

Ordinance No. 124025

Council Bill No. 117639

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 15 of the Official Land Use Map to rezone property located at 11200 1st Avenue Northeast from Midrise (MR) to Neighborhood Commercial 3 with an 85 foot height limit (NC3-85), and accepting a Property Use and Development Agreement in connection therewith. (Petition by Northgate Plaza LLC and T&M Jenn LP, C.F. 311240, DPD Project 3006101)

Related Legislation File:

Date Introduced and Referred: <u>Oct. 22, 2012</u>	To: (committee): <u>Planning, Land Use, and Sustainability</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>11.5.12</u>	Date Presented to Mayor: FEB -
Date Signed by Mayor: #	Date Returned to City Clerk: <u>11.5.12</u>
Published by Title Only <u>X</u>	Date Vetoed by Mayor:
Published in Full Text	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Richard Conlin

Committee Action:

Date	Recommendation	Vote
<u>10/26/12</u>	<u>POD</u>	<u>3-0 PC, TB, MD</u>

This file is complete and ready for presentation to Full Council.

Full Council Action:

Date	Decision	Vote
<u>11.5.12</u>	<u>Passed as Amended</u>	<u>9-0</u>

Law Department

CITY OF SEATTLE

ORDINANCE 124025

COUNCIL BILL 117039

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 15 of the Official Land Use Map to rezone property located at 11200 1st Avenue Northeast from Midrise (MR) to Neighborhood Commercial 3 with an 85 foot height limit (NC3-85), and accepting a Property Use and Development Agreement in connection therewith. (Petition by Northgate Plaza LLC and T&M Jenn LP, C.F. 311240, DPD Project 3006101)

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. This Ordinance affects the following legally described lots ("the Property") commonly known as 11200 1st Avenue Northeast:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF NORTHEAST NORTHGATE WAY (EAST 110TH STREET) WITH THE CENTERLINE OF FIRST AVENUE NORTHEAST, AS SAID STREET AND AVENUE EXISTED PRIOR TO THEIR WIDENING BY DEED TO KING COUNTY DATED DECEMBER 27, 1949, RECORDED JANUARY 31, 1950 UNDER RECORDING NO. 3980663 AND RECORDED IN VOLUME 2911 OF DEEDS, PAGE 527, RECORDS OF KING COUNTY, WHICH INTERSECTION IS THE SOUTHWEST CORNER OF SAID SUBDIVISION;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID SUBDIVISION, 30 FEET, MORE OR LESS, TO INTERSECT THE NORTHERLY MARGIN OF SAID EAST 110TH STREET AS IT EXISTED PRIOR TO SAID WIDENING;

THENCE EASTERLY ALONG SAID NORTHERLY MARGIN, 30 FEET, MORE OR LESS, TO THE EASTERLY MARGIN OF SAID FIRST AVENUE NORTHEAST AS IT EXISTED PRIOR TO SAID WIDENING, WHICH IS THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

THENCE SOUTH 88°19'10" EAST ALONG THE NORTHERLY MARGIN OF SAID EAST 110TH STREET, 599.53 FEET TO THE WESTERLY MARGIN OF THIRD AVENUE NORTHEAST;

THENCE NORTH 00°06'30" EAST ALONG SAID WESTERLY MARGIN, 300 FEET;

THENCE NORTH 88°19'10" WEST 150 FEET;

THENCE NORTH 00°06'30" EAST 150 FEET;



1 THENCE SOUTH 88°19'10" EAST 150 FEET TO THE WESTERLY MARGIN OF SAID THIRD
2 AVENUE NORTHEAST;

3 THENCE NORTH 00°06'30" EAST ALONG SAID WESTERLY MARGIN, 180 FEET;

4 THENCE NORTH 88°19'10" WEST, 598.26 FEET TO THE EASTERLY MARGIN OF SAID FIRST
5 AVENUE NORTHEAST;

6 THENCE SOUTH 00°13'20" WEST ALONG SAID EASTERLY MARGIN, 630 FEET TO THE TRUE
7 POINT OF BEGINNING;

8 EXCEPT THE WESTERLY 10 FEET THEREOF FOR WIDENING SAID FIRST AVENUE
9 NORTHEAST;

10 AND EXCEPT THE SOUTHERLY 10 FEET THEREOF FOR WIDENING SAID EAST 110TH STREET
11 CONVEYED TO KING COUNTY BY THE ABOVE -MENTIONED DEED BEARING RECORDING
12 NO. 3980663.

