



SEATTLE CITY COUNCIL

Legislative Summary

CB 119303

Record No.: CB 119303

Type: Ordinance (Ord)

Status: Passed

Version: 1

Ord. no: Ord 125632

In Control: Planning, Land
Use, and Zoning
Committee

File Created: 07/09/2018

Final Action: 07/30/2018

Title: AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 159 of the Official Land Use Map to rezone property located at 5201 Rainier Avenue South 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)), and accepting a Property Use and Development Agreement as a condition of rezone approval. (Petition by Hugh Schaeffer, S+H Works, LLC, C.F. 314311, SDCI Project 3018378)

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Johnson

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

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

Drafter: Emilia.Sanchez@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published:

☐ Yes

☐ No

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	07/10/2018	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	07/10/2018	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 City Council 07/16/2018 referred Planning, Land Use, and Zoning Committee
- Action Text: The Council Bill (CB) was referred. to the Planning, Land Use, and Zoning Committee
- Notes:
- 1 Planning, Land Use, and Zoning Committee 07/18/2018 pass Pass
- Action Text: The Committee recommends that City Council pass the Council Bill (CB).
- Notes:
- In Favor: 3 Chair Johnson, Vice Chair O'Brien, Member Herbold
- Opposed: 0
- 1 City Council 07/30/2018 passed Pass
- Action Text: The Motion carried, the Council Bill (CB) was passed as amended by the following vote, and the President signed the Bill:
- Notes: ACTION 1:
- Motion was made by Councilmember Johnson, duly seconded and carried, to amend Council Bill 119303, Exhibit B, by substituting an executed Property Use and Development Agreement for the unexecuted Property Use and Development Agreement.
- ACTION 2:
- Motion was made and duly seconded to pass Council Bill 119303 as amended.
- In Favor: 8 Councilmember Bagshaw, Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember Mosqueda, Councilmember O'Brien, Councilmember Sawant
- Opposed: 0
- 1 City Clerk 07/30/2018 attested by City Clerk
- Action Text: The Ordinance (Ord) was attested by City Clerk.
- Notes:
-

CITY OF SEATTLE
ORDINANCE 125632
COUNCIL BILL 119303

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 159 of the Official Land Use Map to rezone property located at 5201 Rainier Avenue South 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)), and accepting a Property Use and Development Agreement as a condition of rezone approval. (Petition by Hugh Schaeffer, S+H Works, LLC, C.F. 314311, SDCI Project 3018378)

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. This ordinance rezones the following legally described lots ("the Rezone Area") commonly known as 5201 Rainier Avenue South:

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.

Section 2. Page 159 of the Official Land Use Map, Seattle Municipal Code Section 23.32.016, is amended to rezone the Property described in Section 1 of this ordinance, and shown in Exhibit A to this ordinance 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)). Approval of this rezone is conditioned upon complying with the Property Use and Development Agreement (PUDA) approved in Section 3 of this ordinance.

Section 3. The PUDA attached to this ordinance as Exhibit B is approved and accepted.

Section 4. The City Clerk is authorized and directed: to file the PUDA with the King County Recorder's Office; to file, upon return of the recorded PUDA from the King County Recorder's Office, the original PUDA along with this ordinance at the City Clerk's Office; and to deliver copies of the PUDA and this ordinance to the Director of the Seattle Department of Construction and Inspections and to the King County Assessor's Office.

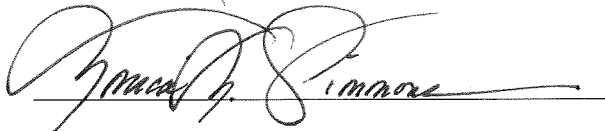
Section 5. This ordinance, effectuating a quasi-judicial decision of the City Council and not subject to mayoral approval or disapproval, shall take effect and be in force 30 days from and after its passage and approval by the City Council.

Passed by the City Council the 30th day of July, 2018,
and signed by me in open session in authentication of its passage this 30th day of July, 2018.



President _____ of the City Council

Filed by me this 30th day of JULY, 2018.



