

*When Recorded, Return to:*

The Seattle City Clerk  
600 Fourth Avenue, Floor 3  
PO Box 94728  
Seattle, Washington 98124

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**PROPERTY USE AND DEVELOPMENT AGREEMENT**

<b>Grantor:</b>	Willow Crossing LLLP
<b>Grantee:</b>	City of Seattle
<b>Legal Description:</b> (abbreviated) Full description on Exhibits 1, 2 and 3 of document:	<u>Exhibit 1:</u> Ptn Lts 1 – 2 Blk 15 Hillman City Add. Vol 11, Pg 23 <u>Exhibit 2:</u> Ptn Tract 2 Coffman Gardens Tract <u>Exhibit 3:</u> A portion of 39th Avenue South lying South of South Willow Street and between Tract 2 of Coffman Garden Tracts, as recorded in Volume 10 of Plats on page 17, and Block 16, Hillman City Addition, as recorded in Volume 11 of Plats on page 23 all in the Southeast quarter of the Northwest quarter of Section 27, Township 24 North, Range 4 East of the Willamette Meridian.
<b>Assessor's Tax Parcel ID #s:</b>	333300-2960, 166250 0007
<b>Reference Nos. of Documents Released or Assigned:</b>	N/A

**This document filed for record by Fidelity National Title Major Accounts as an accommodation only. It has not been examined as to its effect on the title. MISC5487**

## PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS INSTRUMENT is executed this date in favor of the **City of Seattle**, a municipal corporation (herein "City"), and by **Willow Crossing LLLP**, a Washington limited liability limited partnership (herein "Grantor").

### WITNESSETH:

WHEREAS, Grantor is vested in fee simple title in the real property located at 6901 Martin Luther King Jr. Way S, Seattle, King County, Washington, described on Exhibit 1 hereto and 3823 S Willow Street, Seattle, King County, Washington, described on Exhibit 2 hereto (herein collectively called the "Property"); and

WHEREAS, Grantor filed a petition in Clerk File 314422 for the vacation of the portion of 39<sup>th</sup> Avenue South lying south of South Willow Street and between Tract 2 of Coffman Garden Tracts, as recorded in Volume 10 of Plats on page 17, and Block 16, Hillman City Addition, as recorded in Volume 11 of Plats on page 23 all in the Southeast quarter of the Northwest quarter of Section 27, Township 24 North, Range 4 East of the Willamette Meridian, as more particularly described on Exhibit 3 hereto, which petition was considered pursuant to Chapter 35.79 of the Revised Code of Washington and Seattle Municipal Code Chapter 15.62; and

WHEREAS, the Sustainability and Transportation Committee of the Seattle City Council held a public hearing on the vacation petition on November 20, 2019; and

WHEREAS, the Seattle City Council granted approval of the vacation petition subject to conditions on November 25, 2019; and

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

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

**Section 1.** The conditions passed by the City Council on November 25, 2019, specified the following conditions of vacation approval:

1. The vacation is granted to allow Grantor to build a project substantially in conformity with the project presented to the City Council and for no other purpose. The project must be substantially in conformity with the proposal reviewed by the Sustainability and Transportation Committee in November of 2019.
2. All street improvements shall be designed to City standards, as modified by these conditions to implement the public benefit requirements, and be reviewed and approved

by the Seattle Department of Transportation (“SDOT”) through a Street Improvement Permit; elements of the street improvement plan and required street improvements to be reviewed include:

- Establishing curb lines, sidewalk dimensions and garage entry;
- Location of utility facilities, including SCL poles and SPU solid waste bins,
- Landscaping, and
- Material use, signage, art elements and other public benefit features in the right-of-way.

