

**EIGHTH AMENDMENT TO
REAL ESTATE PURCHASE AND SALE AGREEMENT**

THIS EIGHTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT (the "Amendment") is made and entered into effective the ____ day of _____, 2009, by and between KING COUNTY, a municipal corporation and political subdivision of the state of Washington ("Seller"), and NORTH LOT DEVELOPMENT, L.L.C., a Delaware limited liability company ("Buyer").

WHEREAS, Seller and Buyer entered into that certain Real Estate Purchase and Sale Agreement dated June 21, 2007 (the "Agreement") which provided for the sale by Seller and the purchase by Buyer of certain real property in Seattle, Washington, which property is more specifically described in the Agreement (the "Property"); and

WHEREAS, the Agreement was amended by a First Amendment dated September 28, 2007; a Second Amendment dated October 28, 2007; a Third Amendment dated November 20, 2007; a Fourth Amendment dated January 31, 2008; a Fifth Amendment dated March 20, 2008; a Sixth Amendment dated April 30, 2008; and a Seventh Amendment dated December 17, 2008; and

WHEREAS, the Due Diligence Period in Section 5.1 of the Agreement, which contains certain Buyer's Contingencies (as defined in the Agreement), was extended by the Sixth Amendment, and Buyer agreed that "by agreeing to and entering into this Sixth Amendment to Real Estate Purchase and Sale Agreement, Buyer shall be deemed to have removed Buyer's Contingencies as to the Stadium Agreements and Stadium Claim, only, and all provisions of Section 4.1 of the Agreement that result from such removal shall be in full force and effect"; and

WHEREAS, the Due Diligence Period in Section 5.1 of the Agreement, which contains certain Buyer's Contingencies (as defined in the Agreement), was extended by the Seventh Amendment until March 31, 2009; and Buyer agreed that "Buyer hereby waives all of Buyer's Contingencies other than those related to 'environmental (including appropriate concurrence from the Department of Ecology to enable development activities which meet the substantive requirements of the Model Toxics Control Act', as set forth in Section 5.1"; and

WHEREAS, one of Buyer's Contingencies was the environmental status of the Property, including the appropriate concurrences from the Washington State Department of Ecology ("Ecology"); and

WHEREAS, during Buyer's due diligence review, it has been determined that the Property contains Hazardous Substances as defined in RCW 70.105D.020(10); and

WHEREAS, as a result of the existence of such Hazardous Substances, Buyer's decision to purchase the Property will be subject to its ability to negotiate a Clean-Up Action Plan with Ecology and obtain a Prospective Purchaser Consent Decree for the Property under RCW 70.105D.040(5) and WAC 177-340-520 from the appropriate court (the "Consent Decree"); and

WHEREAS, in part due to the issues relating to the existence of Hazardous Substances on the Property, the parties have not finalized the forms of the Deed and Covenants and Reserved Easements (as defined in the Agreement).

WHEREAS, Buyer has completed all of Buyer's due diligence review and is satisfied with the Property, except for those matters related to the Hazardous Substances; and

WHEREAS, the parties desire to acknowledge that certain of the requirements of the Agreement have been satisfied and to otherwise modify certain provisions of the Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The first sentence in Section 4.1.3 of the Agreement is hereby amended by changing "from the date this Agreement is fully executed" to "from the date the Eighth Amendment is fully executed."

2. Section 4.4.3 of the Agreement is hereby deleted.

3. Section 4.5.1 of the Agreement is hereby amended by deleting the term "row houses" in the fourth line.

4. a. Buyer has sought and obtained the concurrence of the City of Seattle Mayor, of amendments to the City's land use code to allow for an increase in the permitted height of buildings within the development under specified conditions, which in turn would increase the gross square footage of the development. Legislation to approve these amendments to the land use code is currently pending before the Seattle City Council as Council Bill 116505, attached hereto as Exhibit 1 ("North Lot ORD"). Based on information gained about the site during Buyer's development feasibility analysis, Buyer has concluded that should the North Lot ORD be adopted, that it is inappropriate to extend the sixty percent housing requirement currently required by Section 4.5.2 to the larger development.

b. For the purposes of satisfying the requirements of Section 4.5.2 of this Agreement to adjust the sixty percent requirement, Buyer has submitted an alternative development plan as to the percentage of the development that must be housing only, as set forth in the MUP Submittal Project No. 3009251 submitted to the City of Seattle on June 30, 2008, as revised by a submittal dated May 8, 2009. A written synopsis of the May 8, 2009 revised MUP is attached hereto as Exhibit 2 ("Alternative Development Plan"), which has been approved consistent with Section 4.5.2 of this Agreement by the City of Seattle Mayor and the King County Executive. The Alternative Development Plan provides for the development's housing component to be less than sixty percent of the development's gross square footage (not including parking) that would be allowable under the Seattle land use code as amended by the North Lot ORD, the height limits imposed by the Stadium View Corridor in Section 4.5.7 of this Agreement, and any easements existing as of June 21, 2007. The King County Council approved, by Ordinance _____, the reduction of the housing component square footage percentage contemplated in the Alternative Development Plan.

c. If the North Lot ORD is adopted by the City of Seattle with provisions that will allow the development's gross square footage to be at least 1,119,712 square feet, not including parking, as specified in the May 8, 2009 revised MUP, then the text of Section 4.5.2 of the Agreement will be deleted and replaced with the following:

Buyer shall covenant that the development shall include at least 350,000 gross square feet of housing, not including parking, for multiple income levels and family sizes and include a minimum of 400 housing units, of which a minimum of 200 housing units shall be ownership units. All housing units in the development must meet either LEED Certification or Built Green Certification at the highest level determined to be economically feasible by Buyer, in the exercise of its best business judgment. The development's housing component shall be consistent with the Alternative Development Plan as to the percentage of the development that must be housing only, which shall be not less **than fifty-eight percent of the development's gross square footage** (not including parking) allowable under the Seattle land use code as amended by the North Lot ORD, the height limits imposed by the Stadium View Corridor in Section 4.5.7 of this Agreement and any easements existing as of June 21, 2007. If the gross square footage of the development is increased, because of a additional changes in zoning to allow for an increase in the height of buildings within the development, and if Buyer concludes that it is inappropriate to extend the fifty-eight percent housing requirement to the larger development, based on information gained about the site during Buyer's development feasibility analysis, Buyer may present this information to Seller and the City of Seattle and develop the property pursuant to an alternative development plan as to the percentage of the development that must be housing only, provided that such alternative development plan is approved by the King County Executive, following approval by ordinance of the King County Council, and the Mayor of the City of Seattle. This covenant shall expire upon the completion of the construction of the Project in a manner consistent with the requirements of this Agreement, including without limitation, the development schedule requirements in Section 4.5.11 of this Agreement.

5. Section 4.5.7 of the Agreement is deleted and replaced with the following:

Buyer shall covenant that the development on the Property shall not exceed 70 feet in height, measured in the manner for measuring height required by the applicable portions of Seattle Municipal Code Section 23.86.006 to which Buyer vests in its filing of an application for a master use permit, for a distance of 60 feet on each side of the 90-foot-wide easement on the Second Avenue Extension that is granted to the PSA. This view covenant is intended to provide a view corridor to and from the Stadium located to the South of the Property, which Stadium is owned by the PSA. This covenant shall run in perpetuity. Provided however, this view covenant shall be satisfied if the Buyer provides the Seller with a written agreement between the Buyer and PSA and First and Goal, Inc. ("FGI") providing either for different view corridors or that PSA and FGI will not seek to enforce any rights to the view corridor described in this Section 4.5.7.

6. The parties acknowledge and agree that:

a. Buyer has to date provided FGI and PSA the right to early review and comment on Buyer's development plans for the North Half Lot as required by Section 4.5.8 and 5.2.5 of the Agreement.

b. Development of the project did commence prior to July 1, 2008, as required by Section 4.5.11 of the Agreement.

c. Section 4.6.1 of the Agreement will be satisfied upon the issuance of the Master Use Permit by the City of Seattle.

d. Buyer has satisfied the requirement in Section 4.6.2 of the Agreement to prepare at its sole expense a traffic, circulation, and staging study designed to inform Buyer of the traffic and circulation issues that arise during the staging of large events.

7. Buyer's last remaining Buyer's Contingency shall be satisfied with the entry of the Consent Decree, and, therefore, the third sentence of Section 5.1 of the Agreement is hereby amended in its entirety to read as follows: "Buyer shall make such determination on or before 5:00 pm on the earlier of (a) the twentieth (20th) day after the entry of the Consent Decree or (b) January 1, 2010 ("Due Diligence Period"), provided that Buyer may extend the Due Diligence Period, as provided in Section 5.3, in the event Seller has not waived or satisfied the Seller's Due Diligence Contingency by such date."

