SEATTLE CITY COUNCIL

Legislative Summary

CB 118676

Record No.: CB 118676 **Type:** Ordinance (Ord) **Status:** Passed

Version: 2 **Ord. no:** Ord 125035 **In Control:** City Clerk

File Created: 04/25/2016

Final Action: 05/09/2016

Title: AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 16 of the Official Land Use Map to rezone property located at 10711 8th Avenue NE from Neighborhood Commercial 3-40 (NC3-40) to Neighborhood Commercial 3-65 (NC3-65), and accepting a Property Use and Development Agreement as a condition of rezone approval. (Petition by Kevin Cleary, Baylis Architects, C.F. 314287, DPD Project 3018442)

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Johnson

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments: Exhibit A - Rezone Map v2, Exhibit B - Final Property Use and Development Agreement

Drafter: patrick.wigren@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	04/26/2016	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office **Notes:**						
1	Council President's Office	04/28/2016	sent for review	Planning, Land Use, and Zoning Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Planning, Land Use, and Zoning Committee **Notes:**						
1	Full Council	05/02/2016	referred	Planning, Land Use, and Zoning Committee			
1	Planning, Land Use, and Zoning Committee	05/03/2016	pass as amended				Pass

Action Text: The Committee recommends that Full Council pass as amended the Council Bill (CB).
In Favor: 3 Chair Johnson, Vice Chair O'Brien, Member Herbold
Opposed: 0

1	Full Council	05/09/2016	passed	Pass

Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:
In Favor: 8 Councilmember Bagshaw, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant
Opposed: 0

2	City Clerk	05/09/2016	attested by City Clerk

Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:

CITY OF SEATTLE

ORDINANCE 125035

COUNCIL BILL 118676

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 16 of the Official Land Use Map to rezone property located at 10711 8th Avenue NE from Neighborhood Commercial 3-40 (NC3-40) to Neighborhood Commercial 3-65 (NC3-65), and accepting a Property Use and Development Agreement as a condition of rezone approval. (Petition by Kevin Cleary, Baylis Architects, C.F. 314287, DPD Project 3018442)

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. This ordinance affects the following legally described property (collectively, the "Property"), which consists of real property separately owned by three owners (collectively, the "Owners"; individually, "Owner"):

Property Owned by Wallace Properties – Northgate Eighth LLC	PARCEL B OF CITY OF SEATTLE SHORT SUBDIVISION NO. 8705410 RECORDED MAY 20, 1988 UNDER RECORDING NO. 8805200974, IN KING COUNTY WASHINGTON.
Property Owned by Wallace GT – Northgate II LLC	THE NORTH 24.00 FEET OF THE E ½ OF THE S ½ OF THE NW ¼ OF THE SW ¼ OF THE SE ¼ OF SECTION 29, TOWNSHIP 26N, RANGE 4E, W.M., KING COUNTY, WASHINGTON. EXCEPT THE E 30.00 FEET THEREOF. AND PORTION OF THE E ½ OF THE S ½ OF THE NW ¼ OF THE SW ¼ OF THE SE ¼ OF SECTION 29, TOWNSHIP 26N, RANGE 4E, W.M., KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: BEGINNING 24.00 FEET S OF THE NE CORNER OF SAID SUBDIVISION; THENCE W 160.00 FEET, THENCE S 55.00 FEET, THENCE E 160.00 FEET.
Property Owned by GRE/NOP Northgate LLC	PARCEL A AND PARCEL C OF CITY OF SEATTLE SHORT SUBDIVISION NO. 8705410.

Section 2. Contingent on Section 3 of this ordinance, the Official Land Use Map zone classification for the Property, shown on page 16 of the Official Land Use Map, is amended to rezone the portion of the Property currently zoned Neighborhood Commercial 3 with a 40 foot

height limit to Neighborhood Commercial 3 with a 65 foot height limit, all as shown in Exhibit A to this ordinance.

