

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

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantors: Trenton Associates-McClellan, LLC, a Washington limited liability company

Grantee: The City of Seattle, a Washington charter city

Legal Description:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 AND 14, BLOCK 2, MCARTHUR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE(S) 92, IN KING COUNTY, WASHINGTON; AND

LOTS 1, 2, 3, 4, 5, 6, 7 AND 8, BLOCK 5, MCARTHUR'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 11 OF PLATS, PAGE(S) 92, IN KING COUNTY, WASHINGTON.

Assessor's Tax Parcel ID#: XXXXXXXXXXXXXXXXXXXX

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT ("Agreement") is executed as of this _____ day of _____, 2013, in favor of the CITY OF SEATTLE, a Washington charter city (the "City"), by TRENTON ASSOCIATES-MCCLELLAN, LLC, a Washington limited liability company (the "Owner").

RECITALS

A. Owner is the owner of that certain real property legally described as: Lots 1-14 of Block 2, and Lots 1-8 of Block 5, McArthur's Addition, according to the plat thereof recorded in Volume 11 of plats, page 92, in King County, Washington. (the "Property"). The Property is located in the City of Seattle and is zoned Single Family 5000 (SF5000). Exhibit 1 to this Agreement shows the location of the Property and the area to be rezoned.

B. On or around September 16, 2011, the Owner submitted to the City a request to rezone the Property from SF5000 to Seattle Mixed with a 65-foot height limit (SM-65'), as authorized under Seattle Municipal Code (SMC) Section 23.34 (the "Rezone"). The Rezone would allow proposed development at the Property that will include two seven-story mixed use structures, as reflected in Master Use Permit Nos. 3012417 and 3012217.

C. Seattle Municipal Code (SMC) Section 23.34.004 allows the City to approve a contract 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:

1. Agreement. Pursuant to SMC 23.34.004, the Owner hereby covenants, bargains and agrees, on behalf of itself and its successors and assigns, that it will comply with the following limitations and conditions in consideration of the Rezone:

- a. Future development of the Property shall be those improvements circumscribed by the approved uses, structures, landscaping and street improvements in substantial conformance with the approved plans for Master Use Permit numbers 3012217 and 3012247, dated September 6, 2012, and as presented to the Hearing Examiner at the public hearing on January 28, 2013.
- b. Prior to the granting of any Certificate of Occupancy for either or both of the proposed structures, the Owner will supply, in lieu of other improvements to the 24th Avenue South right-of-way, a plan and timetable for development of a pedestrian access path from South McClellan Street to the Cheasty Greenbelt, substantially as contained in the plans presented to the Hearing Examiner on January 28, 2013. Should the Owner, having otherwise met the standard requirements for a Certificate of Occupancy for either or both of the proposed structures, be unable to secure plan approval from the Seattle Department of Transportation, the Department of Parks and Recreation, and the Department of Planning and Development, the Owner may instead grant to the Department of Parks and Recreation an easement suitable to accommodate future development of a pedestrian access path from South McClellan Street to the Cheasty Greenbelt where such path crosses the Property. The easement must be utilized by the Department of Parks and Recreation for use of the pedestrian path within ten years of its granting, or the easement will expire. Should the easement be utilized by the Department of Parks and Recreation for use of the pedestrian path, the easement will remain in perpetuity.
- c. In cooperation and coordination with Seattle Public Utilities, the Owner shall undertake a capacity study of the existing sewer system on either side of South Lander Street servicing the Property and provide, if deemed necessary after analysis of the capacity study, improvements to the sewer infrastructure that are deemed adequate by the City to provide capacity to serve the proposed developments.

2. Agreement Runs with the Land. This Agreement shall be recorded in the real property records of King County. The covenants hereof shall be deemed to attach to and run with the Property and shall be binding upon the Owner, its heirs, successors and assigns, and shall apply to after-acquired title of the Owner in the Property.

3. Termination. The covenants herein shall expire at such time as the Rezone expires or is revoked pursuant to SMC 23.34.004.

4. Amendment. This Agreement may be amended or modified by agreement between Owner and the City; provided, such amendment shall be approved by the legislative authority of the City by ordinance.

5. Exercise of Police Power. Nothing in this Agreement prevents 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.

6. 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.

7. Benefited. This Agreement is made for the benefit of the City and for the benefit of the owners of property within 300 feet of the Property and either the City or any such property owners may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

8. Repeal as Additional Remedy. Owner acknowledges that compliance with the conditions of this Agreement is a condition of the Rezone and that if Owner or its successor(s) avails itself of the benefits of the Rezone but then fails to comply with the conditions of this Agreement, in addition to pursuing any other remedy, the City may revoke the Rezone by ordinance and require the use of the Property to conform to the requirements of the SR5000 zone, the original zoning of the Property prior to the Rezone.

//

//

//

//

//

//

//

//

//

Signed this ____ day of _____, 2013 by:

TRENTON ASSOCIATES-MCCLELLAN,
LLC, a Washington limited liability company

By _____
Michael D. Ross, Managing Member

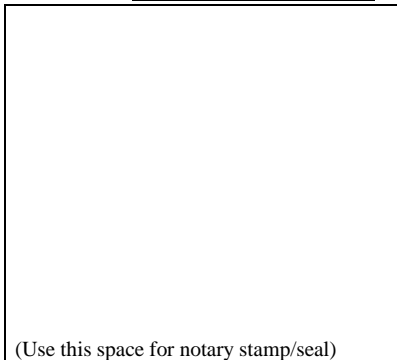
By _____
Robert Spitzer, Managing Member

DRAFT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Michael D. Ross is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as a Managing Member of Trenton Associates – McClellan, LLC, to be the free and voluntary act of such parties for the uses and purposes mentioned in this instrument.

DATED: _____



Print Name: _____
NOTARY PUBLIC for the State of Washington, residing at

My appointment expires: _____

DRAFT

