

Property Use and Development Agreement

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

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor(s):	(1)	East Union 22, LLC		
Grantee:	(1)	The City of Seattle		
Legal Description <i>(abbreviated if necessary):</i>	see <i>Recital A</i> , below			
Assessor's Tax Parcel ID #:	7228500571, 7228500570, 7228500585			
Reference Nos. of Documents Released or Assigned:	n/a			

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this ___ day of _____, 2016, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by East Union 22, LLC, a Washington limited liability company (the "Owner").

RECITALS

A. East Union 22, LLC is the owner of that certain real property (the "Property") in the City of Seattle currently zoned Neighborhood Commercial 2 40 (NC2-40) and Neighborhood Commercial 2 40 with a pedestrian designation (NC2P-40), shown in Attachment A and legally described as:

PARCEL A:

LOTS 11, 12 AND 13, BLOCK 8, RENTON HILL AN ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 68, IN KING COUNTY, WASHINGTON; EXCEPT THE WEST 40 FEET THEREOF; AND EXCEPT THE WEST 3.80 FEET OF THE NORTH 95.5 FEET THEREOF.

PARCEL B:

THE SOUTH 13.93 FEET OF THE WEST 40 FEET OF LOT 12 AND THE WEST 40 FEET OF LOT 13 IN BLOCK 8 OF RENTON HILL AN ADDITION TO THE CITY OF SEATTLE, ACCORDING THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 68, IN KING COUNTY, WASHINGTON.

PARCEL C:

THE WEST 43.80 FEET OF LOT 11, BLOCK 8, RENTON HILL AN ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 68 IN KING COUNTY, WASHINGTON. TOGETHER WITH THAT PORTION OF LOT 12, BLOCK 8 OF SAID PLAT DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 114.2 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 12 OF SAID BLOCK; THENCE SOUTH 35.5 FEET; THENCE WEST 3.8 FEET; THENCE SOUTH TO THE NORTHEAST CORNER OF THE TRACT OF LAND CONVEYED BY ELLIOTT HIMEBAUGH AND LYDIE A HAMBAUGH, HIS WIFE, TO ANNIE M HYDE BY DEED DATED FEBRUARY 6, 1903, RECORDED FEBRUARY 19, 1903, UNDER RECORDING NO. 255570; THENCE WEST ALONG THE NORTH LINE OF SAID TRACT TO THE WEST LINE OF SAID LOT; THENCE NORTH ALONG SAID WEST LINE TO THE NORTHWEST CORNER OF SAID LOT 12; THENCE EAST TO THE POINT OF BEGINNING.

B. In June 2015, the Owner submitted to the City an application under Project No. 3019001 for a rezone of the Property from NC2-40 to Neighborhood Commercial 2 65 (NC2-65) and NC2P-40 to Neighborhood Commercial 2 65 with a pedestrian designation (NC2P-65).

C. Seattle Municipal Code Section 23.34.004 allows the City to approve a rezone subject to "self-imposed restrictions" upon the development of the property.

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

AGREEMENT

Section 1. Agreement. Pursuant to Seattle Municipal Code Section ("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:

- (a) Future development of the Property is restricted to a project that complies with Master Use Permit (MUP) #3019001, once the Seattle Department of Construction and Inspections (SDCI) issues that MUP. Prior to issuing the MUP, SDCI must confirm that the drawings substantially comply with the conditions established during the design review process, including the structure design and location on the site, structure height, building materials, landscaping, street improvements, parking design, signage and site lighting.
- (b) A Construction/Noise Management Plan shall be submitted to and approved by the Seattle Department of Transportation prior to issuance of any demolition or construction permit.
- (c) The provisions of Seattle Municipal Code Chapter 23.58B, the Affordable Housing Impact Mitigation Program for Commercial Development, as adopted in Ordinance 124895, shall apply to the Property. Compliance with that Ordinance shall be

- through the payment option according to SMC 23.58B.040. The required cash contribution according to SMC 23.58B.040.A shall be provided prior to issuance of the first construction permit other than a demolition, excavation, or shoring permit.
- (d) The development pursuant to MUP #3019001 shall include four dwelling units affordable to households earning 60 percent of Area Median Income (AMI) (the “Affordable Units”).
 - (e) The location and configuration of the Affordable Units shall be shown on the MUP plans and shall be subject to review and approval by the Office of Housing for consistency with the criteria set forth in SMC 23.58C.050.C.1 and 23.58C.050.C.2 as adopted in Ordinance 125108.
 - (f) Prior to issuance of MUP #3019001, an executed and recorded agreement between the City and the owner of the Property shall be provided that specifies the following requirements:
 - The development shall include four dwelling units affordable to households earning 60 percent of AMI. At initial occupancy the Affordable Units shall be rental units.
 - The Affordable Units shall comply with the same requirements as are contained in the following provisions of Ordinance 125108, the substance of which requirements shall be stated in its entirety in the agreement:
 - 23.58C.050.B, provided that the period referenced in SMC 23.58C.050.B.1.a and SMC 23.58C.050.B.2 shall be changed from seventy-five years to fifty years; and
 - 23.58C.050.C.

The agreement shall be recorded on the title of the Property. The agreement shall be enforceable by the City in Superior Court.

Section 2. Agreement Runs With the Land. This Agreement shall be recorded in the records of King County by the City Clerk. The covenants contained in this Agreement shall attach to and run with the land and be binding upon the Owner, its heirs, successors and assigns, and shall apply to after-acquired title of the Owner.

Section 3. Amendment. This Agreement may be amended or modified by agreement between the Owner and the City; provided any amendments are approved by the City Council by ordinance.

Section 4. Exercise of Police Power. Nothing in this Agreement shall prevent the City Council from making further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 5. No Precedent. The conditions contained in this Agreement are based on the unique circumstances applicable to the Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 6. 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 avails itself of the benefits of this rezone but then fails 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 Property to conform to the requirements of the previous zoning designation or some other zoning designation imposed by the City Council; and
- b. Pursue specific performance of this Agreement.

[signature and acknowledgment on following page]

SIGNED this ____ day of ____, 2016.

East Union 22, LLC

a Washington limited liability company

By: ____

Patrick Foley
Manager

On this day personally appeared before me ____, to me known to be the Managing Member, of ____, 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 ____ day of ____, 2016.

		Printed Name _____
		NOTARY PUBLIC in and for the State of Washington, residing at _____
		My Commission Expires _____
STATE OF WASHINGTON	}	ss.
COUNTY OF KING		

ATTACHMENT A REZONE MAP