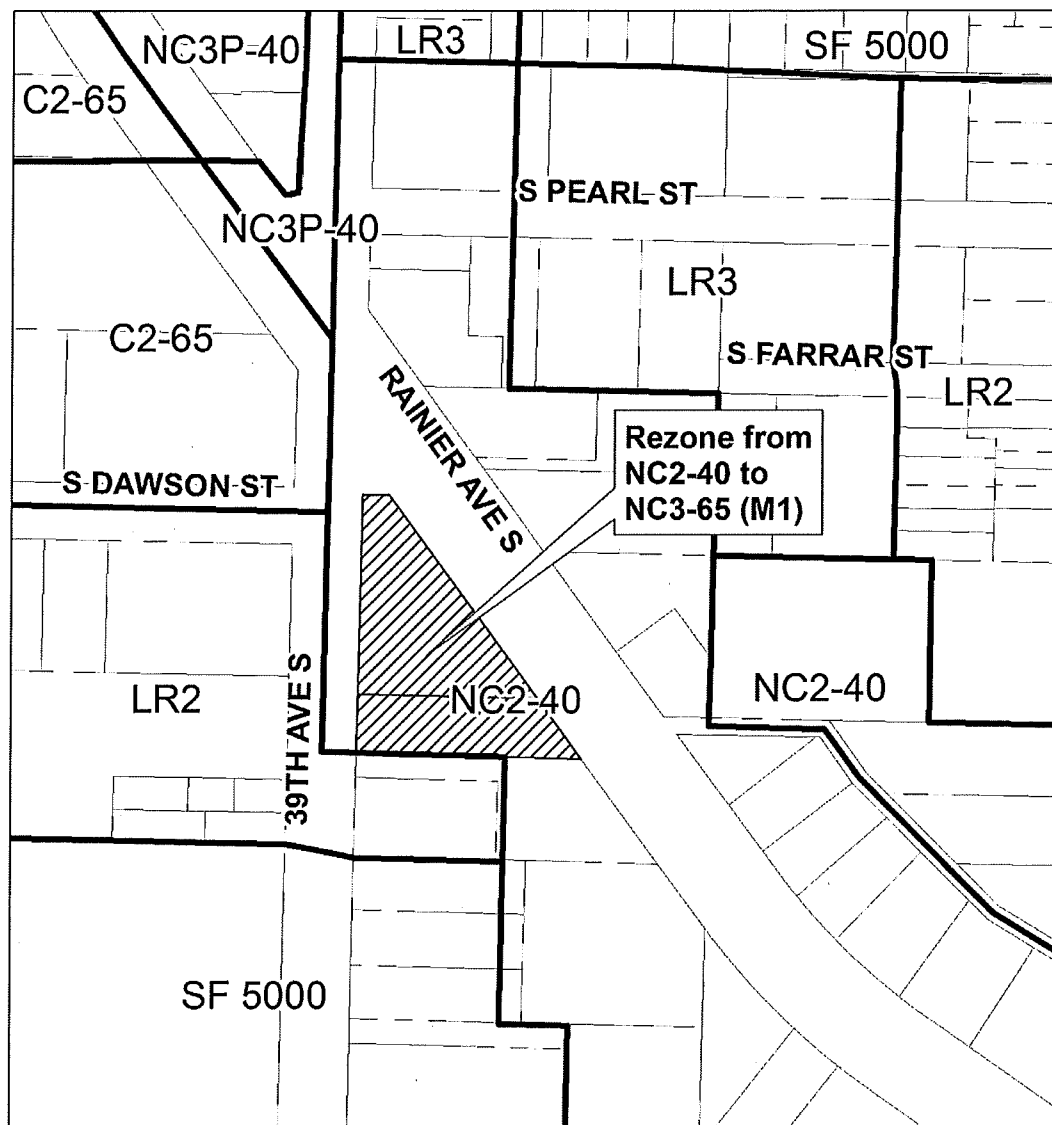
Monica Martinez Simmons, City Clerk

(Seal)

Exhibits:

Exhibit A – Rezone Map

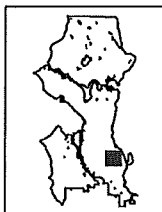
Exhibit B – Property Use and Development Agreement



Proposed Rezone
SDCI Project No. 3018378
5201 Rainier Avenue South



rezoning site



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City of Seattle. Prepared July 6, 2018
by Council Central Staff.