Section 3. If any Owner fails to execute the Property Use and Development Agreement, attached to this ordinance as Exhibit B ("Agreement"), before 30 days after passage and approval of this ordinance by the City Council, the rezone of the property owned by that Owner will not take effect. To the extent the rezone takes effect, the rezone is conditioned upon compliance with the Agreement.

Section 4. The Agreement, to the extent executed, is hereby approved and accepted.

Section 5. To the extent this rezone becomes effective, this rezone shall not expire and shall remain in full force and effect until changed by future Council action.

Section 6. No sooner than the 31st day following passage and approval of this ordinance by the City Council, and only if the Agreement is executed by at least one Owner, the City Clerk is hereby authorized and directed to file the Agreement at the King County Records and Elections Division; to file, upon return of the recorded agreement from the King County Records and Elections Division, the original of said Agreement with this ordinance at the City Clerk's Office; and to deliver copies of the same to the Director of the Department of Construction and Inspections and to the King County Assessor's Office.

Section 7. Except as provided in Section 3, this ordinance, effectuating a quasi-judicial decision of the City Council and not subject to mayoral approval or disapproval, shall take effect and be in force 30 days from and after its passage and approval by the City Council.

Passed by the City Council the 9th day of May, 2016, and signed by me in open session in authentication of its passage this 9th day of May, 2016.