8. The text of that last paragraph in Section 5.2 of the Agreement is deleted and replaced with the following:

Seller agrees not to unreasonably withhold its approval of the satisfaction of the foregoing conditions. If Buyer has made reasonable efforts to obtain PSA's approval pursuant to contingencies 5.2.3 and 5.2.4 above, has submitted a proposal for parking in a timely manner that meets the requirements of this Agreement, and has been unable to obtain PSA's approval, Seller shall remove said contingencies, notwithstanding the lack of such approvals. Seller agrees to notify Buyer, in writing, thereby removing the Seller's Due Diligence Contingency. Seller shall make such determination on or before 5:00 pm on the last day of the Due Diligence Period. In the event this contingency is not satisfied or waived by Seller within the Due Diligence Period, either Party may terminate this Agreement upon written notice to the other, and neither party shall have any further rights or obligations to the other hereunder; provided however, Seller may extend the Due Diligence Period for up to two (2) consecutive 175-day periods (each, an "Extension Period"). To exercise an Extension Period, Seller shall give written notice to Buyer of the extension not later than two (2) business days before the then-applicable end of the Due Diligence Period.

9. Section 5.3 of the Agreement is hereby amended by reducing the number of extensions from 4 to 2, and changing the extension periods from "90 days" to "175 days."

10. Upon execution of this Eighth Amendment, the extension, and any requirement for an extension payment, for any extension previously exercised by Buyer shall be null and void.

11. Section 5.4 of the Agreement is hereby amended to provide that the date for the parties to agree on the forms of the Deed and Covenants and the Reserved Easements shall be June 30, 2009, unless a longer period is agreed to in writing by the parties; and

12. The text of Section 10.1 of the Agreement is deleted and replaced with the following:

The Closing shall take place on the earlier of (i) sixty (60) days (or on such later business day as the parties may agree) after Buyer and Seller remove or waive all of Buyer's and Seller's Contingencies as the same may be extended as provided in Sections 5.2 or 5.3, or (ii) December 16, 2010 (the "Closing Date"). If all Contingencies have been removed or waived before Buyer has obtained an extension of the Due Diligence Period under Section 5.3, then Buyer may instead obtain extensions of the Closing Date in the same manner as provided for an extension under Section 5.3. If all Contingencies are removed or waived during Buyer's first extension under Section 5.3, then Buyer may elect in writing and at no cost to extend the Closing Date for the same period remaining under the first extension, and Buyer may in addition extend the Closing Date with a second extension in the same manner as provided for an extension under Section 5.3. If all Contingencies are removed or waived during Buyer's second extension under Section 5.3, then Buyer may elect in writing and at no cost to extend the Closing Date for the same period remaining under the second extension. Any extension of the Closing Date under this Section 10.1 shall extend the Closing Date no later than December 16, 2010 regardless of whether there would be additional days remaining under the then applicable 175-day extension period. Any extension of the Closing Date under this Section 10.1 will be treated and considered to be the same under the terms of this Agreement as an extension of the Due Diligence Period under Section 5.3.

13. Except as previously amended and as hereby amended, the terms of the Agreement shall remain in full force and effect.

14. Exhibit 1 – Seattle City Council Bill 116505 and Exhibit 2 - a written synopsis of the May 8, 2009 revised MUP are attached hereto.

“SELLER”

KING COUNTY, a municipal corporation and political subdivision of the state of Washington

By _____
Its _____

APPROVED AS TO FORM:

By _____
Deputy Prosecuting Attorney

“BUYER”

NORTH LOT DEVELOPMENT, L.L.C.
a Delaware limited liability company

By: Opus Northwest, L.L.C., Member

By _____
Its _____

By: Nitze-Stagen & Co., Inc., Member

By _____
Kevin D. Daniels, President

APPROVED AS TO FORM:

By _____
Counsel to North Lot Development, L.L.C.

ORDINANCE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AN ORDINANCE related to land use and zoning, amending Sections 23.41.004, 23.41.012, 23.49.178, 23.66.120, 23.66.122, 23.66.124, 23.66.130, 23.66.140, 23.66.150, 23.66.170, 23.76.032, of the Seattle Municipal Code; adding new Sections 23.49.180, and 23.49.181; to implement Comprehensive Plan policies for accommodating growth by permitting additional building height under specified conditions within a defined area of the Pioneer Square Mixed 85-120 zone, to amend applicable provisions of the Pioneer Square Preservation District regulations to allow such development; to allow for a longer term for a master use permit for development under Section 23.49.180 and Section 23.49.181; and to make technical changes.

WHEREAS, the City adopted Pioneer Square Neighborhood Plan goals and policies into the Comprehensive Plan in December 1998; and

WHEREAS, both residential and employment growth in the Pioneer Square Urban Center Village have lagged behind other Downtown neighborhoods and, if trends continue, will be insufficient to meet Comprehensive Plan growth targets, and

WHEREAS, the Livable South Downtown Planning Study provided a public process for identifying ways in which South Downtown neighborhoods, including Pioneer Square, could attract sufficient growth to meet Comprehensive Plan housing and employment growth targets and accomplish neighborhood plan goals and policies, including a review of proposals for high-density mixed-use development in Pioneer Square; and

WHEREAS, the proposed Land Use Code amendments would facilitate new, high density mixed-use development at a location on the edges of the Pioneer Square Preservation District to contribute to the revitalization of Pioneer Square, enhance urban form, and accommodate additional growth without requiring the demolition of historic structures or displacement of existing uses; and

WHEREAS, the Pioneer Square Preservation Board created *Design Guidelines for New Construction on the North Lot*, approved by the Director of the Department of Neighborhoods in May of 2007 to provide guidance for development of the Stadium North Lot; and

WHEREAS, the Pioneer Square Preservation Board reviewed the proposed amendments and voted to endorse an earlier version of the draft amendments on December 17, 2008; and

WHEREAS, environmental review requirements for this ordinance are satisfied by the analyses provided in Livable South Downtown Planning Study's environmental review documents; NOW, THEREFORE,

1 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

2 Section 1. Subsection C of 23.41.004 of the Seattle Municipal Code, which Section was
3 last amended by Ordinance 122670, is amended as follows:

4 **23.41.004 Applicability**

5 * * *

6
7 C. Exemptions. The following structures are exempt from design review:

8 1. New structures located ~~((with))~~in special review districts,~~((as))~~ regulated by
9 Chapter 23.66; design review is not available for an applicant applying for additional building height
10 under the provisions of Section 23.49.180;

11
12 2. New structures ~~((with))~~in Landmark districts~~((as))~~ regulated by SMC Title 25,
13 Environmental Protection and Historic Preservation;

14 3. New structures that are within the historic character area of the Downtown
15 Harborfront 1 zone~~((as))~~ regulated by Section 23.60.704, or that are otherwise required to
16 undergo shoreline design review ~~((as regulated by))~~pursuant to Chapter 23.60;

17
18 4. New monorail transit facilities that have been subject to review by the Seattle
19 Design Commission; and

20 5. New light rail transit facilities that have been subject to review by the Seattle
21 Design Commission.

22
23 Section 2. Section 23.41.012 of the Seattle Municipal Code, which Section was last
24 amended by Ordinance 122935, is amended as follows:

25 **23.41.012 Development standard departures**

1 A. Departure from Land Use Code requirements may be permitted for new multifamily,
2 commercial, and Major Institution development as part of the design review process. Departures
3 may be allowed if an applicant demonstrates that departures from Land Use Code requirements
4 would result in a development that better meets the intent of adopted design guidelines.
5

6 B. Departures may be granted from any Land Use Code standard or requirement, except
7 for the following:

- 8 1. Procedures;
- 9 2. Permitted, prohibited or conditional use provisions, except that departures may
10 be granted from development standards for required street-level uses;
- 11 3. Residential density limits;
- 12 4. In Downtown zones, provisions for exceeding the base FAR or achieving
13 bonus development as provided in Chapter 23.49;
- 14 5. In Downtown zones, the minimum size for Planned Community Developments
15 as provided in Section 23.49.036;
- 16 6. In Downtown zones, the average floor area limit for stories in residential use in
17 Chart 23.49.058.D.1;
- 18 7. In Downtown zones, the provisions for combined lot developments as
19 provided in Section 23.49.041;
- 20 8. In Downtown Mixed Commercial zones, tower spacing requirements as
21 provided in subsection 23.49.058.E;
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1 9. Downtown view corridor requirements, provided that departures may be
2 granted to allow open railings on upper level roof decks or rooftop open space to project into the
3 required view corridor, provided such railings are determined to have a minimal impact on views
4 and meet the requirements of the Building Code;

5 10. Floor Area Ratios;

6 11. Maximum size of use;

7 12. Structure height, except that:

8 a. Within the Roosevelt Commercial Core building height departures up
9 to an additional 3 feet may be granted for properties zoned NC3-65, (Exhibit 23.41.012.A,
10 Roosevelt Commercial Core);
11

12 b. Within the Ballard Municipal Center Master Plan area building height
13 departures may be granted for properties zoned NC3-65, (Exhibit B for 23.41.012, Ballard
14 Municipal Center Master Plan Area). The additional height may not exceed 9 feet, and may be
15 granted only for townhouses that front a mid-block pedestrian connection or a park identified in
16 the Ballard Municipal Center Master Plan;
17

18 c. In Downtown zones building height departures may be granted for
19 minor communication utilities as set forth in ((S))subsection 23.57.013.B;