13 AND

14 THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE
15 SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN
16 KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

17 BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF NORTHEAST 110TH STREET AS
18 SAID STREET EXISTED PRIOR TO ITS WIDENING BY DEED TO KING COUNTY RECORDED
19 JANUARY 31, 1950, UNDER AUDITOR'S FILE NO. 3980663, WITH THE WEST LINE OF 3RD
20 AVENUE NE; THENCE NORTH 300.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE
21 NORTH 150.00 FEET; THENCE WEST 150.00 FEET; THENCE SOUTH 150.00 FEET; THENCE EAST
22 150.00 FEET TO THE TRUE POINT OF BEGINNING.

23 Section 2. The Official Land Use Map zone classification for the Property, established
24 on page 15 of the Official Land Use Map, and adopted by Ordinance 110381 and last modified
25 by Ordinance 123963, shall be amended to rezone the Property from Midrise (MR) to
26 Neighborhood Commercial 3 with an 85 foot height limit (NC3-85), as shown in Exhibit A to
27 this Ordinance upon the later of: the effective date of this Ordinance; or the recording by the
28 City Clerk with the King County Recorder of the Property Use and Development Agreement,
 attached to this Ordinance as Exhibit B ("PUDA"), executed by the legal and beneficial owners.
 The Official Land Use Map zone classification is conditioned upon performance and continued
 compliance with the conditions of the PUDA.

 Section 3. The PUDA is hereby approved and accepted.



1 Section 4. The rezone approval of the Property shall not expire unless the City Council
2 changes the zoning designation by ordinance.

3 Section 5. The restrictions and requirements in the PUDA shall terminate as provided in
4 the PUDA.

5 Section 6. The City Clerk is hereby authorized and directed to file, within 30 days after
6 adoption of this Ordinance, the PUDA with the King County Records and Elections Division; to
7 file, upon return of the recorded PUDA from the King County Records and Elections Division,
8 the original of said PUDA with this Ordinance at the City Clerk's Office; and to deliver copies of
9 the same to the Director of the Department of Planning and Development and to the King County
10 Assessor's Office.

11 Section 7. This Ordinance, effectuating a quasi-judicial decision of the City Council and
12 not subject to mayoral approval or disapproval, shall take effect and be in force 30 days from and
13 after its passage and approval by the City Council.



1 Passed by the City Council the 5th day of November, 2012, and
2 signed by me in open session in authentication of its passage this
3 5th day of November, 2012.

4
5 
6 President _____ of the City Council

7
8 Filed by me this 5th day of November, 2012.

9
10 
11 Monica Martinez Simmons, City Clerk

12 (Seal)

13
14
15 Exhibit A: Rezone Map

16 Exhibit B: Property Use and Development Agreement
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Exhibit A: Rezone Map - v.1

