

Instrument Number: 20201210002758 Document:AG Rec: \$114.50 Page-1
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King County, WA



20201210002758

AGREEMENT Rec: \$114.50
-12/10/2020 4:39 PM
KING COUNTY, WA

When Recorded, Return to:
HILLIS CLARK MARTIN & PETERSON P.S.
Attention: T. Ryan Durkan
1221 Second Avenue, Suite 500
Seattle, WA 98101-2925

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor:	<u>Acorn Development LLC</u>
Grantee:	<u>City of Seattle</u>
Legal Description (abbreviated):	<u>Alley in Block 21, Heirs of Sarah A. Bell's Second Addition to the City of Seattle</u>
Assessor's Tax Parcel ID #:	<u>066000-0375; 066000-0355; 066000-0345; 066000-0340; 066000-035; 066000-0325</u>
Reference Nos. of Documents Released or Assigned:	<u>N/A</u>

This PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this _____ day of _____, 2020, 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. 3018578) to develop a 24-story commercial tower and an 8-story commercial building 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 314278, pursuant to Chapter 35.79 of the Revised Code of Washington

and Seattle Municipal Code Chapter 15.62, by the Owner to vacate the alley in Block 21 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 January 11, 2016, in City of Seattle Clerk's File No. 314278 ("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 21 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. 8th Avenue Hillclimb

- i. Approximately 12,000 sf of publicly accessible open space, including a ramp from the corner of 8th Avenue and Bell Street to the mid-block plaza, landscaping, and seating.

B. Blanchard Street Setback

- i. Approximately 1,100 sf of voluntary building setbacks within the property line to allow for landscape and seating elements.

C. Bell Street Setback

- i. Approximately 1,000 sf of voluntary building setbacks within the property line to allow for landscape and seating elements.

D. Enhanced Right-of-Way Improvements

- i. 7th Avenue Improvements and Cycle Track: approximately 4,700 sf of expanded pedestrian streetscape and cycle track, including landscaping, a bus stop, pedestrian light fixtures, and enhanced curb bulbs at the corners.
- ii. 8th Avenue Improvements: approximately 3,300 sf of expanded pedestrian streetscape, including landscaping, pedestrian light fixtures, seating elements, and enhanced curb bulbs at the corners.
- iii. Blanchard Street Improvements: approximately 750 sf of expanded pedestrian streetscape, including landscaping, pedestrian light fixtures, seating elements, and enhanced curb bulbs at the corners.
- iv. Bell Street Improvements: approximately 1,800 sf of expanded pedestrian streetscape, including landscaping, pedestrian light fixtures, seating elements, and enhanced curb bulbs at the corners.

E. Off-Site Benefits

- i. 8th Avenue and Bell Street Intersection: approximately 5,350 sf of raised intersection and sidewalk to enhance pedestrian safety.
- ii. Bell Street Cycle Track: approximately 4,500 sf of buffered bike lane on the north side of Bell Street from Denny to 7th consistent with the Center City Bike Network.

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 will be allowed to the following 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: 8th Avenue Hillclimb, Blanchard Street Setback, and Bell Street Setback (as described in Section 1.A and 1.B and 1.C), as depicted on EXHIBIT D. The Owner may adopt reasonable rules and regulations regarding use of and access to such 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.

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 enjoyment of the space by others, shall be allowed within these public benefit features. While engaged in allowed activities, members of the public

may not be asked to leave for any reason other than conduct that unreasonably interferes with the enjoyment of the space by others. Signage clearly identifying public access and allowed free speech activities is required at the public open space elements and shall require the review and approval of SDOT Street Vacations. Signage shall be consistent with signage provided for public amenity space on the site. Any violation of these conditions will be enforced through Chapter 15.90 of the Seattle Municipal Code.

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 a right of use within the Development, provided the right of use does not materially interfere and is consistent 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 17 day of September, 2020.

Acorn Development LLC
a Delaware limited liability company

By: [Signature]
Patrick Miller
Its: Authorized Signatory

STATE OF WASHINGTON }
COUNTY OF KING } ss.

