

Property Use and Development Agreement

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

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor(s):	Acer House, LLC
Grantee:	The City of Seattle
Legal Description <i>(abbreviated if necessary):</i>	See Attachment B
Assessor's Tax Parcel ID #:	Parcels: 912610-1695, 912610-1685, 912610-1681, 912610-1705, 912610-1725, 912610-1730, and 912610-1706

Reference Nos. of Documents Released or Assigned:	n/a
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THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the “Agreement”) is executed this ___ day of _____, 2023, in favor of the CITY OF SEATTLE (the “City”), a Washington municipal corporation, by ACER HOUSE, LLC, a Washington Limited Liability Company (“Owner”).

RECITALS

- A. ACER HOUSE, LLC, is the owner of that certain real property, addressed as 2210 East Cherry Street, consisting of seven parcels (collectively “Property”) in the City of Seattle currently zoned Neighborhood Commercial 1 with a 40 foot height limit and M Mandatory Housing Affordability suffix (NC1-40 (M)) and Neighborhood Commercial 1 with a 40 foot height limit and M2 Mandatory Housing Affordability Suffix (NC1 40 (M2)), shown in Attachment A and legally described in Attachment B.

- B. In July 2021, the Owner submitted to the City an application under Project No. 3037185-LU to rezone parcels 912610-1705, 912610-1725, 912610-1730, and 912610-1706 of the Property from NC1-40 (M) to Neighborhood Commercial 1 with a 65 foot height limit and M1 Mandatory Housing Affordability suffix (NC1-65 (M1)) and parcels 912610-1695, 912610-1685, and 912610-1681 of the Property from NC1 40 (M2) to Neighborhood Commercial 1 with a 65 foot height limit and M2 Mandatory Housing Affordability suffix (NC1-65 (M2)) (the “Rezone”), shown in Attachment A.

- C. Seattle Municipal Code Section 23.34.004 allows the City to approve a rezone subject to “self-imposed restrictions” upon the development of the Property.

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 covenants, bargains, and agrees, on behalf of itself and its successors and assigns that it will comply with the following conditions in consideration of the Rezone:

Prior to Issuance of a Building Permit

- 1. Plans for development of the rezoned property shall be in substantial conformance, as determined by the Director, with the approved plans for Master Use Permit (MUP) Number 3037185-LU.

Prior to Issuance of Demolition, Excavation/Shoring, or Construction Permit

1. Provide a Construction Management Plan that has been approved by the Seattle Department of Transportation (SDOT). The submittal information and review process for Construction Management Plans are described on the SDOT website.
2. Provide an archaeological monitoring and inadvertent discovery plan prepared by a qualified professional and include statement that the Duwamish Tribe shall be notified in the event of archaeological work.

For the Life of the Project

1. The building and landscape design shall be substantially consistent with the materials presented at the Design Review Board Recommendation meeting and in the materials submitted after the recommendation meeting, before the MUP issuance. Any change to the proposed design, including materials or colors, shall require prior approval by a Land Use Planner at the Seattle Department of Construction and Inspections.

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

Section 3. Amendment. This Agreement may be amended or modified by agreement between the Owner and the City; provided any amendments are approved by the City Council by ordinance.

Section 4. Exercise of Police Power. Nothing in this Agreement shall prevent the City Council from making further amendments to the Seattle Municipal Code or Land Use Code as it may deem necessary in the public interest.

Section 5. No Precedent. The conditions contained in this Agreement are based on the unique circumstances applicable to the Property and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

Section 6. 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 Property to conform to the requirements of the previous zoning designation or some other zoning designation imposed by the City Council; and
- b. Pursue specific performance of this Agreement.

[signature and acknowledgment on following pages]

Exhibit B - Property Use and Development Agreement

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SIGNED this ____ day of ____, 2023.