20 d. Within the PSM 85-120 zone in the area shown on Map A for
21 23.49.180, departures may be granted from development standards that apply as conditions to
22 additional height, except for floor area ratios and provisions for adding bonus floor area above
23 the base FAR.
24
25

1 13. Quantity of parking required, minimum and maximum parking limits, and
2 minimum and maximum number of drive-in lanes, except that within the Ballard Municipal
3 Center Master Plan area required parking for ground level retail uses that abut established mid-
4 block pedestrian connections through private property as identified in the "Ballard Municipal
5 Center Master Plan Design Guidelines, 2000," may be reduced, but shall not be less than the
6 required parking for Pedestrian-designated areas shown in Chart D for Section 23.54.015;
7

8 14. Provisions of the Shoreline District, Chapter 23.60;

9 15. Standards for storage of solid-waste containers;

10 16. The quantity of open space required for major office projects in Downtown
11 zones as provided in ~~((S))~~subsection 23.49.016.B;
12

13 17. Noise and odor standards;

14 18. Standards for the location of access to parking in Downtown zones;

15 19. Provisions of Chapter 23.52, Transportation Concurrency Project Review
16 System;

17 20. Provisions of Chapter 23.53, Requirements for Streets, Alleys and Easements,
18 except that departures may be granted from the access easement standards in Section 23.53.025
19 and the provisions for structural building overhangs in Section 23.53.035;
20

21 21. Definitions; and

22 22. Measurements.
23
24
25
26
27
28

1 C. Limitations upon departures through the design review process established in
2 subsection 23.41.012.B ~~((of this section-))~~ do not limit departures expressly permitted by other
3 provisions of this title or other titles of the Seattle Municipal Code.

4 Section 3. Section 23.49.178 of the Seattle Municipal Code, which Section was last
5 amended by Ordinance 122435, is amended as follows:

6 **23.49.178 Pioneer Square Mixed, structure height**~~((-))~~

7 A. Maximum structure height ~~((shall be as))~~ is the applicable height limit designated on
8 the Official Land Use Map, Chapter 23.32, except as provided in this Section 23.49.178.

9 B. Rooftop features and certain additions to structures ~~((may be permitted-))~~ are allowed to
10 exceed the applicable height limit according to the provisions of ~~((S))~~ subsection 23.66.140.C.

11 C. In the PSM ~~((one hundred-))~~ 100 ~~((-foot height district))~~ zone:

12 1. Except as expressly allowed in this subsection 23.49.178.C ~~((no))~~ a structure
13 shall not exceed by more than ~~((fifteen-))~~ 15 ~~(())~~ feet the height of the tallest structure on the
14 block or the adjacent block front(s) ~~((, to a maximum of one hundred (100) feet))~~; ~~((provided~~
15 ~~that))~~

16 2. ~~((a))~~ A structure within which a streetcar maintenance base use has been
17 established may attain a maximum height of ~~((one hundred thirty-))~~ 130 ~~(())~~ feet ~~((provided that~~
18 ~~))~~ if the structure has, in residential or hotel use, gross floor area ~~((equivalent))~~ equal to the gross
19 floor area in the structure above ~~((one hundred-))~~ 100 ~~(())~~ feet.

20 D. In the ~~((one hundred-))~~ PSM 100 ~~(())~~ to ~~((one hundred twenty-))~~ 120 ~~(())~~ ~~((height~~
21 ~~district))~~ zone, structure height over ~~((one hundred-))~~ 100 ~~(())~~ feet to a maximum of ~~((one~~
22

1 hundred twenty (120) feet ~~((shall be))~~ is permitted if a minimum of ~~((seventy five (75))~~
2 percent of the gross floor area of the structure is in residential use.

3 E. ~~((In the eighty five (85) to one hundred twenty (120) foot height district, structure
4 height over eighty five (85) feet to a maximum of one hundred twenty (120) feet shall be
5 permitted if a minimum of seventy five (75) percent of the gross floor area of the structure is in
6 residential use.))~~ In the PSM 85-120 zone:

7 1. The applicable height limit is 85 feet except as provided in subsections
8 23.49.178.E.2 and 23.49.178.E.3.

9 2. The applicable height limit is 120 feet if a minimum of 75 percent of the gross
10 floor area of the structure is in residential use, except as provided in subsection 23.49.178.E.3.

11 3. The applicable height limit is 240 feet for structures located within the area
12 identified on Map A for 23.49.180 if the structures comply with the provisions of Section
13 23.49.180.

14 Section 4. A new Section 23.49.180 of the Seattle Municipal Code, is adopted to read as
15 follows:

16 **23.49.180 Additional height in the Pioneer Square Mixed 85-120 zone**

17 **A. General Intent**

18 This section applies to the area identified on Map A for 23.49.180 within the Pioneer
19 Square Preservation District if an applicant elects to develop a project using the height limits in
20 Section 23.49.178.E.3. The purpose of this section is to provide added flexibility through an
21 increase in the maximum height limit to promote a high density, mixed use, and mixed income
22
23
24
25
26
27

development that can contribute to the vitality of Pioneer Square.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1 B. Structure height.

2 1. The maximum structure height is 240 feet for a proposed development for
3 which all the following is true:

4 a. An amount of floor area in residential use equal to or greater than 2
5 FAR is to be provided on the lot upon completion of the project. The project applicant shall have
6 entered into an agreement with the City that is recorded against the property prior to issuance of
7 the MUP, in which the owner agrees to provide the amount of residential floor area on the lot
8 specified in Subsection 23.49.180.B.1.a, and agrees that failure to provide the amount of
9 residential floor area before the expiration of the MUP will result in the loss of the ability to use
10 any floor area built above the otherwise applicable height limit.

11
12 b. Provision is made for pedestrian circulation and for mitigation of scale
13 and bulk impacts from the increased height through:

14 1) Pedestrian routes providing connections between the Weller
15 Street pedestrian bridge and:

16 a) Occidental Avenue S., and

17 b) S. King Street; and

18 2) An open area extending through the lot aligned with the 2nd
19 Avenue S. right-of-way and meeting the standards of subsection 23.49.180.G.6.c.
20

21 c. The proposed development complies with the standards of subsections
22 23.49.180.C through 23.49.180.I.
23

1 2. Rooftop features. Rooftop features are allowed to exceed the maximum
2 structure height pursuant to subsection 23.49.008.D.

3 C. Lot area. If the applicant uses the height provisions of subsection 23.49.180.B to gain
4 additional height above the otherwise applicable height limit, the entire area identified on Map A
5 for 23.49.180, including any areas provided as open area or setbacks, or dedicated as street right
6 of way, shall be used to determine compliance with applicable provisions of this section and
7 Section 23.49.181.
8

9 D. Location of uses. If the applicant uses the height provisions of subsection
10 23.49.180.B to gain additional height above the otherwise applicable height limit, uses on the lot
11 with a development using these height provisions are to be located on the lot as follows:
12

13 1. Commercial uses. Commercial uses are to be concentrated in the area with the
14 most direct access to regional transit and where commercial development can buffer residential
15 uses from rail operations at King Street Station.
16

17 2. Residential uses. Residential uses are to be concentrated close to existing
18 housing on adjacent blocks and to contribute to a corridor of housing and amenities along
19 Occidental Ave. S.

20 3. Street-level uses. Street-level uses are to be provided along street frontages
21 and the edges of open areas aligned with adjacent street right-of-way.
22

23 E. Floor area ratio (FAR)
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Base and Maximum FAR. The base FAR for all uses on a lot, except for those uses expressly exempted, is 4. The maximum FAR for all uses on a lot, except for those uses expressly exempted, is 8.

2. Limit on non-residential FAR. Non-residential chargeable floor area on a lot may not exceed a FAR of 4.

3. Affordable housing incentive program. Development that includes residential use may exceed the base FAR to the extent the applicant qualifies for bonus floor area by providing affordable housing according to Section 23.49.181, subject to the FAR limit in subsection 23.49.180.E.1.

4. Exemptions and deductions from FAR calculations

a. The exemptions and deductions from FAR calculations specified in subsection 23.49.011.B apply, except that residential use is not exempt and is considered chargeable floor area.

b. In addition to the exemptions from floor area calculations for parking in subsection 23.49.011.B.1.1, enclosed parking provided at or above grade as accessory parking for non-residential uses or as principal use parking replacing the surface spaces existing on the lot on June 25, 1998 is exempt from FAR calculations if it is separated from all streets abutting the lot by another use or is screened according to the provisions of subsection 23.49.180.G.9.

c. Street-level uses other than residential lobbies are exempt if they meet the requirements of subsection 23.49.180.F.

F. Street-level use requirements

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. One or more of the following uses are required at street-level on all street-facing facades and street-level facades facing the open area provided in accordance with the provisions of subsection 23.49.180.G.6.c:

- a. General sales and services;
- b. Human service uses and childcare facilities;
- c. Retail sales, major durables;
- d. Entertainment uses;
- e. Eating and drinking establishments; and
- f. On each street-facing façade or façade facing an open area, up to 20 feet of a residential lobby that provides principal access to residential uses in a structure may be counted as a required street-level use.

