



20190624000710

AGREEMENT Rec: \$108.00

6/24/2019 1:36 PM

KING COUNTY, WA

When Recorded, Return to:
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Seattle, WA 98104

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor:	The Whittaker, a Condominium Association, a Washington nonprofit corporation
<input type="checkbox"/> Additional on page	_____
Grantee:	City of Seattle
<input type="checkbox"/> Additional on page	_____
Legal Description (abbreviated):	ALL UNITS, THE WHITTAKER, A CONDOMINIUM, DECLARATION REC. NO. 20141218000344, VOL. 281, PAGES 89-102
<input checked="" type="checkbox"/> Additional on:	<u>Exhibit A</u>
Assessor's Tax Parcel ID #:	<u>9379700000</u>
Reference Nos. of Documents Released or Assigned:	<u>N/A</u>

PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT is executed this date in favor of the City of Seattle, a municipal corporation (“City”), by The Whittaker, a Condominium Association, a Washington nonprofit corporation (the “Association”).

WHEREAS, the Association has the authority, pursuant to RCW 64.34.304, to represent all Owners (the “Owners”) vested in fee simple title of all Units in The Whittaker, a Condominium (the “Condominium”) situated in King County, Washington, described in Exhibit A and incorporated into this Agreement (the “Property”) with regard to matters affecting the Condominium; and

WHEREAS, West Seattle Project X, LLC, a predecessor in interest to the Association, filed a petition in Clerk File 312783 for the vacation of the portions of the public alleys in Block 3, Norris Addition to West Seattle, according to the plat thereof recorded in Volume 14 of Plats, Page 93, Records of King County; Together with that property conveyed to the City of Seattle for street purposes as recorded under Recording Numbers 6689470 and 6689471, Records of King County, Washington; Lying northerly of the southerly boundary, and its easterly and westerly extension thereof, of Lot 39, in Block 3, Norris Addition to West Seattle. Excepting therefrom, any portion of said public alleys lying within said Block 3, Norris Addition to West Seattle, previously vacated by City of Seattle Ordinance Number 99278, 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 11, 2014, Transportation Committee of the Seattle City Council held a public hearing on the vacation petition; and

WHEREAS, on April 21, 2014, the Seattle City Council granted preliminary approval of the vacation petition, subject to conditions; and

WHEREAS, the Association completed development activity authorized under the alley vacation approval before April 21, 2019; and

WHEREAS, executing this Property Use and Development Agreement (the “Agreement” or “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 Association, on behalf of the Owners, covenants, bargains, and agrees on behalf of themselves, their successors, and assigns as follows:

Section 1. The conditions passed by the City Council on April 21, 2014 specified the following conditions of approval:

- A. The vacation is granted to allow the Petitioner 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 Transportation Committee in March of 2014.
- B. 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; elements of the street improvement plan and required street improvements to be reviewed include:
- The mid-block connector shall include the following elements:
 - The total width shall be no less than 44 feet in width to 50 feet in width;
 - Two-way traffic is required;
 - The drive lane for vehicles is 20 to 25 feet in width;
 - An 8-foot wide elevated, pedestrian sidewalk shall be located on the south side of the mid-block connector;
 - The pedestrian sidewalk shall be separated from the drive lane by a 3-foot landscaping strip;
 - The pedestrian sidewalk shall have continuous overhead weather protection;
 - The northwest side of the mid-block connector shall have landscaping to discourage pedestrians;
 - No pedestrian crossing north/south may be provided in the mid-block connector;
 - Pedestrian lighting shall be provided in the mid-block connector;
 - The northeast side of the mid-block connector will provide a sidewalk and landscaping at the residential entry;
 - Vehicles may turn right only when existing at Fauntleroy Way SW;
 - Roll-up doors shall be added to the loading bay area; and
 - A drive-up window may not be provided.
 - Street improvement plan showing sidewalks, street trees, bike racks, street furniture, lighting, art or artist-made elements, paving or special materials, wayfinding, and landscaping around the site;
 - The design on the new alley segment, including the geometry of the turns and the connection at 40th Avenue SW, SW Edmunds Street, and Fauntleroy Way SW; and
 - Agreement between all property owners on the alley that protect use and access for all owners.