ACER HOUSE, LLC, a Washington Limited Liability Company

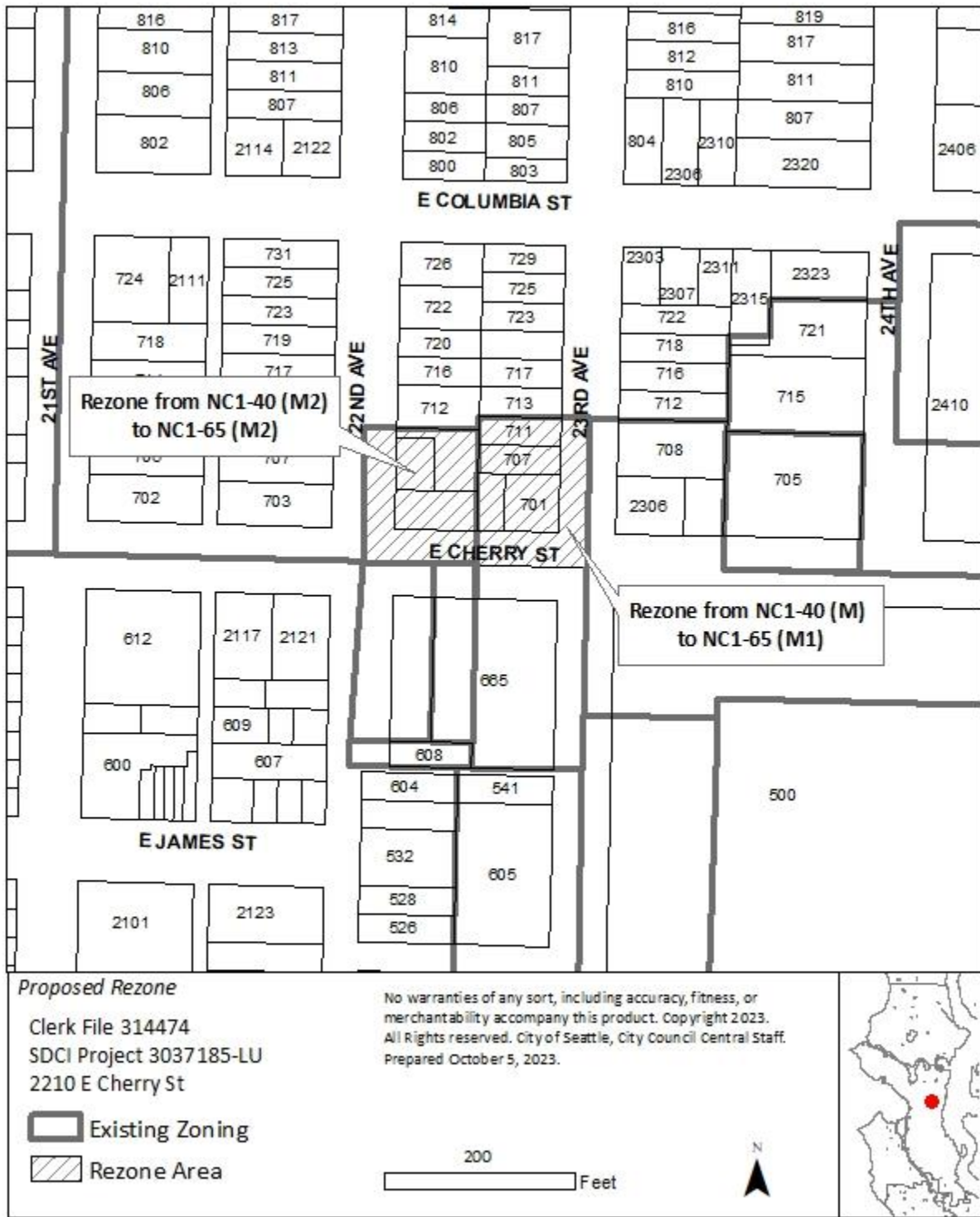
By: ____

On this day personally appeared before me ____, to me known to be the ____, of ____, 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 ____, 2023.

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

ATTACHMENT A



ATTACHMENT B

PARCELS #912610--1695, 912610--1685 & 912610--1681

(PER STEWART TITLE INSURANCE COMPANY ORDER NO. 820537, DATED JUNE 30, 2020)

PARCELS A, C, AND C, CITY OF SEATTLE LOT BOUNDARY ADJUSTMENT NO. 3032095-LU, RECORDED UNDER RECORDING NO. 20181024900003, RECORDS OF KING COUNTY, WASHINGTON. SITUATE IN THE COUNTY OF KING STATE OF WASHINGTON.

PARCEL #912610--1705

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3523432, DATED JULY 15, 2020)

THE EASTERLY 2/3 OF LOTS 11 AND 12, BLOCK 17, WALLA WALLA ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.

PARCEL #912610--1725

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3547292, DATED AUGUST 07, 2020)

LOT 13, BLOCK 17 WALLA WALLA ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.

PARCEL #912610--1730

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3547283, DATED AUGUST 07, 2020)

LOT 14, BLOCK 17 WALLA WALLA ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.

PARCEL #912610--1706

(PER FIRST AMERICAN TITLE INSURANCE COMPANY ORDER NO. 4201--3523524, DATED JULY 15, 2020)

THE WEST ONE-THIRD OF LOTS 11 AND 12, BLOCK 17, WALLA WALLA ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 81, IN KING COUNTY, WASHINGTON.