2. General standards

- a. A minimum of 75 percent of each street-facing façade at street-level where street-level uses are required shall be occupied by uses listed in subsection 23.49.180.F.1. The remaining 25 percent of the street-facing facade at street-level may contain other permitted uses and/or pedestrian or vehicular entrances.
- b. Required street-level uses shall be located within 2 feet of the required street-facing façade or the street-level façade facing an open area, in accordance with subsection 23.49.180.G.4.
- c. Except for child care facilities, pedestrian access to street-level uses shall be provided directly from the street or other open area with access to a street. Pedestrian

1 entrances shall be located no more than 3 feet above or below sidewalk grade or at the same
2 elevation as any abutting open area.

3 d. Required street-level uses shall be located in a space with a minimum
4 floor-to-floor height of 13 feet.

5 e. Required street-level uses shall be located in a space with a minimum
6 depth of 15 feet.

7 f. For street-level uses on a street-facing facade, the average width of a
8 business establishment shall be 60 feet or less, and the maximum width of any single business
9 establishment shall be 100 feet. Portions of a business that are separated from the street by
10 another business are not limited in width.

11 g. The gross floor area at street-level of any business establishment shall
12 not exceed 10,000 square feet, except that if the business establishment includes a grocery store,
13 the gross floor area at street level shall not exceed 25,000 square feet.

14 G. Development standards

15 1. Street-level setbacks.

16 a. Locations

17 1) A street-level setback with an average depth of 10 feet and a
18 minimum depth of 6 feet shall be provided from property lines that do not abut a street.

19 2) A street-level setback of at least 9 feet and no more than 12 feet
20 shall be provided from the street property line along Occidental Avenue S.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

b. To qualify as a street-level setback, all portions of a structure must set back at street-level the required distance.

c. Setback areas may be used for pedestrian routes, vehicular driveways, and to provide landscaping to meet green factor requirements pursuant to subsection 23.49.180.I.

2. Upper-level setbacks.

a. The following upper-level setbacks shall be provided:

1) A minimum setback of 10 feet shall be provided from S. King Street for all portions of a structure above a height of 85 feet for a distance of at least 120 feet measured along S. King Street from the point where the street lot line intersects the eastern lot line of the lot.

2) A minimum setback of 10 feet shall be provided from S. King Street for all portions of structures above 85 feet in height for a distance of at least 330 feet along S. King Street measured from the intersection with Occidental Avenue S.

3) An average setback of 50 feet shall be provided from the eastern lot line of the lot for all portions of structures above a height of 85 feet. For the purposes of averaging, only 100 feet in depth of any setback shall be counted.

4) A minimum setback of 15 feet is provided from Occidental Avenue S. for all portions of structures above 85 feet in height.

5) A minimum setback of 30 feet is provided from Occidental Avenue S. for portions of structures above 120 feet in height.

1 3. Upper-level coverage limits, measured as a percentage of the total area of the
2 lot, apply to portions of structures exceeding specified heights, in accordance with Table A for
3 23.49.180.

4

5

6 **Table A for 23.49.180 Upper Level Coverage Limits**

7 The maximum permitted lot coverage for all portions of structures within
8 specified height ranges

9 Height range	Maximum permitted lot coverage for all 10 portions of structures located at the same 11 height within specified height range
12 0 - 85 feet	No limit, except as required to provide 13 open area pursuant to subsection 14 23.49.180.G.6
85 – 120 feet	65%
120 - 200 feet	50%
Greater than 200 feet	30%

15

16 4. Street façades. Street-facing facades shall be provided on all street frontages.

17 For purposes of this requirement, the street frontage includes the entire length of a street lot line,
18 less any part of the street lot line where open area provided pursuant to subsection
19 23.49.180.G.6.c abuts the street.

20 a. Street-facing façade height. The street-facing facades of structures
21 shall have a minimum height of 50 feet for 75 percent of each street frontage. The minimum
22 street-facing façade height for the remaining 25 percent of each street frontage is 35 feet.

23

24 b. Street façade setbacks.

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1) For each street frontage, the street-facing façade shall be built to the street lot line for a minimum of 75 percent of the street frontage. For the remaining street frontage, the street-facing façade may set back from the street lot line to provide for the following:

a) street-level open area at the intersection of S. King Street and Occidental Avenue S. meeting the standards of subsection 23.49.180.G.6.a; and

b) architectural treatment of the street-facing facade, including setbacks of portions of the street-facing façade up to a maximum depth of 15 feet, for principal building entrances or for architectural detailing and features of a structure that reflect the surrounding development pattern, such as the sequence of streets and alleys or the massing and articulation of historic structures on opposing block fronts.

2) Where set back, the street-facing façade is measured from a location other than the street lot line in the following instances:

a) If a utility easement abutting a street lot line prevents a structure from extending to the street lot line, a street-facing façade setback shall be measured from the abutting utility easement rather than the street lot line.

b) On Occidental Avenue S., a street-facing façade setback shall be measured from the setback line provided pursuant to subsection 23.49.180.G.1.a.2 rather than the street lot line.

3) The maximum length of any setback area, as measured along the street lot line, shall not exceed 60 feet.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 4) Art;
- 5) Seating and tables;
- 6) Landscaping; and
- 7) Any similar features approved by the Director that contribute to

the comfort and use of the space.

b. Open area at ground level shall be provided at the following locations:

- 1) The intersection of Occidental Avenue S. and S. King Street, in the northwestern corner of the lot; and
- 2) The intersection of the lot's eastern and southern lot lines, on the southeastern corner of the lot, unless a structure with a street level use is located there.

c. An open area at ground level with boundaries referred to as "edges" shall be provided in the area established by extending the street lot lines of 2nd Avenue S. through the lot from S. King Street to the southern lot line. The open area and facades abutting it shall meet the following:

- 1) For a minimum depth of 20 feet measured from each edge into the open area, the open area must be open for use by pedestrians and for landscaping.
- 2) The facades of structures abutting the open area shall have a minimum height of 35 feet and shall not set back more than five feet from the edges of the open area;

8. Blank Facade Limits.

a. For all facades abutting South King Street, Occidental Avenue South, and the open area provided pursuant to subsection 23.49.180.G.6.c, blank facades shall not exceed 15 feet in width, except that

1) a blank façade may be increased to 30 feet in width if the Director determines that the façade is sufficiently enhanced by architectural detailing, artwork, landscaping, or similar features that have visual interest; and

2) the width of a blank façade that includes a garage door may exceed 15 feet but is limited to the width of the driveway plus 5 feet. The total of all blank façade segments, including garage doors, shall not exceed 40 percent of the total width of all facades abutting South King Street, Occidental Avenue South, and the open area provided pursuant to subsection 23.49.180.G.6.c.

b. For all facades other than those specified in subsection 23.49.180.G.8.a, if the street level is occupied by uses other than parking, blank facades shall be limited to segments no more than 30 feet in width. Blank façade width may be increased to 60 feet if the Director determines that the façade is sufficiently enhanced by architectural detailing, artwork, landscaping, or similar features that have visual interest. The width of a blank façade that includes a garage door may exceed 30 feet but is limited to the width of the driveway plus 5 feet. If the street level is occupied by parking, the provisions for screening parking at street level in subsection 23.49.180.G.9.a apply.

1 c. Any blank façade shall be separated by transparent areas at least 2 feet
2 wide. Only clear, non-reflective, non-tinted glass is considered to be transparent.

3 9. Screening and location of parking. All parking permitted on the lot shall be
4 enclosed within a structure, except that within the open area provided pursuant to subsection
5 23.49.180.G.6.c, surface parking serving abutting structures is permitted.

6 a. Parking at street level.

7
8 1) Parking is not permitted at street level within a structure along
9 street frontages and along the open area edges provided pursuant to subsection 23.49.180.G.6.c
10 unless separated from the street or open area by other uses, except that garage and loading doors
11 and access to parking need not be separated.

12
13 2) Parking is permitted at street level within a structure along lot
14 lines that do not abut a street, subject to the following requirements:

15 a) Parking abutting a lot line shall be screened from view
16 at street-level except that garage and loading doors and permitted access to parking need not be
17 screened.

18
19 b) The facade facing the lot line shall be enhanced by
20 architectural detailing, artwork, landscaping, or similar visual interest features.

21
22 c) If parking is located within a structure at the intersection
23 of the eastern and southern lot lines, separation by another use is required for a minimum
24 distance of 20 feet along one of the intersecting lot lines.

25 b. Parking above street level.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1) On the portion of the lot west of the open area provided pursuant to subsection 23.49.180.G.6.c, parking is not permitted above street level along street frontages and along the western edge of the open area unless separated from the street or open area by another use. Parking is permitted above street level along other lot lines for a maximum of four stories.

2) On the portion of the lot east of the open area provided pursuant to subsection 23.49.180.G.6.c, parking is permitted in portions of a structure above 20 feet in height along S. King Street and in portions of a structure above the first story along other frontages for a maximum of four stories.

3) For all parking located on stories above street level that is not separated from the street by another use, screening of the parking through materials, fenestration, and other architectural treatments is required. The screening shall be designed as an extension of the primary facade of the structure and to provide visual interest.