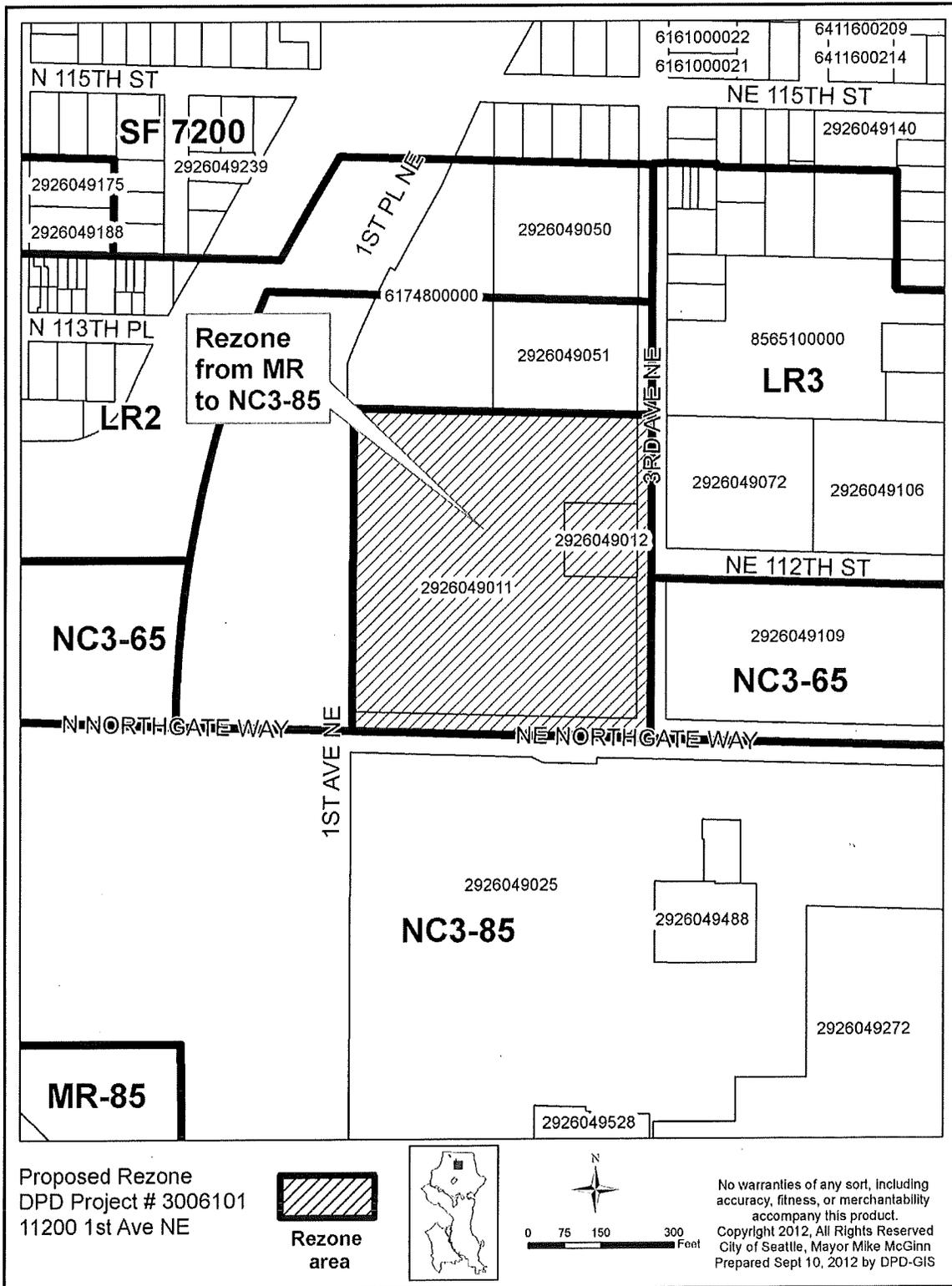


Exhibit B: Property Use and Development Agreement – v.1

When Recorded, Return to:

THE CITY CLERK
600 Fourth Avenue, Floor 3
PO Box 94728
Seattle, Washington 98124-4728

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor: 1) <u>Northgate Plaza LLC</u> 2) <u>T&M Jenn LP</u> <input type="checkbox"/> Additional on page _____
Grantee: 1) <u>The City of Seattle</u> 2) _____ <input type="checkbox"/> Additional on page _____
Legal Description (abbreviated): PORTIONS OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON
<input checked="" type="checkbox"/> Additional on : <u>pp.2-3</u>
Assessor's Tax Parcel ID #: <u>2926049011, 2926049012</u>
Reference Nos. of Documents Released or Assigned: <u>Not applicable.</u>

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 31ST day of October, 2012, in favor of the **CITY OF SEATTLE** (the "City"), a Washington municipal corporation, by **NORTHGATE PLAZA LLC**, a Washington limited liability company, and **T&M JENN LP**, a Washington limited partnership (the "Owners").

RECITALS

A. Northgate Plaza LLC and T&M Jenn LP are the owners of that certain real property (the "Rezone Site") in the City of Seattle zoned Midrise (MR) shown in Attachment A and described as:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF NORTHEAST NORTHGATE WAY (EAST 110TH STREET) WITH THE CENTERLINE OF FIRST AVENUE NORTHEAST, AS SAID STREET AND AVENUE EXISTED PRIOR TO THEIR WIDENING BY DEED TO KING COUNTY DATED DECEMBER 27, 1949, RECORDED JANUARY 31, 1950 UNDER RECORDING NO. 3980663 AND RECORDED IN VOLUME 2911 OF DEEDS, PAGE 527, RECORDS OF KING COUNTY, WHICH INTERSECTION IS THE SOUTHWEST CORNER OF SAID SUBDIVISION;

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THENCE EASTERLY ALONG SAID NORTHERLY MARGIN, 30 FEET, MORE OR LESS, TO THE EASTERLY MARGIN OF SAID FIRST AVENUE NORTHEAST AS IT EXISTED PRIOR TO SAID WIDENING, WHICH IS THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