0 100 200 300
Feet

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

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

RECITALS

A. 5201 Rainier Ave 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.

SIGNED this ____ day of ____, 2018.

5201 Rainier Ave, LLC

a Washington limited liability company

By: ____

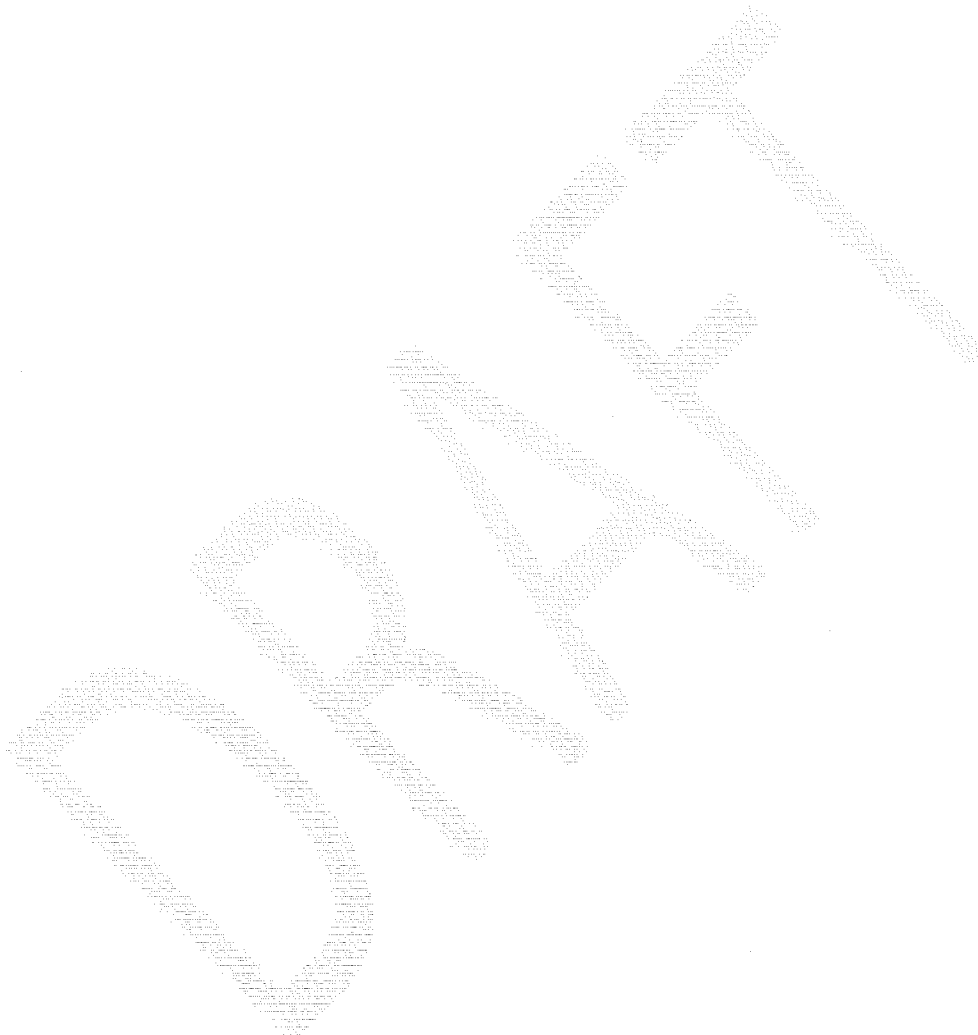
Scott Shapiro

Its: Manager

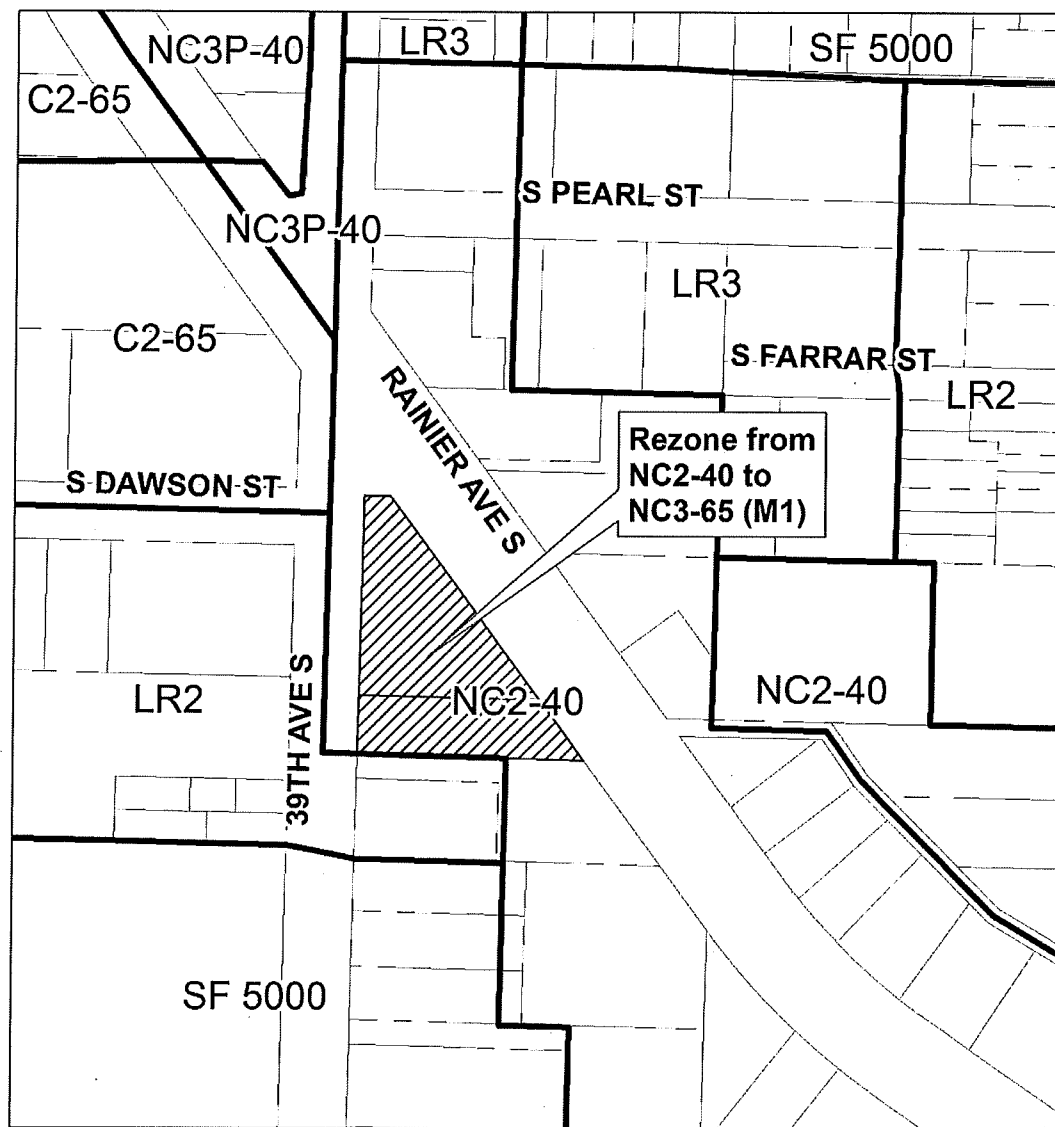
On this day personally appeared before me Scott Shapiro, to me known to be the Manager of 5201 Rainier Ave LLC, a Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, 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 ____, 2018.

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



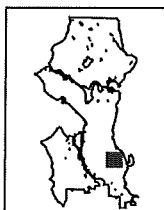
Attachment A: Rezone Map



Proposed Rezone
SDCI Project No. 3018378
5201 Rainier Avenue South



rezoning site



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City of Seattle. Prepared July 6, 2018
by Council Central Staff.

0 100 200 300 Feet

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

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.

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Section 4. Termination of Conditions.