H. LEED requirement. The applicant shall strive to achieve a LEED Gold rating or better, make a commitment acceptable to the Director that the proposed development will earn at least a LEED Silver rating or meet a substantially equivalent standard, and demonstrate compliance with that commitment, all in accordance with the provisions of Section 23.49.020.

I. Green Factor Requirement. The project shall achieve a green factor score of .30 or greater in accordance with the provisions of Section 23.86.019.

1 J. Development standard departures. As a special exception pursuant to Section
2 23.76.004, the Director may waive or modify those development standards in Section 23.49.180
3 that would be eligible for departures through the design review process pursuant to Section
4 23.41.012, if they were applicable to a project subject to that process. The Director shall consult
5 with the Pioneer Square Preservation Board and the Director of the Department of
6 Neighborhoods prior to making a decision on a requested modification or waiver. The Director
7 may grant a waiver or modification only if the Director determines that it will cause the project to
8 better meet the intent of this Section 23.49.180 and the Design Guidelines for New Construction
9 on the North Lot in Pioneer Square, as adopted by the Pioneer Square Preservation Board.
10

11 Section 5. A new Subchapter V for Section 23.49 of the Seattle Municipal Code, is
12 adopted to read as follows:
13

14 **23.49.181 Bonus floor area for affordable housing in the PSM 85-120 zone**

15 A. Purpose; Scope of provisions; State law controlling. This section establishes an
16 affordable housing incentive program for development on lots zoned PSM 85-120 that are
17 subject to FAR limits pursuant to the provisions of Section 23.49.180. Chargeable floor area in
18 addition to the base FAR is allowed for development that includes residential use, to the extent
19 that the applicant qualifies by providing low-income housing as part of the development, in
20 accordance with this section and subject to the provisions of section 23.49.180. In case of any
21 irreconcilable conflict between the terms of this section and the authority granted in RCW
22 36.70A.540, as it may be amended, the provisions of RCW 36.70A.540, as it may be amended,
23 shall supersede and control. Unless the context otherwise clearly requires, references to RCW
24
25
26
27

1 36.70A.540 in this section mean that section in effect on the date as of which the provisions of
2 this title apply to the application for a use permit for the project using the bonus floor area.

3 B. Permitting Conditions

4 1. Master Use Permit. The Master Use Permit application to establish any bonus
5 floor area under this section shall include a calculation of the total amount of bonus floor area
6 sought and shall identify the quantity and type of affordable housing to be provided to satisfy the
7 conditions to such bonus floor area. The application shall include the proposed location of the
8 affordable housing, including the location or distribution within the proposed building(s). The
9 Director shall, at the time of issuance of any Master Use Permit decision approving any bonus
10 floor area, issue a Type I decision as to the amount of bonus floor area to be allowed and the
11 conditions to such bonus floor area. A declaration signed by the applicant and any other owners
12 of the lot, on a form approved by the Director, specifying the amount of bonus floor area and the
13 conditions, must be executed and recorded as a condition to issuance of the Master Use Permit
14 for a development to include bonus floor area. The declaration may be amended, with the written
15 approval of the Director, if a change in the total bonus floor area to be developed results in
16 adjustment to one or more conditions.
17
18
19

20 2. First Building Permit. Prior to issuance, and as a condition to issuance, of the
21 first building permit for a structure using bonus floor area, the applicant and any other owner of
22 the portion of the lot that will include the affordable housing for that bonus floor area shall
23 execute and record an agreement in a form acceptable to the Director of Housing that shall
24 commit to provide that affordable housing, and shall run with the land to bind successors. The
25
26
27
28

1 applicant shall submit an acceptable agreement, fully signed, as part of the building permit
2 application, and if there is any change in ownership prior to the issuance of the building permit,
3 the new owners shall execute the agreement or an addendum or substitute acceptable to the
4 Director of Housing.

5
6 C. Findings. Pursuant to the authority of RCW 36.70A.540, the City finds that the
7 higher income levels specified in this section, rather than those stated in the definition of “low-
8 income households” in RCW 36.70A.540, are needed to address local housing market conditions
9 in the area to which this section applies.

10 D. Defined Terms

11 For purposes of this section:

12
13 1. “Affordable housing” means a unit or units of low-income housing provided as
14 a condition to bonus floor area.

15 2. “Base FAR” or “base floor area ratio” means a FAR of 4.

16 3. “Bonus floor area” means all chargeable floor area allowed in addition to the
17 base FAR.

18 4. “Income-eligible households” means:

19 a. In the case of rental housing, households with incomes no higher than
20 80 percent of median income as defined in Section 23.84A.025.

21 b. In the case of owner occupancy housing units, households with incomes
22 no higher than the median income as defined in Section 23.84A.025.

23 5. “Low-income housing” means housing that serves income-eligible households.
24
25
26

1 6. “Net bonus floor area” means gross square footage of bonus floor area,
2 multiplied by an efficiency factor of 80 percent.

3 E. Affordable Housing

4 1. Amount. An applicant using bonus floor area shall provide an amount of net
5 rentable floor area of low-income housing, applicable to units for sale or rent, equal to at least
6 17.5 percent of the net bonus floor area obtained.

7 2. Serving income-eligible households. For the purposes of this section, a
8 housing unit serves income-eligible households only if either:

9 a. For a period of 50 years beginning upon the issuance of a final
10 certificate of occupancy by the Department of Planning and Development for a structure using
11 the bonus floor area for which that affordable housing is provided, the housing is used as rental
12 housing solely for income-eligible households at rent limited so that annual housing costs,
13 including rent and basic utilities, do not exceed 30 percent of 80 percent of median income, and
14 the housing unit and the structure in which it is located are maintained in decent and habitable
15 condition, including basic appliances in the housing unit; or

16 b. The unit is sold for owner-occupancy to an income-eligible household
17 at an initial sale price limited so that the annual housing costs, including mortgage principal and
18 interest, real estate taxes, insurance, plus homeowner dues if applicable, are not expected to
19 exceed 35 percent of median income, according to a calculation based on reasonable assumptions
20 and approved by the Director of Housing, and the unit is subject to a recorded instrument
21 satisfactory to the Director of Housing with a term extending until 50 years after the issuance of a
22
23
24
25
26

1 final certificate of occupancy by the Department of Planning and Development for the structure
2 using the bonus floor area for which that affordable housing is provided, providing for sales
3 prices on any resale consistent with affordability on the same basis as the initial sale, allowing
4 resales only to income-eligible households, and requiring that upon any resale, the housing unit
5 be in decent and habitable condition, including adequate basic appliances in the housing unit.
6

7 3. Location, size and other requirements. Affordable housing shall be provided
8 on the same lot as the project using the bonus floor area in a range of unit sizes consistent with
9 RCW 36.70A.540. The affordable housing shall comply with all requirements of RCW
10 36.70A.540.
11

12 4. Time of completion. The affordable housing shall be completed and ready for
13 occupancy at or before the time when a certificate of occupancy is issued for any bonus floor area
14 that is based on the affordable housing and as a condition to any right of the applicant to such a
15 certificate of occupancy.
16

17 5. No Subsidies for affordable housing; exceptions.

18 a. In general, and except as may be otherwise required by applicable
19 federal or state law, no bonus floor area may be earned by providing affordable housing if:

20 1) Any person is receiving or will receive with respect to the
21 housing any charitable contributions or public subsidies for housing development or operation,
22 including, but not limited to, tax exempt bond financing, low-income housing tax credits, federal
23 loans or grants, City of Seattle housing loans or grants, county housing funds, and State of
24 Washington housing funds; or
25
26

1 2008 to the year in which the sale or transfer is made, for the review and processing of
2 documents to determine compliance with income and affordability restrictions.

3 8. Identification of bonus floor area. The floor area that constitutes bonus floor
4 area under this section shall be determined according to the order in which Master Use Permits
5 are issued to establish the chargeable floor area, with the base FAR allocable to the earlier Master
6 Use Permits. Within a structure or structures developed under a single Master Use Permit that
7 involves both base floor area and bonus floor area:

9 a. if the complete applications for building permits for construction, not
10 including any permits limited to excavation and shoring, are submitted at different times, then
11 unless otherwise specifically identified in the Master Use Permit application and approved by the
12 Director, the base floor area shall be allocated first to the structure or structures for which the
13 earlier complete building permit applications are submitted; and

14 b. if the complete applications for building permits for construction, not
15 including any permits limited to excavation and shoring, are submitted at the same time, then
16 unless otherwise specifically identified in the Master Use Permit application and approved by the
17 Director, the bonus floor area shall be the chargeable floor area, excluding any affordable
18 housing, in the highest stories in the structure or structures, and if only a portion of a story
19 consists of bonus floor area, it shall be allocated to each portion of that story in proportion to its
20 chargeable floor area, excluding any affordable housing, within that story.
21
22
23

24 9. Obligation of Owners.

25 a. Any owner of bonus floor area shall be in violation of this title if:
26
27
28

1 Section 6. Section 23.66.120 of the Seattle Municipal Code, which Section was last
2 amended by Ordinance 117430, is amended as follows:

3 **23.66.120 Permitted uses((:))**

4 A. All uses are permitted outright except those that are specifically prohibited by Section
5 23.66.122 and those that are subject to special review as provided in Section 23.66.124.
6

7 B. Essential Public Facilities. Permitted essential public facilities shall also be reviewed
8 pursuant to the provisions of Chapter 23.80, Essential Public Facilities.