- C. 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, Petitioner shall work with the affected utilities and provide for the protection of the utility facilities. This may include easements, restrictive covenants, relocation agreements, or acquisition of the utilities, which shall be at the sole expense of the Petitioner. Utilities impacted include:
- Seattle Public Utilities
 - Seattle City Light
 - CenturyLink Communications
- D. It is expected that development activity will commence within 18 months of this approval and that development activity will be completed within 5 years. In order to insure timely compliance with the conditions imposed by the City Council the Petitioner shall provide SDOT with Quarterly Reports, following Council approval of the vacation, providing an update on the development activity, schedule, and progress on meeting the conditions. The Petitioner shall not request or be issued a Final Certificate of Occupancy (C of O) for the project until SDOT has determined that all conditions have been satisfied and all fees have been paid.
- E. 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 various City codes and through regulatory review processes including SEPA.
- F. Within one year after the completion of the public park planned on 40th Avenue SW, the Seattle Department of Transportation shall review the pedestrian and traffic volumes on 40th Avenue SW to determine whether a crosswalk from the Whittaker development to the park, midblock on 40th Avenue SW, is warranted. Should the Seattle Department of Transportation determine that a pedestrian crosswalk is warranted in the above-stated location, Project X, LLC shall pay for the installation of a pedestrian crosswalk. The installation of a pedestrian signal or other pedestrian actuated traffic controls is not required. The maximum amount to be paid for the crosswalk shall be \$24,000 and shall include ADA ramps and landings on both sides with ladder striping across the roadway per City standards. Such payment shall be made to the Seattle Department of Transportation within 120 days after the Seattle Department of Transportation determines that the pedestrian crosswalk is necessary in the above-stated location.
- G. The Petitioner shall develop and maintain the public benefit elements as defined by the City Council. A Property Use and Development (PUDA)

or other binding mechanism shall be required to ensure that the public benefit elements remain open and accessible to the public and to outline future maintenance obligations of the improvements. The final design of the public benefit elements shall require the review and approval of SDOT Street Vacations. SDOT will request additional Design Commission review when the design is further developed to the 60% level and 90% level and may request additional review as necessary. The public benefit requirement includes the following features as well as corresponding development standards, including approximate square footage dimensions, which shall be outlined in the PUDA:

Public benefit chart:

Description	Existing	Required	Quantity	Cost
1. Voluntary Street Level Building Setback	No	No	5,134 s.f.	n/a
2. Gateway Plaza at Fauntleroy & Alaska	No	No	542 s.f.	\$37,820
3. Linear Plaza and 40 th Ave. Streetscape	No	No	1,356 s.f.	\$147,140
4. Public “Outdoor Rooms” on Fauntleroy	No	No	1,088 s.f.	\$85,120
5. 40 th Avenue Off-Site Improvement	No	No	2,550 s.f.	\$93,260
6. Pedestrian Crosswalk and Signal Modification at Fauntleroy & Alaska	No	No	n/a	\$15,000
7. Cash Contribution for Public Outreach and Schematic Design (to 30% complete) for new City Park	No	No	n/a	\$25,000
8. Mid-Block pedestrian sidewalk	No	No	n/a	\$25,000
9. Art: Inclusion of commission art	No	No	27 pieces	\$50,000

pieces in public plazas and relocation/				
10. Pedestrian overhead weather protection & new bike lane	No	No	5,666 s.f.	\$853,680
11. Expanded public amenities along Fauntleroy & Alaska	No	No	1,300 s.f.	\$1,100,000
			Total:	\$2,417,050

H. The replacement of any of the Public Benefits shall be of similar quality in design and materials as the original. Significant changes to the streetscape or the required public Benefits 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, as implemented by Master Use Permit number 3013803-LU, as amended, and building permits 6327328-PH and 6365657-PH, has constructed the “Public Benefits” outlined in Section 1 in the following manner:

- A. The buildings were voluntarily setback 5,134 s.f. on the frontages of Alaska Street, 40th Avenue, Edmunds Street, and Fauntleroy Way, as depicted to the City Council.
- B. The 542 square foot public plaza at the corner of Alaska and Fauntleroy was constructed as depicted to the City Council; this feature includes four art sculptures, 4 benches, a water feature, pedestrian lighting, and bike parking.
- C. The 40th Avenue linear plaza and streetscape was constructed as depicted to the City Council and includes art elements, rain gardens, and upgraded landscape and hardscape elements.
- D. The public outdoor rooms on Fauntleroy have been constructed and include seating and benches, art pieces, pedestrian lighting and bike parking.
- E. The 40th Avenue off-site street improvement was installed and includes SDOT standard planting strips and a tapering of the road edge for traffic calming purposes in front of the future West Seattle Junction Park.
- F. The pedestrian crosswalk and signal modification has been installed and is operational at Fauntleroy and Alaska.
- G. The cash contribution of \$25,000 for design of the new West Seattle Junction Park was paid to the Seattle Parks Department. Three design options to the public have been presented by the Parks Department as of Fall 2018.