On this day personally appeared before me Patrick Miller, to me known to be the ~~Authorized~~ ^{Authorized Signatory} 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 17 day of September, 2020.



Amy Casavan
Printed Name Amy Casavan
NOTARY PUBLIC in and for the State of Washington, residing at 1111111111, WA
My Commission Expires 3-05-2024

Exhibit A

Legal Description of Acorn Development LLC Property (Block 21)

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 AND 12, BLOCK 21, 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 VOLUME 1 OF PLATS, PAGE(S) 121, IN KING COUNTY, WASHINGTON;

EXCEPT THOSE PORTIONS CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 193437 FOR THE WIDENING OF 7TH AVENUE, AS PROVIDED BY ORDINANCE NUMBER 50890 OF THE CITY OF SEATTLE.

Exhibit B

Legal Description of Alley to be Vacated (CF 314278)

ALLEY IN BLOCK 21, 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 VOLUME 1 OF PLATS, PAGE(S) 121, IN KING COUNTY, WASHINGTON

Exhibit C

Public Benefit Improvements

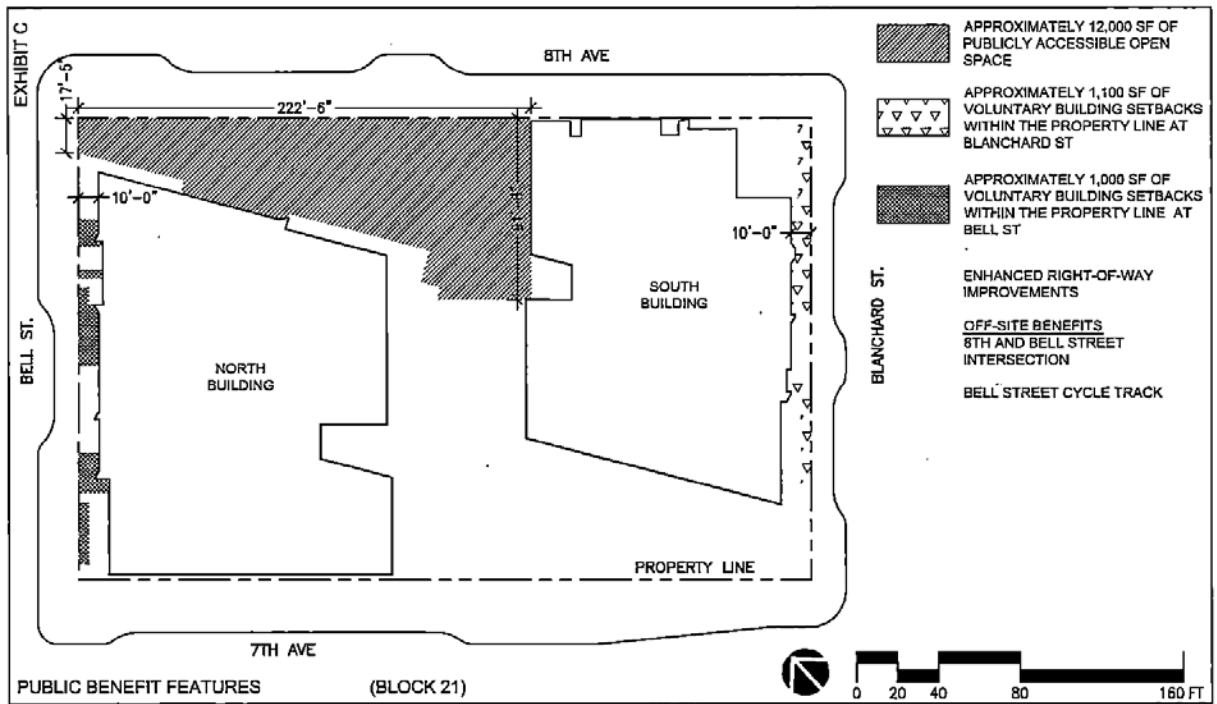


Exhibit D

Public Benefit Improvements Available for Public Access