9 ((B)) C. All uses not specifically prohibited or subject to special review under Section
10 23.66.124 are permitted as both principal and accessory uses, except((:G)) gas stations, which
11 ((shall be)) are permitted as accessory uses only in parking garages((; and
12

13 ~~2. Principal use parking garages, which shall be permitted only after special~~
14 ~~review by the Preservation Board pursuant to Section 23.66.124 of this chapter. Accessory~~
15 ~~parking garages shall be permitted outright.))~~

16 ((C. Essential Public Facilities. Permitted essential public facilities shall also be
17 reviewed according to the provisions of Chapter 23.80, Essential Public Facilities.)).
18

19 Section 7. Section 23.66.122 of the Seattle Municipal Code, which Section was last
20 amended by Ordinance 122330, is amended as follows:

21 **23.66.122 Prohibited uses((:))**

22 A. The following uses are prohibited in the ((entire)) Pioneer Square Preservation
23 District as both principal and accessory uses:
24

25 Retail ice dispensaries;
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plant nurseries;

Frozen food lockers;

Animal shelters and kennels;

~~((Animal health services;))~~

~~((Pet grooming;))~~

Pet daycare, except as permitted as a street level use in subsection 23.49.180.F if an applicant elects to use added height under the provisions of Section 23.49.180;

Automotive sales and service, except gas stations located in parking garages;

Marine sales and service;

Heavy commercial services;

Heavy commercial sales;

Adult motion picture theaters;

Adult panorams;

Bowling alleys;

Skating rinks;

Major communication utilities;

Advertising signs and off-premises directional signs;

Transportation facilities, except passenger terminals, rail transit facilities, parking garages, and streetcar maintenance bases;

Outdoor storage;

Jails;

1 Work-release centers;

2 General and heavy manufacturing uses;

3 Solid waste management;

4 Recycling uses; and

5 High-impact uses.

6
7 B. Except for the uses listed in subsection 23.66.122.B.2, ((Commercial uses that are))
8 automobile-oriented commercial uses are prohibited, ~~((Such uses))~~ includ~~((e))~~ing but ~~((are))~~not
9 limited to the ~~((following:))~~ automobile-oriented uses listed in subsection 23.66.122.B.1.

10 1. Examples of prohibited automobile-oriented commercial uses.

11 a. Drive-in businesses, ~~((except gas stations accessory to parking~~
12 ~~garages;))~~

13
14 b~~((2))~~. Principal and accessory surface parking areas not in existence prior
15 to August 10, 1981~~((, except that accessory use surface parking lots may be permitted in Subarea~~
16 ~~B shown on Map C if the lot satisfies the provisions of SMC Section 23.49.019, Parking~~
17 ~~quantity, access and screening/landscaping requirements))~~.

18 c. Principal-use parking garages for long-term parking.

19 ~~((3-))~~ d. Motels.

20 2. Permitted automobile-oriented uses.

21 a. Gas stations accessory to parking garages;

22 b. Accessory-use surface parking in the Subarea B shown on Map C for
23 23.66.122 and 23.66.150 either
24
25
26
27
28

1 3. Access will comply with the standards ~~((provided))~~ in Section 23.66.170 ~~((of~~
2 ~~this chapter))~~; and

3 4. Automobile circulation within the garage will not be visible from the adjoining
4 public streets.

5 ~~((C))~~B. Uses at ~~((the))~~ street level of approved parking garages ~~((shall be))~~ are limited to
6 those uses permitted in the area, other than parking, to a minimum depth of ~~((twenty (20))~~
7 feet along all street frontages, and along alleys and malls ~~((which))~~ that are limited solely to
8 pedestrian use.
9

10 Section 8. Section 23.66.130 of the Seattle Municipal Code, which Section was last
11 amended by Ordinance 122311, is amended as follows:
12

13 **23.66.130 Street-level uses**~~((:))~~

14 A. 1. Uses at street level in the area designated on Map B ~~((^t))~~ for 23.66.130 ~~((shall~~
15 ~~))~~ require the approval of the Department of Neighborhoods Director after review and
16 recommendation by the Preservation Board.
17

18 2. Street level uses in the PSM 85-120 zone within the area shown on Map A for
19 23.49.180 are subject to the provisions of subsection 23.49.180.F if an applicant elects to use
20 added height under the provisions of Section 23.49.180. Such street level uses require the
21 approval of the Department of Neighborhoods Director after review and recommendation by the
22 Preservation Board.
23

24 B. Preferred Street-level Uses.
25
26
27

1 1. Preferred uses at street level must be highly visible and pedestrian oriented.

2 Preferred street-level uses either display merchandise in a manner that contributes to the
3 character and activity of the area, and/or promote residential uses, including but not limited to the
4 following uses:

5 a. Any of the following uses under 3,000 square feet in size: ~~(((A)))~~ art
6 galleries and other general sales and service uses, restaurants and other eating and drinking
7 establishment uses, and lodging uses;

8 b. Theaters.

9
10 2. Accessory parking garages that serve preferred street-level uses on streets or
11 malls, parks or alleys designed for pedestrian uses are also preferred.

12
13 C. Discouraged Street-level Uses.

14 1. The following are discouraged at street level in the area designated on Map
15 ~~B((+))~~ for 23.66.130:

16 a. Any use occupying more than ~~((fifty-))~~50~~((+))~~ percent of any block
17 front;

18 b. Any of the following with gross floor area over ~~((three thousand~~
19 ~~))~~3,000~~((+))~~ square feet: general sales and services uses, eating and drinking establishment uses,
20 and lodging uses;

21 c. All other uses with gross floor area over ~~((ten thousand-))~~10,000~~((+))~~
22 square feet;

1 d. Professional services establishments or offices that occupy more than
2 ~~((twenty-))20((t))~~ percent of any block front; and

3 e. Parking garages that are not accessory to preferred uses.

4 2. Discouraged uses may be approved by the Department of Neighborhoods
5 Director after review and recommendation by the Preservation Board if an applicant
6 demonstrates that the proposed use is compatible with uses preferred at street level.
7

8 D. Conditions on Street-level Uses. Approved street level uses in the area designated on
9 Map B~~((t))~~ for 23.66.130 ~~((shall be))~~are subject to the following conditions:

10 1. No use may occupy more than ~~((fifty-))50((t))~~ percent of the street-level
11 frontage of a block that is ~~((twenty-thousand-))20,000((t))~~ square feet or more in area;

12 2. Human service uses and personal service establishments, such as hair cutting
13 and tanning salons, may not exceed ~~((twenty-five-))25((t))~~ percent of the total street-level
14 frontage of any block front.
15

16 E. The following uses are prohibited at street level in the area designated on Map B~~((t))~~
17 for 23.66.130:
18

19 Wholesaling, storage and distribution uses;

20 Vocational or fine arts schools;

21 Research and development laboratories;

22 Radio and television studios;

23 Taxidermy shops;

24 Appliance repair shops;

25

26

27

28

1 Upholstery establishments; and

2 Other similar uses.

3 F. The street-level location of entrances and exits of all vehicular-oriented uses, where
4 permitted, shall be approved by the Department of Neighborhoods Director after review and
5 recommendation by the Preservation Board. View-obscuring screening may be required as
6 needed to reduce adverse visual impacts on the immediate area.
7

8 Section 9. Section 23.66.140 of the Seattle Municipal Code, which Section was last
9 amended by Ordinance 122935, is amended as follows:

10 **23.66.140 Height**

11 A. Maximum Height. Maximum structure height is regulated by Section 23.49.178,
12 Pioneer Square Mixed, structure height(~~(, and shall be as designated on the Official Land Use~~
13 ~~Map, Chapter 23.32)~~)).

14 B. Minimum Height. No structure shall be erected or permanent addition added to an
15 existing structure (~~(which))~~that would result in the height of the new structure of less than ~~((fifty~~
16 ~~(~~)~~50(~~)~~) feet, except as allowed in the PSM 85-120 zone under the provisions of Section
17 23.49.180 for the area shown on Map A for 23.49.180. Height of the structure is to be measured
18 from mean street level fronting on the property to the mean roofline of the structure.
19~~

20 C. Rooftop Features and additions to structures.

21 1. The height limits established for the rooftop features described in this
22 ~~((subs))~~Section 23.66.140 may be increased by the average height of the existing street parapet or
23

1 a historically substantiated reconstructed parapet on the building on which the rooftop feature is
2 proposed.

3 2. For development in the PSM 85-120 zone in the area shown on Map A for
4 23.49.180 and subject to the provisions of Section 23.49.180, the height limits for rooftop
5 features are provided in subsection 23.49.008.D. The standards contained in subsections
6 23.66.140.C.1 and 23.66.140.C.4 do not apply to rooftop features on development subject to the
7 provisions of Section 23.49.180.
8

9 3. The setbacks required for rooftop features may be modified by the Department
10 of Neighborhoods Director, after a sight line review by the Preservation Board to ensure that the
11 features are minimally visible from public streets and parks within 300 feet of the structure.
12

13 4. Height limits for rooftop features.