3. The utility issues shall be resolved to the full satisfaction of the affected utility prior to the approval of the final vacation ordinance. Prior to the commencement of any development activity on the site, Grantor shall work with the affected utilities and provide protection for the utility facilities. This may include easements, restrictive covenants, relocation agreements, or acquisition of the utilities, which shall be at the sole expense of Grantor. Utilities impacted include:

SPU:

- Fire hydrant: relocate or provide an easement;
- Review landscaping with SPU; and
- Complete permitting work on solid waste and recycling staging and pick up services provided on S Willow Street.

SCL:

- Complete work on location of new poles on both MLK and S Willow Street.

4. It is expected that development activity will commence within approximately 18 months of City Council’s approval on November 25, 2019, and that development activity will be completed within 5 years. To ensure timely compliance with the conditions imposed by the City Council, Grantor shall provide SDOT with regular reports providing an update on the development activity, schedule, and progress on meeting the conditions and anticipated date of project completion and opening. Grantor shall not request or be issued a Final Certificate of Occupancy until SDOT determines that all conditions have been satisfied and all fees have been paid as applicable.
5. In addition to the conditions imposed through the vacation process, the project as it proceeds through the permitting process is subject to SEPA review and to conditioning pursuant to City codes through the regulatory review processes.
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 enjoyment of the space by others, shall be allowed within the on-site vacation public benefit features. While engaged in allowed activities, members of the public shall 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 shall be 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 spaces, if any, on the site. Any violation of these conditions will be enforced through Chapter 15.90 of the Seattle Municipal Code.

7. Signage clearly identifying public access shall be required at the public open space elements and shall require the review of SDOT Street Vacations. The final design of the public benefit elements shall require the review and approval of SDOT Street Vacations. SDOT Street Vacations may require additional review by the Design Commission as needed. Changes to the proposed public benefits require SDOT review and may necessitate additional Design Commission review. The value column in the matrix below reflects the estimated value of the public benefit features and obligations, the off-site contribution reflects the actual value of the payment obligation.
8. Grantor shall develop and maintain the public benefit elements as approved by the City Council. The public benefit requirements include the following features:

No.	Public Benefit Component	Costs	Timing of Implementation	Total Value
1.	MLK Plaza 1,250 SF	Concrete Pavers: \$1,110 SF @ \$22/SF = \$24,420  Concrete Planters: 80 LN FT @ \$75/LN FT = \$6,000  Benches: Concrete: 101 LN FT @ \$60/LN FT = \$6,060 Wood: 78 SF @ \$40/SF = \$3,120  Metal Screens: 5 Screens = \$7,500 Landscaping: 53 SF @ \$10/SF = \$530	Provided during construction, prior to Certificate of Occupancy	\$47,630
2.	Willow Walkway 309 SF	Decorative Paving: 309 SF @ \$15/SF = \$4,635  Concrete Planters: 78 LN FT @ \$75/LN FT = \$5,850  Benches: Concrete: 65 LN FT @ \$60/LN FT = \$3,900 Wood: 49 SF @ \$40/SF = \$1,960  Metal Screens: 5 Screens = \$5,000 Landscaping: 48 SF @ \$10/SF = \$480	Provided during construction, prior to Certificate of Occupancy	\$21,825
3.	Off-site	Right-of-way improvements at	Funds donated to	

	Donation	Inflorescence Park or other location in Othello neighborhood	HOSTED no later than 12/31/2020	\$25,000
<b>TOTAL:</b>				<b>\$94,455</b>

**Section 2.** An executed copy of this Agreement shall be recorded in the records of King County for the Property and the covenants hereof shall be deemed to attach to and run with each portion of the Property.

**Section 3.** Grantor shall have the reasonable right to temporarily close, obstruct, limit access, or establish temporary hours of public access to the public benefits areas for: (1) construction, provided that any removed or permanently closed areas shall be replaced by Grantor to the satisfaction of the City before the area is removed or permanently closed; (2) maintenance and repair; (3) temporary use for private functions by Grantor, tenants, or other occupants of the Property; (4) the maintenance of or security for the development or persons using the development; (5) other circumstances beyond Grantor's control; or (6) as Grantor reasonably deems necessary to comply with any applicable law, regulation, or order. Grantor may adopt reasonable rules and regulations regarding the use of and access to the public benefits. 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 at the public benefits areas.

