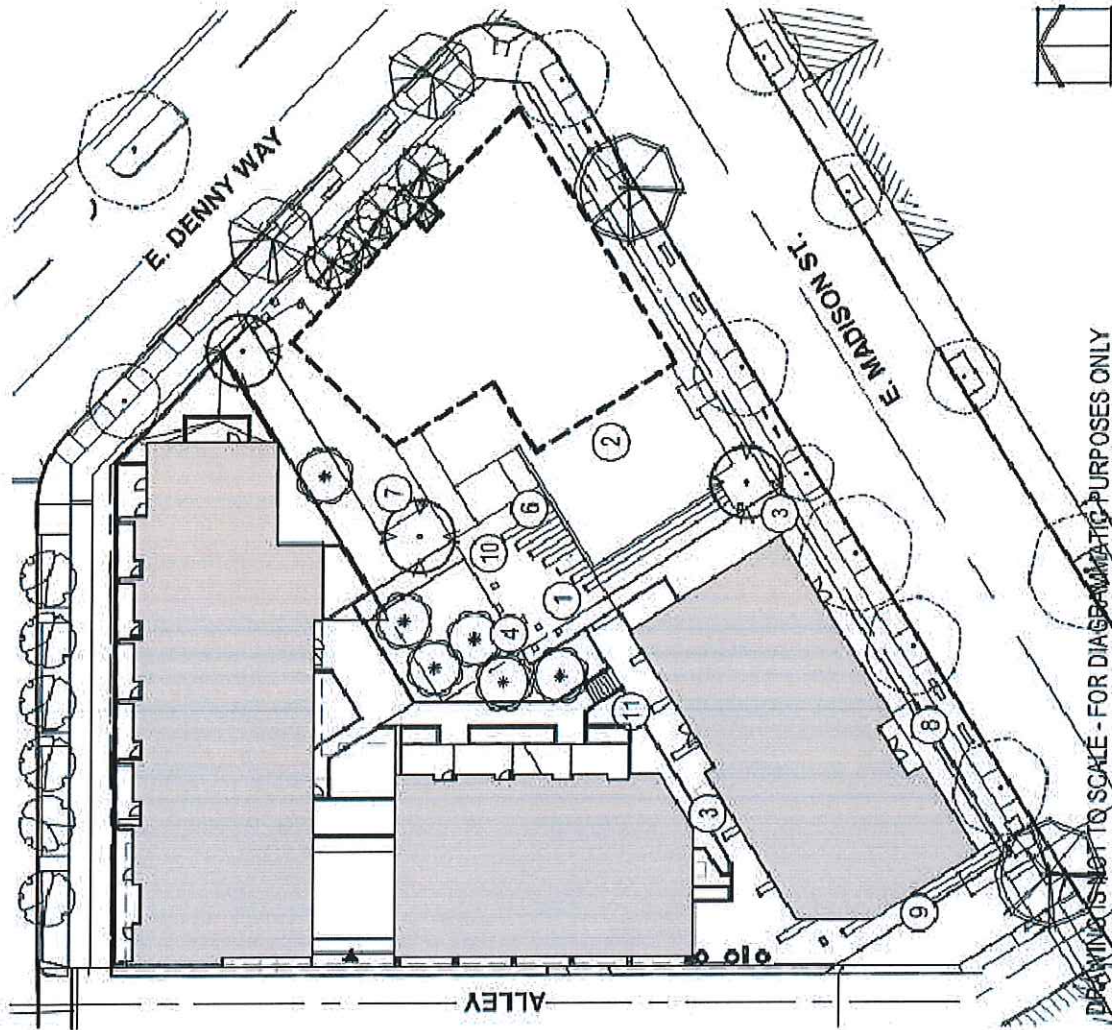
**BUILDING SETBACKS** on East Madison Street, N/S Alley, and provide spill-out for retail

8. Setback along Madison
9. Setback along N/S Alley

**PUBLIC ART** including permanent lighting and a feature sculptural element in the main public plaza space.

10. Art
11. In-grade Lighting

 Future Building Footprint



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

- PUBLICLY BENEFIT REQUIREMENTS:**
- Public space of approximately 11,700 SF
  - Water feature or art element
  - Benches or cafe seating
  - Stone finishes
  - Special treatments at the entries to invite the public to enter and linger

Public Open Space  
(11,700 SF total required)

Future Building Footprint

Plaza w/ Air Rights  
(Protected Against Future Development)