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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.

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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 20th day of July, 2018.

5201 Rainier LLC,
a Washington limited liability company

By: MS Ventures LLC,
a Washington limited liability company

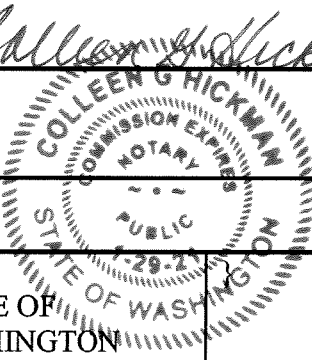
Its: Manager

By: Scott E. Shapiro

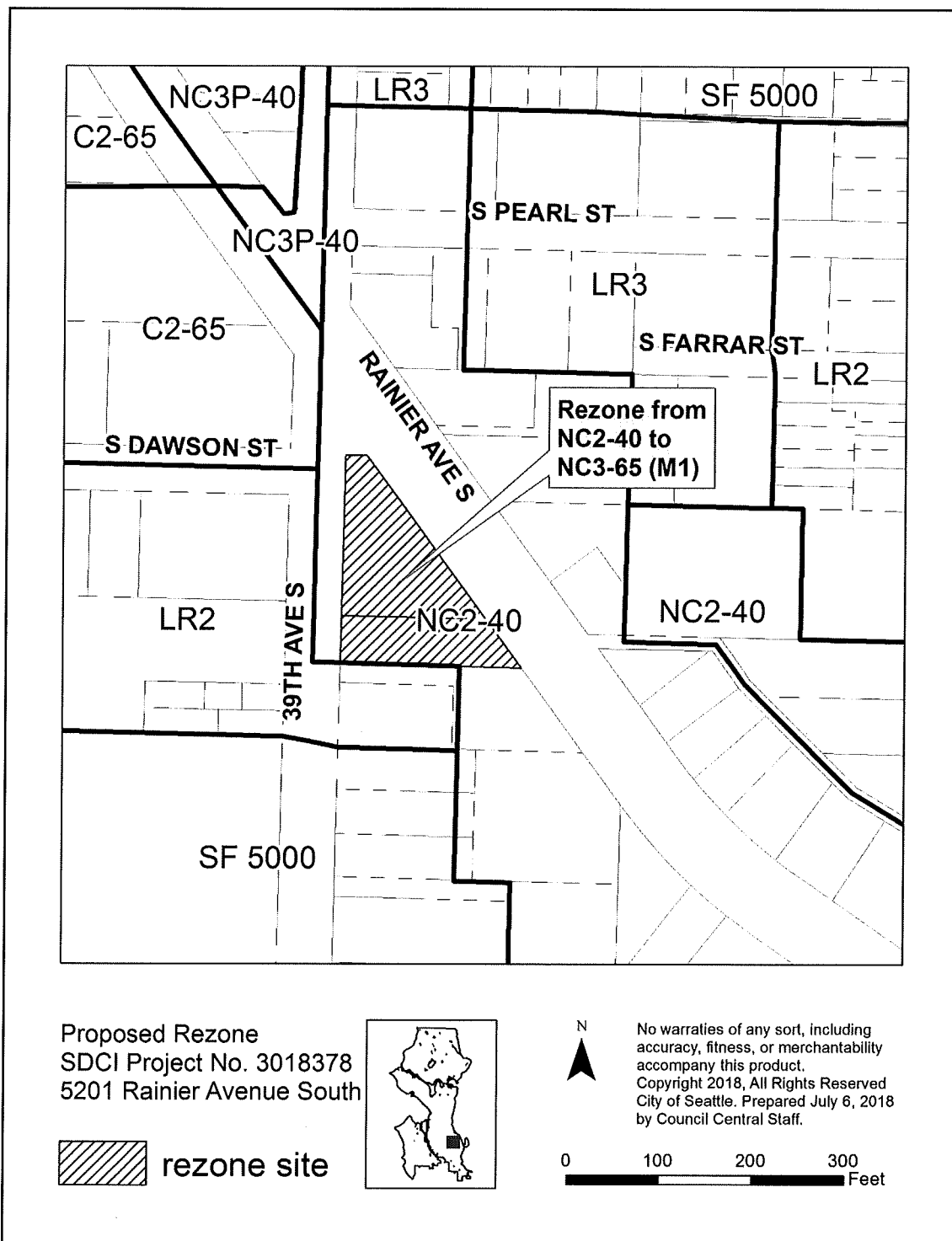
Its: Manager

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 20th 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



STATE OF WASHINGTON -- KING COUNTY

--SS.

