

**Property Use and Development Agreement**

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

**PROPERTY USE AND DEVELOPMENT AGREEMENT**

<b>Grantor(s):</b>	(1)	Zella Apartments, LLC	(2)	
<input type="checkbox"/> Additional grantors on page _____				
<b>Grantee:</b>	(1)	The City of Seattle		
<input type="checkbox"/> Additional on page _____				
<b>Legal Description</b> <i>(abbreviated if necessary):</i>	LOTS 1 AND 2, BLOCK 12 D.T. DENNY'S NORTH SEATTLE ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 41, IN KING COUNTY, WASHINGTON. ALL SITUATE IN THE SECTION 25, TOWNSHIP 25 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.			
<input type="checkbox"/> Additional legal description on page _____:				
<b>Assessor's Tax Parcel ID #:</b>	1989200655, 1989200650			
<b>Reference Nos. of Documents Released or Assigned:</b>				

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by Zella Apartments, LLC (the "Owner").

## RECITALS

A. Zella Apartments, LLC is the owner of that certain real property (the "Property") in the City of Seattle zoned Neighborhood Commercial 3 with a 65-foot height limit (NC3 65)) shown in Attachment A and described as:

LOTS 1 AND 2, BLOCK 12 D.T. DENNY'S NORTH SEATTLE ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 41, IN KING COUNTY, WASHINGTON. ALL SITUATE IN THE SECTION 25, TOWNSHIP 25 NORTH, RANGE 3 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.

B. On December 14, 2015, the Owner submitted to the City of Seattle an application under Project No. 3020961 for a rezone of the Property from Neighborhood Commercial 3 with a 65-foot height limit (NC3 65) to Neighborhood Commercial 3 with an 85-foot height limit (NC3 85). The purpose of the application is to allow the Property to accommodate a seven-story structure containing 90 residential units and 38 live work units.

C. Seattle Municipal Code Section 23.34.004 allows the City to approve a rezone subject to "self-imposed restrictions upon the use and development of the property in order to ameliorate adverse impacts that could occur from unrestricted use and development permitted by development regulations otherwise applicable after the rezone."

NOW, THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

## AGREEMENT

**Section 1. Agreement.** Pursuant to Seattle Municipal Code Section ("SMC") 23.34.004, the Owner hereby covenants, bargains and agrees, on behalf of itself and its successors and assigns, that they will comply with the following conditions in consideration of the rezone of the Property from NC3 65 to NC3 85:

- (a) Future development of the Property is restricted to a project that complies with Master Use Permit (MUP) #3020961, once the Seattle Department of Construction and Inspections (SDCI) issues that MUP. Prior to issuing the MUP, SDCI must confirm that the drawings substantially comply with the conditions established during the design review process, including the structure design and location on the site, structure height, building materials, landscaping, street improvements, parking design, signage and site lighting.

- (b) The provisions of Seattle Municipal Code Chapter 23.58B shall apply to applicable development, if any, on the Property. Compliance with that Chapter shall be through the payment option according to SMC 23.58B.040. Any required cash contribution according to SMC 23.58B.040.A shall be provided prior to issuance of the first construction permit other than a demolition, excavation, or shoring permit.
- (c) For purposes of compliance with Seattle Municipal Code Chapter 23.58C, the development pursuant to MUP #3020961 shall include 8 units, as defined in SMC 23.58C.020, affordable to households earning 60 percent of median income, as defined in SMC 23.84A.025 (the Affordable Units).
- (d) The location and configuration of the Affordable Units shall be shown on the MUP plans and shall be subject to review and approval by the Office of Housing for consistency with the criteria set forth in SMC 23.58C.050.C.1 and 23.58C.050.C.2.
- (e) Prior to issuance of MUP #3020961, an executed and recorded agreement between the City and the Owner shall be provided that specifies the following requirements:
  - The development shall include 8 units, as defined in SMC 23.58C.020, affordable to households earning 60 percent of median income, as defined in SMC 23.84A.025. At initial occupancy, the Affordable Units shall be rental units.
  - The Affordable Units shall comply with following requirements, the substance of which requirements shall be stated in its entirety in the agreement:
    - 23.58C.050.B, provided that the period referenced in SMC 23.58C.050.B.1.a and SMC 23.58C.050.B.2 may be changed from seventy-five years to fifty years; and
    - 23.58C.050.C.

The agreement shall be recorded on the title of the Property. The agreement shall be enforceable by the City in Superior Court.

**Section 2. Agreement Runs With the Land.** This Agreement shall be recorded in the records of King County by the City Clerk. The covenants hereof shall be deemed to attach to and run with the land and shall be binding upon the Owner, its heirs, successors and assigns, and shall apply to after-acquired title of the owners of the property.

**Section 3. Termination of Zoning Designation.**

The new zoning designation shall expire according to SMC 23.76.060.C, or if the rezone is revoked pursuant to SMC 23.34.004.

**Section 4. Termination of Conditions.**

The conditions listed in Section 1 of this agreement shall expire at such time as the rezone expires or is revoked pursuant to SMC 23.34.004. If the rezone does not expire, these conditions shall remain in effect until amended or repealed.

**Section 5. Amendment.** This Agreement may be amended or modified by agreement between the Owner and the City; provided, such amendments are approved by the City Council by ordinance.

**Section 6. Exercise of Police Power.** Nothing in this Agreement shall prevent the City Council from making such further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

**Section 7. No Precedent.** The conditions contained in this Agreement are based on the unique circumstances applicable to this property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

**Section 8. Repeal as Additional Remedy.** Owner acknowledges that compliance with the conditions of this Agreement is a condition of the subject rezone and that if the Owner avails itself of the benefits of this rezone but then fails to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may:

- a. revoke the rezone by ordinance and require the use of the Rezone Site to conform to the requirements of the previous NC3 65 zoning designation or some other zoning designation imposed by the City Council; and/or
- b. pursue specific performance of this Agreement.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2017.

Zella Apartments, LLC, a Washington limited liability company

By: Anderson-Lanterman Investments, LLC, a Washington limited liability company,

its Manager

By: \_\_\_\_\_

H. Jenny Anderson, its Manager

On this day personally appeared before me H. Jenny Anderson, to me known to be the Manager of Anderson-Lanterman Investments, LLC, a Washington limited liability company, the Manager of Zella Apartments, LLC, a Washington limited liability company that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_ day of \_\_\_\_\_, 2017.

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

STATE OF WASHINGTON		
COUNTY OF KING		

Proposed

ATTACHMENT A