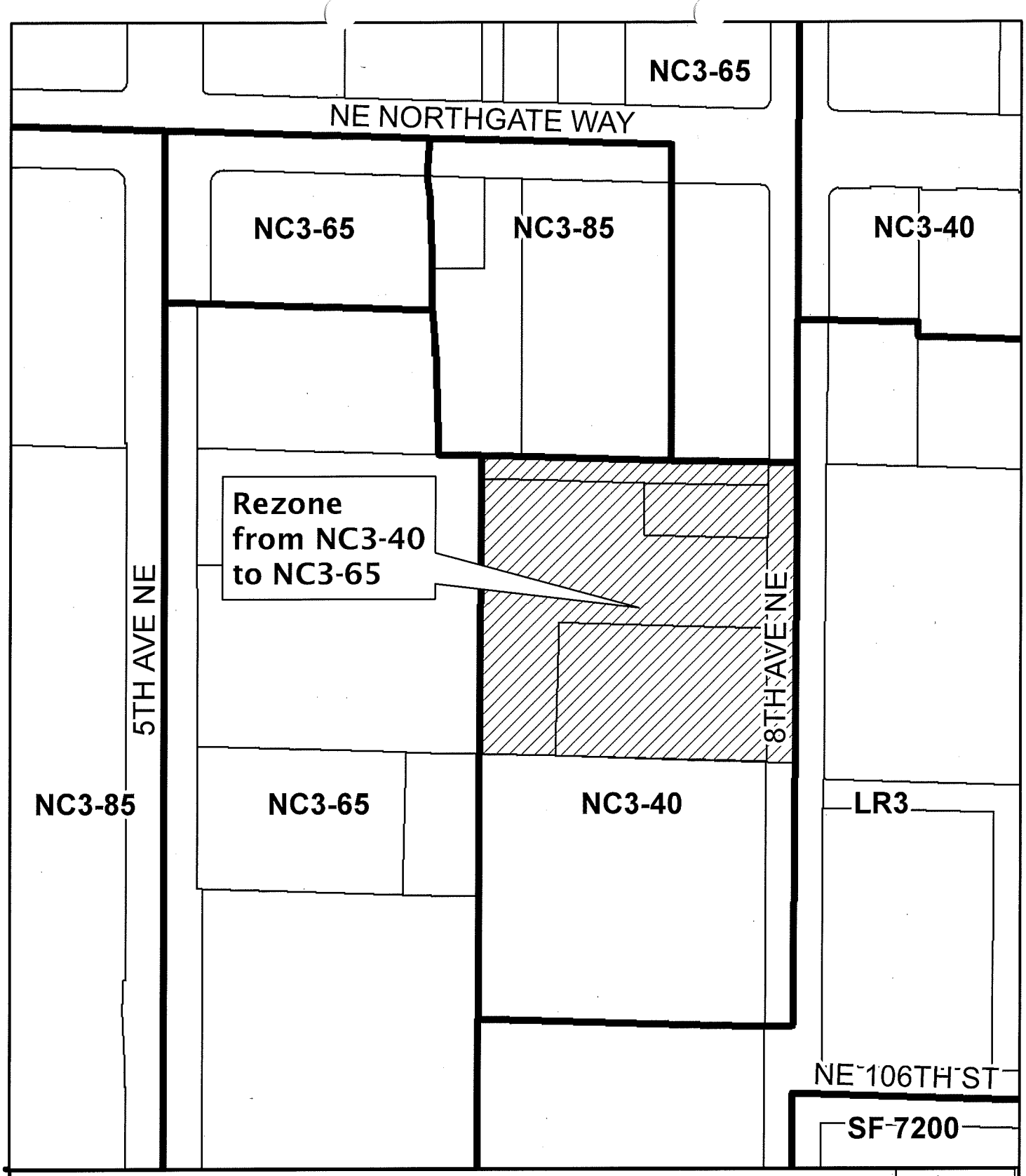
President _____ of the City Council

Filed by me this 9th day of May, 2016.

Monica Martinez Simmons, City Clerk

(Seal)

Exhibits:
Exhibit A – Rezone Map
Exhibit B – Property Use and Development Agreement



Proposed Rezone
Clerk File 314287
SDCI Application No. 3018442
10711 8th Avenue NE

Proposed Rezone

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City of Seattle, City Council.
Prepared April 13, 2016
Council Central Staff-GIS.

N

0 100 Feet

Property Use and Development Agreement

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

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor(s):	(1)	Wallace Properties-Northgate Eighth LLC	(2)	Wallace GT – Northgate II LLC
	(3)	GRE/NOP Northgate LLC		
☐ Additional grantors on page _____				
Grantee:	(1)	The City of Seattle		
☐ Additional on page _____				
Legal Description (*abbreviated if necessary*):				
☐ Additional legal description on page _____:				
Assessor's Tax Parcel ID #:				
Reference Nos. of Documents Released or Assigned:				

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed as of the date set forth below, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by one or more of the following: Wallace Properties-Northgate Eighth LLC, a Washington limited liability company, Wallace GT – Northgate II LLC, a Washington limited liability company, and GRE/NOP Northgate LLC, a Washington limited liability company (the "Owners").

RECITALS

A. This Property Use and Development Agreement may be executed by the owner(s) of the following legally described property (collectively, the "Property"), which consists of real property separately owned by three owners (collectively, the "Owners"; individually, "Owner"):

Property Owned by Wallace Properties – Northgate Eighth LLC	Parcel B of City of Seattle Short Subdivision No. 8705410 recorded May 20, 1988 under Recording No. 8805200974, in King County Washington.
Property Owned by Wallace GT – Northgate II LLC	The north 24.00 feet of the E ½ of the S ½ of the NW ¼ of the SW ¼ of the SE ¼ of Section 29, Township 26N, Range 4E, W.M., King County, Washington. Except the E 30.00 feet

	thereof. and Portion of the E ½ of the S ½ of the NW ¼ of the SW ¼ of the SE ¼ of Section 29, Township 26N, Range 4E, W.M., King County, Washington, described as follows: beginning 24.00 feet S of the NE corner of said subdivision; thence W 160.00 feet, thence S 55.00 feet, thence E 160.00 feet.
Property Owned by GRE/NOP Northgate LLC	Parcel A and Parcel C of City of Seattle Short Subdivision No. 8705410.

B. In March 2015, Kevin Cleary, on behalf of the Owners, submitted to the City of Seattle an application under Project No. 3018442 for a rezone of the Property from Neighborhood Commercial 3-40 (NC3-40) to Neighborhood Commercial 3-65 (NC3-65),

C. Seattle Municipal Code Section 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 to Seattle Municipal Code Section ("SMC") 23.34.004, each Owner signing this Agreement hereby covenants, bargains and agrees, on behalf of themselves and their successors and assigns, that they will comply with the following condition in consideration of the rezone of their property from NC3-40 to NC3-65:

> The provisions of Seattle Municipal Code Chapter 23.58B, the Affordable Housing Impact Mitigation Program for Commercial Development, shall apply to the above-described property owned by each Owner signing this Agreement.