THENCE SOUTH 88°19'10" EAST ALONG THE NORTHERLY MARGIN OF SAID EAST 110TH STREET, 599.53 FEET TO THE WESTERLY MARGIN OF THIRD AVENUE NORTHEAST;

THENCE NORTH 00°06'30" EAST ALONG SAID WESTERLY MARGIN, 300 FEET;

THENCE NORTH 88°19'10" WEST 150 FEET;

THENCE NORTH 00°06'30" EAST 150 FEET;

THENCE SOUTH 88°19'10" EAST 150 FEET TO THE WESTERLY MARGIN OF SAID THIRD AVENUE NORTHEAST;

THENCE NORTH 00°06'30" EAST ALONG SAID WESTERLY MARGIN, 180 FEET;

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THENCE SOUTH 00°13'20" WEST ALONG SAID EASTERLY MARGIN, 630 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THE WESTERLY 10 FEET THEREOF FOR WIDENING SAID FIRST AVENUE
NORTHEAST;

AND EXCEPT THE SOUTHERLY 10 FEET THEREOF FOR WIDENING SAID EAST 110TH STREET
CONVEYED TO KING COUNTY BY THE ABOVE-MENTIONED DEED BEARING RECORDING
NO. 3980663.

AND

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE
SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN
KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF NORTHEAST 110TH STREET AS
SAID STREET EXISTED PRIOR TO ITS WIDENING BY DEED TO KING COUNTY RECORDED
JANUARY 31, 1950, UNDER AUDITOR'S FILE NO. 3980663, WITH THE WEST LINE OF 3RD
AVENUE NE; THENCE NORTH 300.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE
NORTH 150.00 FEET; THENCE WEST 150.00 FEET; THENCE SOUTH 150.00 FEET; THENCE EAST
150.00 FEET TO THE TRUE POINT OF BEGINNING.

B. On December 16, 2010, the Owners submitted to the City of Seattle an
application under Project No. 3006101 for a rezone of the Rezone Site from MR to
Neighborhood Commercial 3 with an 85 foot height limit (NC3-85). The purpose of the
application is to allow the Rezone Site to accommodate future mixed-use, commercial, and multi-
family residential development of greater density. No development proposal is associated with the
rezone application.

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
Owners hereby covenant, bargain and agree, on behalf of themselves and their successors and
assigns, that they will comply with the following conditions in consideration of the rezone of the
Rezone Site from MR to NC3-85:

a. No development will be permitted on the Rezone Site prior to Seattle Public
Utilities' approval of a sewer system engineering analysis and any required infrastructure
improvements.

b. Future development on the Rezone Site shall be consistent with the mitigation
described in massing Option 3 in Section II.D of the "Addendum to the Northgate Urban

Center Rezone Final Environmental Impact Statement for Rezone of 11200 1st Avenue N.E. and 11205 3rd Avenue N.E. from the Midrise to Neighborhood Commercial 3-85', dated November, 2011, and included in Clerk File 311240 as Hearing Examiner Exhibit 3.

c. The following conditions relate to affordable housing:

1. The Owners shall make land at the Rezone Site available for lease, for a minimum period of 75 years, with zero lease payments due for a minimum period of 20 years, for a low-income housing developer ("Lessee") to construct 66 rental units that are restricted to occupancy by households with incomes no higher than 50% of Median Income, for a minimum period of 50 years from the date of issuance of a Final Certificate of Occupancy for the 66-unit project ("Affordable Housing"). In determining the amount of land made available for lease pursuant to this provision, the following criteria shall be followed for the Affordable Housing, to the extent that these criteria are not inconsistent with then applicable provisions of the City of Seattle Land Use Code:

a) the units are contiguous within a single building;

b) "5 over 1" construction with no nonresidential use within the building; parking at a ratio of no more than .5 spaces per unit, with the parking to be constructed in one level below the building, with the exception of Code-required handicapped stalls which are to be provided on grade; and

c) the unit mix generally reflecting the current mix of units at the Rezone Site (which is 30% studios, 42% 1-bedrooms, and 28% 2-bedrooms), unless the Lessee determines that a different unit mix is needed for adequate funding of the Affordable Housing; provided, however, that a building with predominantly all studio units shall not be considered consistent with this Agreement unless there is no reasonable alternative.

The definition of "Median Income" in SMC 23.84A.025, as it exists on the date of this Agreement, shall apply.

