

After recording return to:

The City of Seattle
c/o Department of Neighborhoods
Attn: Sarah Sodt, Historic Preservation Officer
P.O. Box 94649
Seattle, WA 98104

**COVENANTS FOR
LANDMARK TRANSFER OF FLOOR AREA**

Grantor: **MC VILLA CAMINI LLC**

Grantee: **THE CITY OF SEATTLE**

Legal Description:

1. Lot 24, Block 15, Brooklyn Addition to Seattle, according to the Plat Thereof Recorded in Volume 7 of Plats, Page 32, in King County, Washington.

Assessor's Property Tax Parcel Account Number(s): 1142001635

Reference numbers of related documents: NOT APPLICABLE

THIS AGREEMENT is entered into this 1st day of June, 2022 between **MC VILLA CAMINI LLC**, a Washington limited liability company (“Grantor”), and **THE CITY OF SEATTLE**, a Washington municipal corporation acting through its Department of Neighborhoods (the “City” or “Grantee”).

RECITALS

A. Chapter 23.48 of the City’s Land Use Code (“Land Use Code”) authorizes the use of additional incremental floor area ratio (“FAR”) associated with lots that include one or more designated landmark structures pursuant to the Landmark Preservation Ordinance, Chapter 25.12 (“Landmarks Ordinance”) of the Seattle Municipal Code (“SMC”).

B. Grantor is the owner of the structure commonly known as the Villa Camini (the “Building”) that is located at 1205 NE 42nd Street in Seattle’s University District neighborhood, King County, Washington, in the Seattle Mixed (SM) zone (the “Landmark Property”). The legal description of the Landmark Property is included on **Exhibit A** attached and incorporated by this reference.

C. The Landmark Property is a designated City of Seattle Landmark, as stated in Ordinance No. 126171, and is eligible to participate in the City’s Landmark Additional Incremental Floor Area Ratio (FAR) program pursuant to SMC 23.48.620.

D. The Landmark Property is providing additional floor area to a separate property (the “Increased Lot”) in the same block as part of combined lot development, pursuant to SMC 23.48.627, resulting in the Landmark Property becoming a lot with reduced development capacity (the “Reduced Lot”).

D. Grantor has rehabilitated the building or structure to the extent necessary so that all features and characteristics controlled or designated by ordinance pursuant to Chapter 25.12 are in good condition and consistent with the applicable ordinances and with any Certificates of Approval issued by the Landmarks Preservation Board (the “Board”), all as determined by the Director of the Department of Neighborhoods.

E. The Land Use Code makes executing and recording of an agreement with King County real estate records in order to document the bonus allowed on the lot with the Landmark(s). This Agreement is being entered into to satisfy that requirement of the Land Use Code.

F. The Land Use Code states that a qualifying Landmark that transfers additional floor area to another property, is not also eligible to be a Landmark transferable development rights (TDR) or transferable development potential (TDP) sending site.

G. The Land Use Code states that any Landmark providing additional floor area to another property shall remain designated as a Landmark under Chapter 25.12, and the owner shall maintain the exterior and interior of each qualifying Landmark in good condition and repair, and in a manner that preserves the features and characteristics that are subject to designation or controls by ordinance.

H. Grantor enters into this Agreement freely and voluntarily.

COVENANTS

NOW, THEREFORE, for good and valuable consideration, receipt of which is acknowledged, the Grantor grants in favor of the City the covenants and negative easements set forth below, and the parties acknowledge and agree as follows:

1. TRANSFER OF FLOOR AREA

A. The Seattle Department of Construction and Inspections (“SDCI”) has determined that the amount of Development Capacity provided by the Landmark Property, the Reduced Lot, is 40,924.90 square feet as stated in the Declaration of Agreement attached as **Exhibit B** and incorporated by this reference, and based on the assumptions stated in that declaration and as of the date thereof.

B. Grantor understands that the transfer of floor area from the Landmark Property will reduce the allowable non-exempt gross floor area that may be built on the Landmark Property pursuant to SMC Title 23. Grantor covenants not to commence or expand any non-exempt use of floor area on the Landmark Property, or permit any non-exempt use of floor area on the Landmark Property to commence or expand, contrary to the applicable terms of SMC Title 23, as applied after taking account of any transfer of the floor area from the Landmark Property.

2. CONTROLS; RENOVATION OF THE LANDMARK PROPERTY

A. Controls on the Building (“Controls”) have been established through Ordinance No. 126171, a copy of which is attached as **Exhibit C** and incorporated by this reference. The features described in Section of 2 of the Ordinance are referred to as “Designated Features”

and the controls established pursuant to the Ordinance are referred to as the “Controls.” The Ordinance continues to apply to the Building and Landmark Property.