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(s), their heirs, successors and assigns, and shall apply to after- acquired title of the Owner(s).

Section 3. Amendment. This Agreement may be amended or modified by agreement between the signing parties; provided, such 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 such further amendments to the Seattle Municipal 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 this Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 6. Repeal as Additional Remedy. Owner(s) acknowledge that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owner(s) 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 Property to conform to the requirements of the previous NC3-40 zoning designation or some other zoning designation imposed by the City Council; and/or

b. pursue specific performance of this Agreement.

[signature and acknowledgment on following page]

SIGNED this _____ day of _____, 2016.

_____

Wallace Properties-Northgate Eighth LLC, a Washington limited liability company

By: _____
(printed name)

Its: _____
(title)

STATE OF
WASHINGTON } ss.

COUNTY OF KING

On this day personally appeared before me _____(name), to me known to be the _____ (title) of Wallace Properties-Northgate Eighth 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 _____day of _____, 2016.

	Printed Name _____
	NOTARY PUBLIC in and for the State of Washington, residing at _____
	My Commission Expires _____

SIGNED this _____ day of _____, 2016.

_____

Wallace GT – Northgate II LLC, a Washington limited liability company

By: _____
(printed name)

Its: _____
(title)

STATE OF
WASHINGTON } ss.

COUNTY OF KING

On this day personally appeared before me _____(name), to me known to be the _____ (title) of Wallace GT – Northgate II 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 _____day of _____, 2016.

	Printed Name _____
	NOTARY PUBLIC in and for the State of Washington, residing at _____
	My Commission Expires _____

SIGNED this _____ day of _____, 2016.

_____

GRE/NOP Northgate LLC, a Washington limited liability company

By: _____
(printed name)

Its: _____
(title)

STATE OF
WASHINGTON } ss.

