

**Property Use and Development Agreement**

<i>When Recorded, Return to:</i>	
<b>THE CITY CLERK</b> 600 Fourth Avenue, Floor 3 PO Box 94728 Seattle, Washington 98124-4728	

**PROPERTY USE AND DEVELOPMENT AGREEMENT**

<b>Grantor(s):</b>	(1)	5201 Rainier LLC, a Washington limited liability company	(2)	n/a
<input type="checkbox"/> Additional grantors on page <u>n/a</u>				
<b>Grantee:</b>	(1)	The City of Seattle		
<input type="checkbox"/> Additional on page <u>n/a</u>				
<b>Legal Description</b> <i>(abbreviated if necessary):</i>	See below.			
<input type="checkbox"/> Additional legal description on page <u>n/a</u> :				
<b>Assessor's Tax Parcel ID #:</b>	5649600378 and 5649600385			
<b>Reference Nos. of Documents Released or Assigned:</b>				

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 30th day of July, 2018, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by 5201 Rainier LLC, a Washington limited liability company (the "Owner").

**RECITALS**

A. 5201 Rainier LLC is the owner of that certain real property (the "Rezone Site") in the City of Seattle zoned Neighborhood Commercial 2 with a 40-foot height limit (NC2-40) shown in Attachment A and legally described as:

All of Tract 31 and the north 50 feet of Tract 32 of Morningside Acre Tracts, as per plat recorded in Volume 9 of Plats, Page 64, record of King County Auditor;

Except that portion which lies north of a line drawn perpendicular to the east line of 39th Ave South from a point thereon which is 30 feet south of the most northerly point of said Tract 31; Situate in the City of Seattle, County of King, State of Washington.

B. On September 1, 2016, the Owner submitted to the City a complete application under Project No. 3018378 for a rezone of the Rezone Site from Neighborhood Commercial 2 with 40-foot height limit (NC2-40) to Neighborhood Commercial 3 with a 65-foot height limit and a M1 suffix (NC3-65(M1)). The development project associated with this proposed rezone includes a

3-story, 4-unit townhouse structure and a 6-story structure with 104 apartment units, 3 live-work units, and 1,607 square feet of restaurant space.

C. Seattle Municipal Code (SMC) 23.34.004.B authorizes the Council to apply the provisions of Chapters 23.58B and 23.58C through a contract rezone. Seattle Department of Construction and Inspections (SDCI) Director's Rule 14-2016 (April 6, 2017) ("The Rule") sets forth performance and payment requirements that shall be applied where the City has not adopted pertinent performance and payment requirements in SMC 23.58C.

D. SMC 23.34.004 allows the City to approve a rezone subject to "self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone."

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

## **AGREEMENT**

**Section 1. Agreement.** Pursuant SMC 23.34.004, the Owner covenants, bargains, and agrees on behalf of itself and its successors and assigns that it will comply with the following conditions in consideration of the rezone of the Rezone Site from NC2-40 to NC3-65(M1):

- (a) Developing the Rezone Site is restricted to a project developed in substantial conformance with the final approved plans for Master Use Permit number 3018378; and
- (b) Developing the Rezone Site is subject to the requirements of SMC 23.58B and 23.58C. As provided in SMC 23.58C, the payment and performance calculation amounts for the Rezone Site are \$20 per square foot and a set-aside of affordable housing units of 9% per total housing units. The requirements of SMC 23.58B are not applicable to a project developed in substantial conformance with the final approved plans for Master Use Permit number 3018378, as the plans do not specify more than 4,000 square feet of gross floor area in commercial use (SMC 23.58B.020.B).

**Section 2. Agreement Runs With the Land.** This Agreement shall be recorded in the records of King County by the City Clerk. The covenants shall be deemed to attach to and run with the land and shall be binding upon the Owners, their heirs, successors and assigns, and shall apply to after-acquired title of the Owners of the Rezone Site.

### **Section 3. Termination of Zoning Designation.**

The new zoning designation shall expire according to SMC 23.76.060.C, or if the rezone is revoked pursuant to SMC 23.34.004.

### **Section 4. Termination of Conditions.**

The conditions listed in Section 1 of this Agreement shall expire according to SMC 23.76.060.C, or if the Rezone is revoked pursuant to SMC 23.34.004.

**Section 5. Amendment.** This Agreement may be amended or modified by agreement between Owner and the City, if such amendments are approved by the City Council by ordinance.

**Section 6. Exercise of Police Power.** Nothing in this Agreement shall prevent the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

**Section 7. No Precedent.** The conditions contained in this Agreement are based on the unique circumstances applicable to this Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

**Section 8. Repeal as Additional Remedy.** Owner acknowledges that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owner avail themselves of the benefits of this rezone but then fail to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may:

- (a) Revoke the rezone by ordinance and require the use of the Rezone Site to conform to the requirements of the previous NC2-40 zoning designation or some other zoning designation imposed by the City Council; or
- (b) Pursue specific performance of this Agreement.

Ex B – Property Use and Development Agreement  
V4

SIGNED this 20<sup>th</sup> day of July, 2018.

5201 Rainier LLC,  
a Washington limited liability company

By: MS Ventures LLC,  
a Washington limited liability company

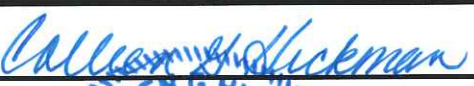

Its: Manager 

By: Scott E. Shapiro

Its: Manager

On this day personally appeared before me Scott E. Shapiro, to me known to be the Manager of MS Ventures LLC, a Washington 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 20<sup>th</sup> day of July, 2018.

		Printed Name <u>Colleen G. Hickman</u>
		NOTARY PUBLIC in and for the State of Washington, residing at <u>Bellevue, WA 98007</u>
		My Commission Expires <u>1-29-21</u>
STATE OF WASHINGTON		ss.
COUNTY OF KING		

Attachment A: Rezone Map