14 ~~((1-))~~a. Religious symbols for religious institutions, smokestacks and
15 flagpoles may extend up to ~~((fifty-))~~50~~(())~~ feet above the roof of the structure or the maximum
16 height limit, whichever is less, except as regulated in Chapter 23.64 of this Land Use Code,
17 provided that they are a minimum of ~~((ten))~~10~~(())~~ feet from all lot lines.
18

19 ~~((2-))~~b. For existing structures, open railings, planters, clerestories,
20 skylights, play equipment, parapets and firewalls may extend up to ~~((four))~~4~~(())~~ feet above
21 the roof of the structure or the maximum height limit, whichever is less. For new structures, such
22 features may extend up to ~~((four))~~4~~(())~~ feet above the maximum height limit. No rooftop
23 coverage limits apply to such features regardless of whether the structure is existing or new.
24
25
26
27
28

1 ~~((3-))~~c. Solar collectors, excluding greenhouses, may extend up to ~~((seven~~
2 ~~(~~7~~(~~0~~)))~~ feet above the roof of the structure or the maximum height limit, whichever is less, with
3 unlimited rooftop coverage, provided they are a minimum of ~~((ten-~~0~~))~~10(~~0~~) feet from all lot
4 lines. For new structures, solar collectors may extend up to ~~((seven-~~0~~))~~7(~~0~~) feet above the
5 maximum height limit, except as provided in subsection 23.66.140.C~~((10-(a)))~~4.j.~~((f))~~1(~~0~~) of this
6 ~~section~~), and provided that they are a minimum of ~~((ten-~~0~~))~~10(~~0~~) feet from all lot lines.
7

8 ~~((4-))~~d. The following rooftop features may extend up to ~~((eight-~~0~~))~~8(~~0~~)
9 feet above the roof or maximum height limit, whichever is less, ~~((when))~~if they are set back a
10 minimum of ~~((fifteen-~~0~~))~~15(~~0~~) feet from the street and ~~((three-~~0~~))~~3(~~0~~) feet from an alley. They
11 may extend up to ~~((twelve-~~12~~))~~15 feet above the roof ~~((when))~~if set back a minimum of ~~((thirty~~
12 ~~(~~0~~))~~30(~~0~~) feet from the street. A setback may not be required at common wall lines subject to
13 review by the Preservation Board and approval by the Department of Neighborhoods Director.
14 The combined coverage of the following listed rooftop features shall not exceed ~~((fifteen~~
15 ~~(~~0~~))~~15(~~0~~) percent of the roof area:
16

- 17 ~~((a-))~~ 1) Solar collectors, excluding greenhouses;
18 ~~((b-))~~ 2) Stair and elevator penthouses;
19 ~~((e-))~~ 3) Mechanical equipment;
20 ~~((d-))~~ 4) Minor communication utilities and accessory
21 communication devices, except that height is regulated according to the provisions of Section
22 23.57.014.
23
24
25
26
27
28

1 Additional combined coverage of these rooftop features, not to exceed ~~((twenty-~~
2 ~~five-))~~25(~~(~~0~~)~~) percent of the roof area, may be permitted subject to review by the Preservation
3 Board and approval by the Department of Neighborhoods Director.

4 ~~((5-))~~e. On structures existing prior to June 1, 1989 and on additions to such
5 structures permitted according to ~~((S))~~subsection 23.66.140.C.~~((9))~~4.i or otherwise, new or
6 replacement mechanical equipment and stair and elevator penthouses may extend up to ~~((eight~~
7 ~~))~~8(~~(~~0~~)~~) feet above the elevation of the existing roof or addition, as applicable, when they are set
8 back a minimum of ~~((fifteen-))~~15(~~(~~0~~)~~) feet from the street and ~~((three-))~~3(~~(~~0~~)~~) feet from an alley;
9 or may extend up to ~~((twelve-))~~12(~~(~~0~~)~~) feet above the elevation of the existing roof or addition, as
10 applicable, ~~((when))~~if they are set back a minimum of ~~((thirty-))~~30(~~(~~0~~)~~) feet from the street,
11 subject to review by the Preservation Board and approval by the Department of Neighborhoods
12 Director. On structures where rooftop features are allowed under ~~((this))~~subsection
13 23.66.140.C.4.e~~((5))~~, the combined coverage of these rooftop features and any other features
14 listed in subsection 23.66.140.C.4.d shall not exceed the limit provided in subsection
15 23.66.140.C.4.d~~((of this section))~~, as it may be increased pursuant to that subsection.
16

17 ~~((6-))~~f. Residential and Office Penthouses.

18 ~~((a-))~~ 1) Residential penthouses may cover a maximum of ~~((fifty~~
19 ~~))~~50(~~(~~0~~)~~) percent of the total roof surface and may extend up to ~~((eight-))~~8(~~(~~0~~)~~) feet above the
20 roof ~~if~~~~((when))~~ set back a minimum of ~~((fifteen-))~~15(~~(~~0~~)~~) feet from the street property line, or
21 ~~((twelve-))~~12(~~(~~0~~)~~) feet above the roof~~((when))~~ if set back a minimum of ~~((thirty-))~~30(~~(~~0~~)~~) feet
22 from the street property line.
23
24
25
26
27

1 roof of the existing structure if ~~((a))~~i) the use of the addition above the limit on structure height
2 applicable under Section 23.49.178 is limited to residential use and ~~((b))~~ii) the addition
3 occupies only all or a portion of the part of a lot that is bounded by an alley on one side and is
4 bounded on at least two sides by walls of the existing structure that are not street-facing facades.

5
6 ~~((10-))~~j. Enclosed Rooftop Common Recreation Areas for New Structures.

7 ~~((a-))~~ 1) ~~If~~~~(When)~~ included on new structures, enclosed rooftop
8 common recreation areas and solar collectors incorporated into those areas and required under
9 this subsection may exceed the maximum height limit by up to 15 feet. The structure must
10 include solar collectors that provide 2 percent or more of the structure's total electrical energy
11 consumption and the structure must meet a Green Factor requirement of ~~((0))~~.30 or greater, ~~((as))~~
12 determined under Section 23.86.019. Each enclosed rooftop common recreation area must
13 include interpretive signage explaining the sustainable features employed on the structure where
14 that area is located. No commercial, residential or industrial use may be established within
15 enclosed common recreation areas allowed to exceed the maximum height limit under this
16 subsection.
17
18

19 ~~((b-))~~ 2) Elevator penthouses serving an enclosed rooftop common
20 recreation area may exceed the maximum height limit by up to ~~((twenty-))~~20~~((0))~~ feet.

21 ~~((e-))~~ 3) Enclosed rooftop common recreation areas, mechanical
22 equipment, and elevator and stair penthouses shall not exceed ~~((thirty-five percent-))~~35~~((%))~~
23 percent of the roof area.
24
25
26
27
28

1 ~~((d.))~~ 4) Enclosed rooftop common recreation areas, mechanical
2 equipment, and elevator and stair penthouses must be set back a minimum of ~~((thirty (0)))~~30(0))
3 feet from the street and three ~~((3))~~ feet from the alley. Solar collectors must be set back as
4 provided in subsections 23.66.140.C.((3))4.c and 23.66.140.C.4.d~~((-of this section))~~.

5 ~~((e.))~~ 5) Owners of structures with enclosed rooftop common
6 recreation areas permitted pursuant to this subsection shall submit to the Pioneer Square
7 Preservation Board, the Director of Neighborhoods and the Director of the Department of
8 Planning and Development an annual report, beginning one year after the date of first occupancy
9 of such structure, documenting compliance with the minimum renewable energy generation and
10 green ~~((area))~~ factor criteria set forth above.
11
12

13 D. New Structures. When new structures are proposed in the District, the Preservation
14 Board shall review the proposed height of the structure and make recommendations to the
15 Department of Neighborhoods Director who may require design changes to assure reasonable
16 protection of views from Kobe Terrace Park.
17

18 Section 10. Section 23.66.150 of the Seattle Municipal Code, which Section was last
19 amended by Ordinance 119484, is amended as follows:

20 **23.66.150 ~~((Maximum))~~Structure setbacks~~((:))~~**

21 Except as allowed through the provisions of subsection 23.49.180.G for the PSM 85-120
22 zone in the area shown on Map A for 23.49.180, the m~~((M))~~aximum permitted setbacks for
23 structures are:
24
25
26
27

1 A. Structures located within Subarea A on Map C⁽¹⁾ for 23.66.150 shall cover the full
2 width of the lot along street ~~((property))~~lot lines and shall abut ~~((upon))~~street lot~~((property))~~
3 lines.

4 B. Structures located within Subarea B on Map C⁽¹⁾ for 23.66.150 shall abut street
5 lot~~((property))~~ lines for the full width of the structure's street-facing~~((front))~~ facade.