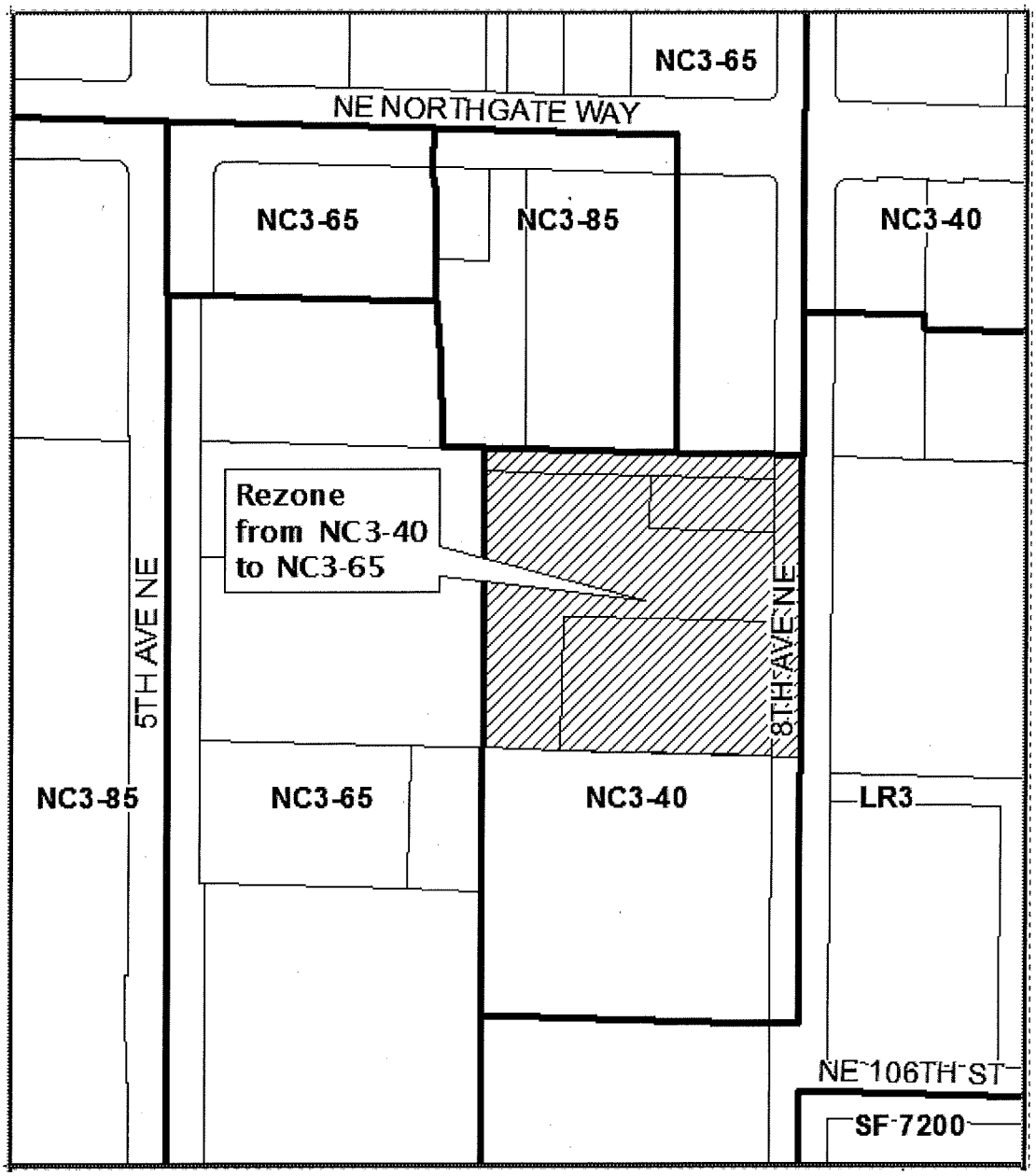
COUNTY OF KING

On this day personally appeared before me _____ (name), to me known to be the _____ (title) of GRE/NOP Northgate 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 _____day of _____, 2016.

	Printed Name _____
	NOTARY PUBLIC in and for the State of Washington, residing at _____
	My Commission Expires _____

ATTACHMENT A
REZONE MAP



Property Use and Development Agreement

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

20160608000465
CUSTOMER AG 78.00
PAGE-001 OF 006
06/08/2016 11:50
KING COUNTY, WA

FILED CITY OF SEATTLE 2016 JUN -8 PM 12:02 CITY CLERK

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor(s):	(1)	Wallace Properties-Northgate Eighth LLC	(2)	Wallace GT – Northgate II LLC
☐ Additional grantors on page _____				
Grantee:	(1)	The City of Seattle		
☐ Additional on page _____				
Legal Description (*abbreviated if necessary*):		Parcel B of City of Seattle Short Subdivision No. 8705410 recorded May 20, 1988 under Recording No. 8805200974, in King County, WA & Ptn. of the E ½ of the S ½ of the NW ¼ of the SW ¼ of the SE ¼ of Section 29, Township 26N, Range 4E, W.M., King County, WA		
☒ Additional legal description on page 2:				
Assessor's Tax Parcel ID #:		292604-9454; 292604-9270; 292604-9535		
Reference Nos. of Documents Released or Assigned:				

FILED CITY OF SEATTLE 2016 JUN -8 PM 12:02 CITY CLERK

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed as of the date set forth below, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by the following: Wallace Properties-Northgate Eighth LLC, a Washington limited liability company, and Wallace GT – Northgate II LLC, a Washington limited liability company (individually, each is an "Owner" and collectively the "Owners"). The City and Owners are each a "Party" and collectively the "Parties" to this Agreement.