2. Following the 20-year period of zero lease payments, the Owners may charge rent to the Lessee, provided that rents shall be discounted from prevailing market rents for an additional 20 years, with rents not to reach market level until year 41 from the commencement of the Lease. Rent increases during the second, 20-year period shall be incremental. Unless the Owners and Lessee agree otherwise, rents shall be increased to no more than 25% of market rate during the first five-year interval (years 21 to 25), increasing to no more than 50% of market rate during the second five-year

interval (years 26 to 30), increasing to no more than 75% of market rate during the third five-year interval (years 31 to 35), and increasing to 85% of market rate during the final five-year interval (years 36 to 40). "Market rate" shall be determined by a method agreed to by the Owners and Lessee based on commercially reasonable practices, such as a land appraisal or with reference to the Consumer Price Index. The Owners shall consult with Lessee regarding the market rate before these rent increases are established and also during the term of the lease beyond year 40.

3. Construction of the Affordable Housing shall commence no later than eight years from issuance of a demolition permit for demolition of the first 50 or more existing units on the Rezone Site.

4. The Owners intend for the Affordable Housing to be constructed on the Rezone Site. However, in the event the Owners cannot come to an agreement with an acceptable Lessee for the Affordable Housing at the Rezone Site, then in lieu of making land available for lease at the Rezone Site, the Owners shall instead make a payment to a low-income housing developer or developers selected by the Owners in consultation with the City, Seattle Displacement Coalition, and the Maple Leaf Community Council for construction at an off-site location or locations (following the priorities set forth below) of 66 rental units that are restricted to occupancy by households with incomes no higher than 50% of Median Income, as defined herein, for a minimum period of 50 years from the date of issuance of a Final Certificate of Occupancy for that 66-unit project ("Payment"). The Payment amount shall be equal to the present value of both the 20-year period of zero lease payments and the present value of any discounted incremental lease payments, as described in Section 1(c)(2), that are reasonably likely from the second, 20-year period of discounted rent, as calculated by the City of Seattle Office of Housing at the time of the Payment. The Payment shall be made no later than seven years from issuance of a demolition permit for demolition of the first 50 or more existing units on the Rezone Site. The Payment agreement with the low-income housing developer shall require that the affordable housing built with the Payment be within the City limits, with the following priorities for location:

- a) within the Northgate Urban Center;
- b) within 0.5 miles of light rail or bus rapid transit stations in northeast Seattle;
- c) within 0.25 miles of a bus stop in northeast Seattle; or

d) within 0.5 miles of a light rail or bus rapid transit station or within 0.25 miles of a bus stop elsewhere inside the Seattle city limits.

5. In addition to the Affordable Housing or Payment, the Owners shall allow an additional 10% of the residential units developed on the Rezone Site in excess of 660 residential units (not including assisted living or hotel rooms which shall not be considered residential units) to be affordable to households with incomes no higher than 80% of Median Income, as defined herein ("10% Units"). This obligation is satisfied if the Owners make a reasonable effort for a developer to lease a portion of the Rezone Site at market rate to develop the 10% Units. This opportunity shall be provided by the time of issuance of a Master Use Permit allowing development of the 660th residential unit on the Rezone Site.

6. This Section 1(c) shall apply in the event that the City has not enacted or expanded an affordable housing incentive program providing for the development of low-income housing at the Rezone Site before a Master Use Permit is considered vested under City law. If the City has enacted or expanded such a program that applies to a Master Use Permit on the Rezone Site according to City vesting law, then that program shall apply instead of this Section 1(c); provided, however, that if the newly enacted or expanded affordable housing incentive program requires fewer affordable units than this Section 1(c) while still allowing a Floor Area Ratio of at least 4.5 for a single use building and at least 6.0 for a mixed use building on the Rezone Site, then the Owners nonetheless agree to implement this Section 1(c), and further, if a Lease has been entered into for the Affordable Housing or the 10% Units, or the Payment has been made for affordable housing at an off-site location, then the Affordable Housing or Payment, and the 10% Units, shall be credited toward compliance with the applicable affordable housing incentive program, as determined by DPD in consultation with the City of Seattle Office of Housing.