B. The exterior of the Building is in good condition and repair and does not have a present need for further rehabilitation as a condition to use the FAR.

3. MAINTENANCE AND REPAIR

Grantor shall maintain the site, and the exterior and interior of the Building in good condition and repair, reasonable wear and tear excepted, in a manner that preserves the Designated Features consistent with the Controls and Certificates of Approval; and shall neither commit nor suffer any waste; and shall promptly comply with all requirements of federal, state, and local laws, ordinances, regulations, covenants, conditions, and restrictions respecting the Landmark Property. It shall be the obligation of Grantor, at Grantor’s sole cost, to perform maintenance and repair to the full extent necessary to avoid any need to remove, demolish, or alter any Designated Features due to damage or deterioration from any cause other than fire, earthquake, or other casualty. The extent to which any casualty requires modification, removal, or demolition of Designated Features shall be subject to review under the Landmarks Ordinance. If the Building is going to be entirely vacant at any time, the Grantor agrees to have the following security measures in place to protect the entire Landmark:

A. Establish and maintain an onsite resident or manger with coverage twenty-four hours a day, seven days a week. Their contact information shall be provided to the City Historic Preservation Officer and Landmarks Preservation Board coordinator.

B. A working, comprehensive smoke alarm system monitored by an offsite company, who will notify to the Seattle Fire Department and the property owner if there is an alarm. Devices shall be installed in each level of each residential unit, and in all circulation and utility areas within the building.

C. Security cameras installed in a manner reviewed and approved by the Landmarks Preservation Board coordinator. The system will be monitored by the owner’s representative.

D. Temporary barriers to restrict access to the building or site; designed and installed in a manner reviewed and approved by the Landmarks Preservation Board coordinator.

4. LANDMARK DESIGNATION AND CONTROLS

A. Grantor agrees that the Building shall remain designated as a Seattle Landmark and that Grantor shall not apply for any removal of designation after the transfer of floor area.

Further, the Building shall remain subject to the Controls and to any restrictions contained in the Certificate of Approval after the transfer of the floor area.

B. Grantor further agrees not to physically remove, demolish, or cover any Designated Features without first obtaining a new certificate of approval issued by the Board. Grantor shall remain entitled to seek certificates of approval from the Board for modifications to Designated Features consistent with the historic character of the Building. Further, Grantor shall remain entitled to contest Board decisions on certificates of approval based on the appeal procedure in the Landmarks Ordinance.

5. REMEDIES; ENFORCEABILITY

A. If there is a violation by Grantor of any of the provisions of this Agreement, the City may notify Grantor in writing of the violation. Grantor shall have 30 days from the date of notice to cure the violation, failing which Grantor shall be in default.

Notwithstanding the foregoing, if the violation is of such a nature that it may not practicably be cured within 30 days, the City shall not be entitled to exercise its remedies so long as Grantor commences cure of such violation within the 30-day period and diligently pursues the cure to completion within 90 days of the City's notice, unless the period is extended by written agreement of the City.

If Grantor does not cure within the 30-day period or commence to cure the violation within the 30-day period, as applicable, and complete the cure within the 90-day period (or any extension granted by the City), the City may, in its discretion, pursue any and all remedies provided by this Agreement or available at law or in equity. Grantor agrees that the remedies shall include, to the full extent available under applicable law and without limitation, specific performance, preliminary and permanent injunctive relief, appointment of a receiver on an interim or permanent basis, monetary damages, and the costs of any repairs or other actions reasonably necessary with respect to the Landmark Property including the reasonable value of any services provided by City employees in connection this Agreement.

B. No waiver of any breach or violation shall be binding unless in writing signed by the City and no waiver or delay in enforcing the provisions of this Agreement as to any breach or violation shall impair, damage, or waive the right of the City to obtain relief or recover for the continuation or repetition of the breach or violation or any similar breach or violation at any later time or times.

6. REPRESENTATIONS AND WARRANTIES; NO CONFLICT WITH OTHER DOCUMENTS

Grantor represents and warrants it is the sole owner of the Landmark Property; that it has full power and authority to enter into and perform this Agreement; that this Agreement represents the valid, binding obligation of Grantor enforceable in accordance with its terms; and that no other agreement or instrument encumbering the Landmark Property contains terms that are contrary to the terms of this Agreement or requires any consent or approval for the execution or delivery of this Agreement, except for any consent or approval that has been duly granted.

7. CHOICE OF LAW

This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Washington.

8. CAPTIONS

The section captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

9. GENDERS

The use of any gender shall be deemed to include any other gender, and the use of the singular shall be deemed to include the plural and vice versa, wherever appropriate.