RECITALS

A. This Property Use and Development Agreement is executed by the owners of the following legally described properties (collectively, the "Property"), which consists of the following real property separately owned by the Owners:

Property Owned by Wallace Properties – Northgate Eighth LLC	Parcel B of City of Seattle Short Subdivision No. 8705410 recorded May 20, 1988 under Recording No. 8805200974, in King County Washington.
Property Owned by Wallace GT – Northgate II LLC	The north 24.00 feet of the E ½ of the S ½ of the NW ¼ of the SW ¼ of the SE ¼ of Section 29, Township 26N, Range 4E, W.M., King County, Washington. Except the E 30.00 feet thereof. and Portion of the E ½ of the S ½ of the NW ¼ of the SW ¼ of the SE ¼ of Section 29, Township 26N, Range 4E, W.M., King County, Washington, described as follows: beginning 24.00 feet S of the NE corner of said subdivision; thence W 160.00 feet, thence S 55.00 feet, thence E 160.00 feet.

B. In March 2015, Kevin Cleary of Baylis Architects, on behalf of the Owners, submitted to the City of Seattle an application under Project No. 3018442 for a rezone of the Property from Neighborhood Commercial 3-40 (NC3-40) to Neighborhood Commercial 3-65 (NC3-65).

C. Seattle Municipal Code Section 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 to Seattle Municipal Code Section ("SMC") 23.34.004, each Owner signing this Agreement hereby covenants, bargains and agrees, on behalf of itself and its successors and assigns, that Owner will comply with the following condition in consideration of the rezone of their property from NC3-40 to NC3-65:

> The provisions of Seattle Municipal Code Chapter 23.58B, the Affordable Housing Impact Mitigation Program for Commercial Development, shall apply to the above-described property owned by each Owner signing this Agreement.

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 Owners, their heirs, successors and assigns, and shall apply to after-acquired title of the Owner of real property located within the rezone area in Attachment A, Rezone Map, to this Agreement.

Section 3. Amendment. This Agreement may be amended or modified by agreement between the signing Parties; provided, such 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 such further amendments to the Seattle Municipal 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 this Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 6. Repeal as Additional Remedy. Owners acknowledge that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owners 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 Property to conform to the requirements of the previous NC3-40 zoning designation or some other zoning designation imposed by the City Council; and/or

b. pursue specific performance of this Agreement.

[signatures and acknowledgments on following pages]

SIGNED this 8th day of June, 2016.

Wallace Properties-Northgate Eighth LLC, a Washington limited liability company

By: Wallace Properties Development Company LLC
Its: Manager

By: Kevin R. Wallace
Its: President

STATE OF WASHINGTON } ss.

COUNTY OF KING

On this day personally appeared before me Kevin R. Wallace, to me known to be the President of Wallace Properties Development Company LLC, a Washington limited liability company, the Manager of Wallace Properties-Northgate Eighth 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 8th day of June, 2016.

Elizabeth Laursen	Printed Name ELIZABETH A LAURSEN
	NOTARY PUBLIC in and for the State of Washington, residing at ISSAQUAH
	My Commission Expires 9/29/19

ELIZABETH A. LAURSEN
COMMISSION EXPIRES
NOTARY
PUBLIC
9-29-19
STATE OF WASHINGTON

SIGNED this 8th day of June, 2016.