- H. 27 pieces of art, coordinated and constructed by the same local artist as presented to the City Council, were installed in the right-of-way. The historic mural was relocated and recreated on site and can be seen in the midblock connector today.
- I. The overhead weather protection as depicted to the City Council was installed. The new bike lane on Fauntleroy was installed.
- J. The expanded public amenities along Fauntleroy and Alaska were installed as depicted to City Council, made possible by the undergrounding of the overhead power lines on the projects' frontages by the project.
- K. Regarding the mid-block crosswalk across 40th Avenue to serve the new future park, the public park on 40th Avenue (also known as the West Seattle Junction Park) is not yet finished. In Fall 2018 the Seattle Parks and Recreation Department presented three design options to the public and gathered community feedback. Design and construction of the park is fully budgeted and construction is scheduled to begin in 2019. At the time of park completion, Condition F in Section 1, and Line Item 8 in the Public Benefit Matrix will be completed.

Section 3. The Association shall have the reasonable right to temporarily close, obstruct, limit access, or establish temporary hours of Public Benefits public access to the Public Benefits for: (1) construction, provided that any removed or closed shall be replaced by the developer to the satisfaction of the City; (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 Association's control.

Section 4. The Association may adopt reasonable rules and regulations regarding the use of and access to the Public Benefits 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 5. Free speech activities such as hand billing, signature gathering, and holding sign, all without obstructing access to the Property, the Condominium, or other adjacent amenity features, and without unreasonably interfering with the use and enjoyment of the Property or the Condominium, shall be allowed within the Public Benefit areas described in this Agreement. While lawfully engaged in allowed activities that do not interfere with use and enjoyment of the Property by others, 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 6. This Agreement may be amended or modified by agreement between the Association and the City; provided any such amendment 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.

Section 7. The Association reserves the right to use the Public Benefits 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 the Association's purposes, and the right to grant easements, provided the easements are consistent with the public's use rights established hereunder.

Section 8. Nothing in this Agreement shall constitute a public dedication of any portion of the Property.

Section 9. The legal description of the Property is set forth in Exhibit A to this Agreement, which is incorporated to this Agreement. An executed copy of this Agreement shall be recorded in the records of King County and the covenants contained herein shall to attach to and run with the Property.

Section 10. 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 11. 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 12. Upon the effective date of the vacation ordinance, the Association 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. The Association shall provide evidence of insurance to the City Risk Manager at the City's reasonable request.

Section 13. The Association 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 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.

EXHIBIT A

Legal Description of the Property

PARCEL A:

ALL UNITS, THE WHITTAKER, A CONDOMINIUM, ACCORDING TO THE DECLARATION THEREOF, RECORDED UNDER RECORDING NO. 20141218000344, AND ANY AMENDMENTS THERETO, SAID UNITS ARE LOCATED ON SURVEY MAPS AND PLANS FILED IN VOLUME 281 OF CONDOMINIUMS, PAGE(S) 89 – 102, AND ANY AMENDMENTS THERETO;
EXCEPT THAT PORTION CONVEYED TO THE CITY OF SEATTLE AS DESCRIBED IN DEED FOR ALLEY PURPOSES RECORDED DECEMBER 22, 2014, UNDER RECORDING NO. 201412222000866.

PARCEL B:

NON-EXCLUSIVE TEMPORARY EASEMENTS AS DESCRIBED AND GRANTED IN THAT CERTAIN “CONSTRUCTION EASEMENT AGREEMENT” RECORDED SEPTEMBER 19, 2014 UNDER RECORDING NO. 20140919000028, IN THE RECORDS OF KING COUNTY, WASHINGTON.

PARCEL C:

PERPETUAL AND NON-EXCLUSIVE EASEMENTS AS DISCLOSED IN THE “DECLARATION AND COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE WHITTAKER, A CONDOMINIUM” RECORDED DECEMBER 18, 2014 UNDER RECORDING NO. 20141218000344, IN THE RECORDS OF KING COUNTY, WASHINGTON.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.