10. MORTGAGEE PROTECTIONS

The following provisions are for the benefit of holders of first mortgages (“Mortgagees”) encumbering all or a portion of the Grantor Property and/or the Grantee Property (“Mortgages”). Any Mortgagee who provides a written request to Grantor or Grantee, as applicable, stating its name and address and indicating the property to which its Mortgage relates shall be deemed an eligible mortgage holder (“Eligible Holder”) and shall be entitled to a copy of any notice of default of this Agreement sent to either Grantor or Grantee, and such Eligible Holder shall have the right, but not the obligation, to cure any such default or delinquency within the same cure period as is provide to such defaulting/delinquent Grantor hereunder. Nothing in this provision shall cause the City of Seattle to be financially responsible for the Landmark Property.

11. RECORDING AND BINDING EFFECT

A. Grantor shall record this Agreement with the King County Recorder as an encumbrance on the Landmark Property within 10 working days after the date of this Agreement. The provisions shall not be amended or revised except by an instrument in writing duly executed by the City and Grantor or their successors and duly recorded. This Agreement shall not be terminated except by an instrument in writing authorized and executed by the City.

B. Grantor agrees that the restrictions on modifications in this Agreement shall burden the Landmark Property as negative easements, for the benefit of the City.

C. References to “Grantor” shall include its successors and assigns. The parties agree that this Agreement shall run with the land in perpetuity and shall bind Grantor and its heirs, successors, and assigns as owners of the Landmark Property or any interest therein, in perpetuity.

12. SEVERABILITY

The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions.

13. DELIVERY OF NOTICE

Any notice or other document required by this Agreement to be delivered to a party shall be deemed delivered two business days after mailing, postage prepaid, or upon personal delivery. Delivery to the Grantor and the City shall be made to the following addresses or such other address as either party shall provide to the other by written notice in accordance with this Section:

Grantor:

MC VILLA CAMINI LLC
601 Union St Suite 5300
Seattle, WA 98101
Attn: Dan Chhan
Phone: 206-321-2047

With copy to:

McCullough Hill Leary, P.S.

701 Fifth Avenue, Suite 6600
Seattle, WA 98104
Attn: Jessica M. Clawson
jessie@mhseattle.com

City:

Department of Neighborhoods
600 Fourth Avenue – 4th Floor
Seattle, Washington 98104
Attn: Historic Preservation Officer

14. ENTIRE AGREEMENT

This Agreement, including any exhibits, attachments, and documents incorporated by reference contains the entire Agreement and understanding of Grantor and the City with respect to the subject matter of this Agreement.

15. LANDMARKS ORDINANCE

The obligations of Grantor are in addition to, and not in substitution for, Grantor's obligations under the Landmarks Ordinance and the related Controls. No consent or approval of the City by this Agreement shall operate to waive or otherwise affect the need for consents or approvals from the Board.

16. ACCEPTANCE OF AGREEMENT; EFFECT OF CHANGES

The City accepts this Agreement as complying with the Land Use Code provisions in effect as of the date of this Agreement that are applicable to the transfer of floor area from the Landmark Property, including without limitation that transferring the floor area is consistent with applicable Land Use Code provisions, by a deed in proper form, duly executed, acknowledged, and recorded.

If there is any change in the Land Use Code or any applicable law before transferring the floor area from the Landmark Property, any or all of the following may occur: the amount of available floor area may change; additional conditions may apply, which may require amendment to this Agreement..

[Signature pages follow]

EXECUTED as of the day and year first above written.

Grantor:

MC VILLA CAMINI LLC
a Washington limited liability company

By: MC Managers LLC,
a Washington limited liability company
Its Manager

By: _____

Name: Timothy McKay (or Dan Chhan)
Title: Managing Member

Date: _____

City:

THE CITY OF SEATTLE

By: _____

Name: Greg Wong
Title: Director, Department of Neighborhoods

Date: _____

EXHIBIT A

LEGAL DESCRIPTION OF LANDMARK PROPERTY

Lot 24, Block 15, Brooklyn Addition to Seattle, according to the Plat Thereof Recorded in Volume 7 of Plats, Page 32, in King County, Washington.

DRAFT

EXHIBIT B

DECLARATION AND AGREEMENT REGARDING EXTRA RESIDENTIAL FLOOR AREA FOR PROPERTY
AT 4126 12TH AVENUE NE (COMBINED LOT DEVELOPMENT 1205 NE 42ND STREET)

[INSTRUMENT NO. 20201123002233]

[Attached]

EXHIBIT C
CONTROLS ORDINANCE

[Attached]