_____

Wallace GT – Northgate II LLC, a Washington limited liability company

By: Wallace Northgate II Investor LLC
Its: Manager and Sole Member

By: Robert C. Wallace
Its: Manager

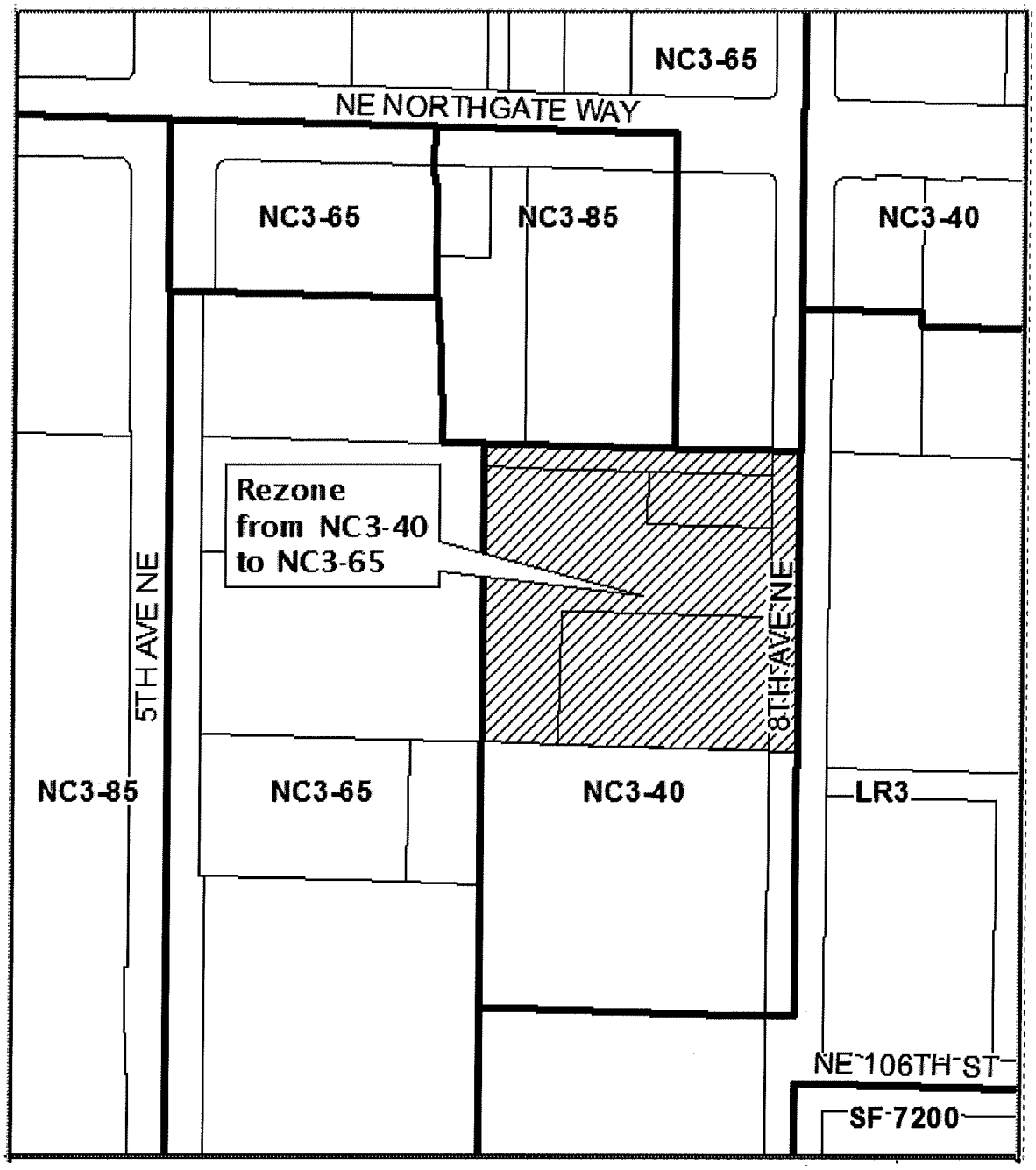
STATE OF
WASHINGTON } ss.

COUNTY OF KING

On this day personally appeared before me Robert C. Wallace, to me known to be the Manager of Wallace Northgate II Investor LLC, a Washington limited liability company, the Manager and Sole Member of Wallace GT – Northgate II 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 8th day of June, 2016.

ELIZABETH A LAURSEN	Printed Name
Elizabeth Laursen	NOTARY PUBLIC in and for the State of Washington, residing at ISSAQUAH
	My Commission Expires 9/29/19

ELIZABETH A. LAURSEN
COMMISSION EXPIRES
NOTARY
PUBLIC
9-29-19
STATE OF WASHINGTON

ATTACHMENT A
REZONE MAP