6
7 C. For both Subareas, modifications to setback standards may be permitted by the
8 Department of Neighborhoods Director following review and recommendation by the
9 Preservation Board when the following criteria are met:

10 1. A larger setback will be compatible with and not adversely affect the
11 streetscape; and

12 2. A larger setback will be compatible with other design elements, such as bulk
13 and profile, of the proposed building.

14
15 Section 11. Section 23.66.170 of the Seattle Municipal Code, which Section was last
16 amended by Ordinance 122054, is amended as follows:

17 **23.66.170 Parking and access~~((=))~~**

18
19 A. Parking standards in the Pioneer Square Preservation District are set forth in Section
20 23.49.019~~((of this Land Use Code))~~.

21 B. To mitigate the potential impacts of required ~~((accessory parking and))~~loading on the
22 District, the Director of Neighborhoods, after review and recommendation by the Preservation
23 Board, may waive or reduce required ~~((parking or))~~loading if ~~((in the following circumstances:~~

1 1. ~~After incorporating high occupancy vehicle alternatives such as carpools and~~
2 ~~vanpools, required parking spaces exceed the net usable space in all below-grade floors; or~~

3 2. ~~R))~~reasonable application of the ~~((parking or))~~loading standards will adversely
4 affect the visual character of the District.

5 C. ~~((When))~~If parking is provided it shall be subject to the requirements of Section
6 23.54.030~~((of this Land Use Code))~~.

7 D. Standards for Location of Access to Parking.

8 1. Access to parking and loading from alleys, and from streets~~((which))~~that
9 generally run east/west~~((↔))~~ is preferred to access from avenues. ~~((When))~~If a lot abuts more than
10 one ~~((1))~~right-of-way, the location of access shall be determined by the Department of
11 Neighborhoods Director in consultation with the Director of Transportation. This determination
12 shall be made according to the traffic classification of the street, depicted on Map D~~((1))~~ for
13 23.66.170. Access shall be from rights-of-way classified as follows, from the most to least
14 preferred, except when the Department of Neighborhoods Director, following review and
15 recommendation by the Board, determines that access from the preferred right-of-way would
16 create a hazardous condition: Alleys; Access streets; Class II pedestrian streets-minor arterial;
17 Class II pedestrian streets-principal arterial; Class I pedestrian streets-minor arterial; Class I
18 pedestrian streets-principal arterial; Principal transit street; Green Streets.

19 2. Curbcut width and the number of curbcuts permitted per street frontage shall
20 be governed by Section 23.54.030~~((of this Land Use Code))~~.

1 3. The street-level location of entrances and exits of all parking garages,
2 ~~((where))~~if permitted, shall be permitted only if approved by the Department of Neighborhoods
3 Director after review and recommendation by the Preservation Board. View-obscuring screening
4 may be required as needed to reduce adverse visual impacts on the immediate area.

5 Section 12. Section 23.76.032 of the Seattle Municipal Code, which Section was last
6 amended by Ordinance 122816, is amended as follows:

7 **23.76.032 Expiration and renewal of Type I and II Master Use Permits((-))**

8 A. Expiration.

9 1. An issued Type I or II Master Use Permit expires three years from the date a
10 permit is approved for issuance as described in Section 23.76.028, except as follows:
11

12 a. Expiration of a Master Use Permit with a shoreline component is
13 governed by WAC 173-27-090.
14

15 b. Expiration of a variance component of a Master Use Permit is governed
16 by the following:
17

18 ((-)1) Variances for access, yards, setback, open space, or lot area
19 minimums granted as part of a short plat or lot boundary adjustment runs with the land in
20 perpetuity as recorded with the Director of the King County Department of Records and
21 Elections.
22

23 ((-)2) Variances granted as separate Master Use Permits pursuant
24 to ~~((S))~~subsection 23.76.004_G expire three years from the date the permit is approved for
25 issuance as described in Section 23.76.028 or on the effective date of any text amendment
26

1 making more stringent the development standard from which the variance was granted,
2 whichever is sooner. If a Master Use Permit to establish the use is granted within this period, the
3 variance's expiration date shall be extended until the expiration date established for the use
4 approval.

5
6 c. The time during which litigation is pending related to the Master Use
7 Permit or the property subject to the permit made it reasonable not to submit an application for a
8 building permit, or to establish a use where a building permit is not required, is not included in
9 the three year term of the Master Use Permit.

10 d. Master Use Permits with a Major Phased Development or Planned
11 Community Development component established under Section 23.47A.007, 23.50.015 or
12 23.49.036 expire as follows:

13
14 ((f))1) For the first phase, three years from the date the permit is
15 approved for issuance;

16 ((f))2) For subsequent phases, expiration shall be determined at
17 the time of permit issuance.

18
19 e. Temporary or intermittent use permits issued pursuant to Section
20 23.42.040 expire on the date stated in the permit.

21 f. Except as otherwise provided in this subsection 23.76.032.A.1.f, Master
22 Use Permits for development pursuant to Sections 23.49.180 and 23.49.181 expire on the date set
23 by the Director in the Master Use Permit decision, which date may be a maximum of 15 years
24 from the date the Master Use Permit is ready to issue. The Director shall consider the complexity
25

1 of the project, economic conditions of the area in which the project is located, and the
2 construction schedule proposed by the applicant in setting the expiration date. If no expiration
3 date is set in the Master Use Permit decision, the expiration date is three years from the date a
4 permit is approved for issuance.

5
6 1) In order for the Director to set the Master Use Permit expiration
7 date, the applicant shall:

8 a) Submit with the application a site plan showing a level of
9 detail sufficient to assess anticipated impacts of the completed project;

10 b) Submit a proposed schedule for complying with the
11 conditions necessary to gain the amount of extra floor area and the extra height sought for the
12 project.

13
14 2) The expiration date of the Master Use Permit may be extended
15 past the expiration date set in the Master Use Permit decision or the date established in
16 subsection 23.76.032.A.1.f if:

17
18 a) On the expiration date stated in the Master Use Permit
19 decision, a building permit for the entire development has been issued and has not expired, in
20 which case the Master Use Permit shall expire when the building permit expires, or

21 b) A complete application for a building permit that either
22 is for the entire development proposed pursuant to section 23.49.180 or is for construction to
23 complete the entire development proposed pursuant to section 23.49.180 is:
24

1 i) submitted at least 60 days before the expiration
2 date of the Master Use Permit; and

3 ii) made sufficiently complete to constitute a fully
4 complete building permit application as defined in the Seattle Building Code, or for a highrise
5 structure regulated under Section 403 of the Seattle Building Code, made to include the complete
6 structural frame of the building and schematic plans for the exterior shell of the building, in
7 either case before the expiration date of the Master Use Permit, in which case the Master Use
8 Permit shall expire when the building permit issued pursuant to the application expires or when
9 the application for a building permit is canceled or withdrawn.

10
11 2. On((At)) the ((end of the three year term))expiration date determined as
12 provided in subsection 23.76.032.A.1, a Master Use Permit((s)) expires unless one of the
13 conditions in ((subsections a through d of))this subsection 23.76.032.A.2 exists:

14
15 a. A building permit is issued before the ((end of the three year

16 term))expiration date, or an application for a building permit is:
17
18 ((f)1) submitted at least 60 days before the end of the three year
19 term;

20 ((f)2) made sufficiently complete to constitute a fully complete
21 building permit application as defined in the Seattle Building Code, or for a highrise structure
22 regulated under Section 403 of the Seattle Building Code, made to include the complete
23 structural frame of the building and schematic plans for the exterior shell of the building, in
24 either case before the ((end of the three year term))expiration date; and

1 ~~((p))~~ Phased ~~((d))~~ Development (MPD) component ~~((, for which this subsection B does not apply)).~~

2 The Director shall not renew issued Master Use Permits for projects that are not in conformance
3 with applicable regulations, including land use and environmentally critical areas regulations, or
4 SEPA policies in effect at the time renewal is sought, except for second and subsequent phases of
5 an approved Master Use Permit with a Major Phased Development component ~~((for which this
6 subsection B does not apply)).~~

8 2. If an application for a building permit is:

9 ~~((f))~~a submitted at least 60 days before the end of the two year term of
10 renewal;

11 ~~((f))~~b made sufficiently complete to meet the requirements of Section 106
12 of the Seattle Building Code; and

13 ~~((f))~~c subsequently issued,
14 the Master Use Permit shall be extended for the life of the building permit. For highrise
15 structures regulated under Section 403 of the Seattle Building Code, the building permit
16 application may be a partial one, provided that it includes the complete structural frame of the
17 building, and schematic plans for the exterior shell of the building.
18

19 3. The Director may renew a Master Use Permit for the temporary relocation of
20 police and fire stations issued pursuant to Section 23.42.040 for a period not to exceed 12
21 months.
22

23 * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Section 13. To the extent that any provision of affordable housing or payment under Section 23.49.181 may be considered a tax, that tax is imposed pursuant to the authority of RCW 36.70A.540.

Section 14. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within 10 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2009, and signed by me in open session in authentication of its passage this ____ day of _____, 2009.

President _____ of the City Council

Approved by me this ____ day of _____, 2009.

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2009.

Dennis Meier/DM
DPD – North Lot ORD
March 24, 2009
Version #15

City Clerk

1

2 (Seal)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28