**Section 4.** Grantor reserves the right to use the public benefits areas for any purpose which does not interfere with the public's use rights established hereunder, including but not limited to the right to use the areas as described in this Agreement for Grantor's purposes (including the right to use the areas by Grantor's tenants, subtenants, and other occupants), and the right to grant easements, provided the easements are consistent with the public's use rights established hereunder.

**Section 5.** Nothing in this Agreement shall constitute a public dedication of any portion of the Property or impose any restriction on any part of the Property other than the areas designated for the public benefits.

**Section 6.** This Agreement is made for the benefit of the City and the public. Grantor is responsible for the obligations of this Agreement. The City may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

**Section 7.** It is further expressly agreed that if 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.

**Section 8.** Upon the effective date of the vacation ordinance, Grantor 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. Grantor shall

provide evidence of insurance to the City Risk Manager at the City's reasonable request.

**Section 9.** Grantor 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 benefits described herein during the term of its ownership of the Property. Upon any transfer of ownership of the Property, 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 10.** This Agreement shall be binding on Grantor's successors and assigns. Grantor and each future owner of the Property shall be bound to this Agreement only during the period of its ownership.

**Section 11.** This Agreement may be amended or modified by agreement between Grantor and the City; provided any such amendment, per Council rules, shall be subject to approval by the City Council by ordinance. Nothing in this Agreement shall be construed as a surrender of the City's governmental powers.

[signature page follows]



**EXHIBIT 1**  
**TO PROPERTY USE AND DEVELOPMENT AGREEMENT**

**Legal Description of MLK Property**

LOTS 1 AND 2, BLOCK 16, HILLMAN CITY ADDITION TO THE CITY OF SEATTLE DIVISION NUMBER 6, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE 23, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION THEREOF CONDEMNED FOR EMPIRE WAY SOUTH IN KING COUNTY SUPERIOR COURT CAUSE NO. 98896, AS PROVIDED BY ORDINANCE NO. 30673 OF THE CITY OF SEATTLE;

AND EXCEPT THE NORTH 5 FEET THEREOF;

AND EXCEPT THAT PORTION THEREOF CONVEYED TO CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY BY DEED RECORDED UNDER RECORDING NUMBER 20031024002876.

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



**EXHIBIT 2  
TO PROPERTY USE AND DEVELOPMENT AGREEMENT**

**Legal Description of Willow Property**

THE EAST 100 FEET OF TRACT 2 OF COFFMAN GARDEN TRACTS, AS PER PLAT RECORDED IN VOLUME 10 OF PLATS, PAGE 17, RECORDS OF KING COUNTY AUDITOR.

EXCEPT THE NORTH 25 FEET THEREOF; AND EXCEPT THE EAST 25 FEET THEREOF.

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

**EXHIBIT 3**  
**TO PROPERTY USE AND DEVELOPMENT AGREEMENT**

**Legal Description of Vacated 2,616 Square Feet of Right-of-Way**

BEGINNING at the Southeast corner of said Tract 2;  
THENCE North 88°59'33" West, along the South line of said Tract 2, 25.00 feet to a line 25.00 feet West of and parallel with the East line of said Tract 2;  
THENCE North 00°18' 12" East, along said parallel line, 104.68 feet to a line 25.00 feet South of and parallel with the north line of said Tract 2 (also being the centerline of South Willow Street);  
THENCE South 88°53'43" East, 25.00 feet to the intersection of the East line of said Tract 2 and a line 5.00 feet South of and parallel with the North line of said Block 16;  
THENCE South 00°18' 12" West, along said East line, 104.64 feet to the TRUE POINT OF BEGINNING.