365020

No. 34,35,36,37,38,39

CITY OF SEATTLE, CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORDINANCE 125632.33

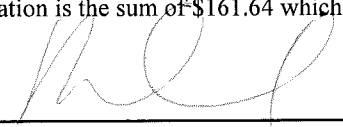
was published on

08/16/18

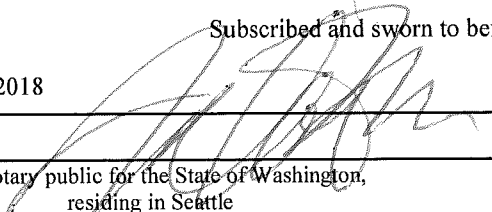
The amount of the fee charged for the foregoing publication is the sum of \$161.64 which amount has been paid in full.



Affidavit of Publication


Subscribed and sworn to before me on

08/16/2018


Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

The full text of the following legislation, passed by the City Council on July 30, 2018, and published below by title only, will be mailed upon request, or can be accessed at <http://seattle.legistar.com>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>.

Ordinance 125632

Council Bill 119303

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 159 of the Official Land Use Map to rezone property located at 5201 Rainier Avenue South 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)), and accepting a Property Use and Development Agreement as a condition of rezone approval. (Petition by Hugh Schaeffer, S+H Works, LLC, C.F. 314311, SDCI Project 3018378)

Ordinance 125633

Council Bill 119320

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Ordinance 125634

Council Bill 119305

AN ORDINANCE relating to street and sidewalk use fees; adopting a Free-Floating Bike Share Program Fee Schedule; and amending Ordinance 125493, which amended the 2018 Budget (Ordinance 125475), by increasing appropriations to the Seattle Department of Transportation; all by a 3/4 vote of the City Council.

Ordinance 125635

Council Bill 119306

AN ORDINANCE relating to appropriations for the Seattle Department of Transportation's Delridge Multimodal Corridor Project; amending Ordinance 125475, which adopted the 2018 Budget; and lifting a proviso.

Ordinance 125636

Council Bill 119298

AN ORDINANCE relating to the Municipal Art Fund; amending Section 20.32.030 of the Seattle Municipal Code to remove the timing limitation on the use of funding.

Ordinance 125637

Council Bill 119309

AN ORDINANCE related to appropriations for the Office for Civil Rights; amending Ordinance 125493, which amended the 2018 Budget (Ordinance 125475); and lifting a proviso imposed on the Office for Civil Rights for funding a comprehensive community-based youth diversion program by Green Sheet 97-1-B-1.

Ordinance 125638

Council Bill 119314

AN ORDINANCE relating to Seattle Public Utilities; declaring certain real property rights to be surplus to the needs of Seattle Public Utilities; and authorizing the General Manager and CEO of Seattle Public Utilities to grant a water utility easement to the Ryan-GHC Two, LLC, a limited liability company of the state of Delaware to use certain City of Seattle property in the Northeast Quarter of Section 25, Township 23 North, Range 4 East, W.M., in King County, Washington for the purpose of constructing, operating, and maintaining a storm drain pipeline crossing the City of Seattle's Bow Lake Pipeline right-of-way.

Ordinance 125639

Council Bill 119316

AN ORDINANCE relating to the Human Rights Code; adding Section 8 or other subsidy program administrator to the definition of person; clarifying the difference between reasonable accommodation and reasonable modification; broadening coverage of unfair practices related to reasonable accommodations and reasonable modifications to any person; and amending Sections 14.08.020 and 14.08.040 of the Seattle Municipal Code.

Date of publication in the Seattle Daily Journal of Commerce, August 16, 2018.

8/16(365020)