Section 2. Reporting. If the Owners have not used the Payment option provided in Section 1(c)(4), and no City-adopted affordable housing reporting requirement otherwise applies, then the Owners shall include the following requirements in the lease described in Section 1(c)(1):

a. the lessee shall submit a report to the City of Seattle Office of Housing annually, starting with the first year of the lease described in Section 1(c)(1), that documents compliance with Sections 1(c)(1) and 1(c)(2), and shall pay a fee equivalent to any then-applicable fee for reports required to determine compliance with affordable housing incentive programs; and

b. the lessee shall submit documentation to the City of Seattle Office of Housing sufficient to demonstrate compliance with Section 1(c)(3) no later than one month after commencement of construction of the Affordable Housing.

Section 3. 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 Owners, their heirs, successors and assigns, and shall apply to after-acquired title of the Owners of the Property.

Section 4. Termination of Zoning Designation. The NC3-85 zoning designation applicable to the Rezone Site shall not expire unless the City Council changes the zoning designation of the Rezone Site by ordinance.

Section 5. Termination of Conditions.

a. If the NC3-85 zoning designation expires or otherwise no longer applies to the Rezone Site, the conditions in Sections 1(a) and 1(b) shall terminate automatically.

b. The conditions in Sections 1(c) and 2 shall terminate as follows:

1. Section 1(c)(1), (2) and (4) shall terminate upon the earliest of either:

a) the conclusion of the 75th year of the lease described in Section 1(c)(1), or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).

2. Section 1(c)(3) shall terminate upon the earliest of either:

a) the written certification by the City of Seattle Department of Planning and Development that the Owners have satisfied the obligation in Section 1(c)(3); or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).

3. Section 1(c)(5) shall terminate upon the written certification by the City of Seattle Office of Housing that the Owners have satisfied the obligation in Section 1(c)(5), if applicable, by making a reasonable effort to provide an opportunity (by the time of issuance of a Master Use Permit allowing development of the 660th residential unit, as defined therein, on the Rezone Site) for a developer to lease a portion of the Rezone Site at market rate to develop the 10% Units.

4. Section 2 shall terminate upon the earliest of either:

a) written certification by the City of Seattle Office of Housing that the lease described in Section 1(c)(1) includes the provisions required by Section 2; or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).

c. Notwithstanding the termination events described in Section 5(b), the conditions in Sections 1(c) and 2 shall terminate upon the effective date of a City Council ordinance that either:

1. applies a new zoning designation to the Rezone Site (or amends the regulations applicable within the NC3-85 zoning designation) in a manner that allows a Floor Area Ratio of less than 4.5 for a single use building or less than 6.0 for a mixed use building; or

2. releases the Rezone Site from the conditions in Sections 1(c) and 2, following application of a new zoning designation to the Rezone Site.

d. Upon termination of the conditions as provided herein, and as verified by the City, the Owners may record in the records of King County a notice of such termination.

Section 6. Amendment. This Agreement may be amended or modified by agreement between Owners and the City; provided, such amendment agreement shall be approved by the legislative authority of the City by ordinance.

Section 7. 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 8. 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 9. Repeal as Additional Remedy. Owners acknowledge that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owners avail themselves of the benefits of this rezone but then fail to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may:

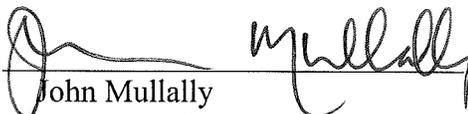
a. revoke the rezone by ordinance and require the use of the Rezone Site to conform to the requirements of the MR zoning designation or some other zoning designation imposed by the City Council; and/or

b. pursue specific performance of this Agreement.

Section 10. References to City Departments. References in this Agreement to the City of Seattle Office of Housing and to Seattle Public Utilities shall be deemed references to any department or office that succeeds the City of Seattle Office of Housing or Seattle Public Utilities, respectively.

SIGNED this 31st day of October, 2012.

Northgate Plaza LLC
a Washington limited liability company

By: 
John Mullally
Its: Managing Member

T&M Jenn LP
a Washington limited partnership

By: 
Mari Lyn Spearbeck
Its: General Partner

STATE OF WASHINGTON
COUNTY OF KING

}
SS.

On this day personally appeared before me John Mullally, to me known to be the Managing Member, of Northgate Plaza 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 31st day of October, 2012.



Janet M. Norman

Printed Name Janet M. Norman

NOTARY PUBLIC in and for the State of Washington, residing at Seattle

My Commission Expires 07/01/2013

STATE OF WASHINGTON
COUNTY OF KING

}
SS.

On this day personally appeared before me Mari Lyn Spearbeck, to me known to be the General Partner, of T&M Jenn LP, a Washington limited partnership, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited partnership, 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 31st day of October, 2012.



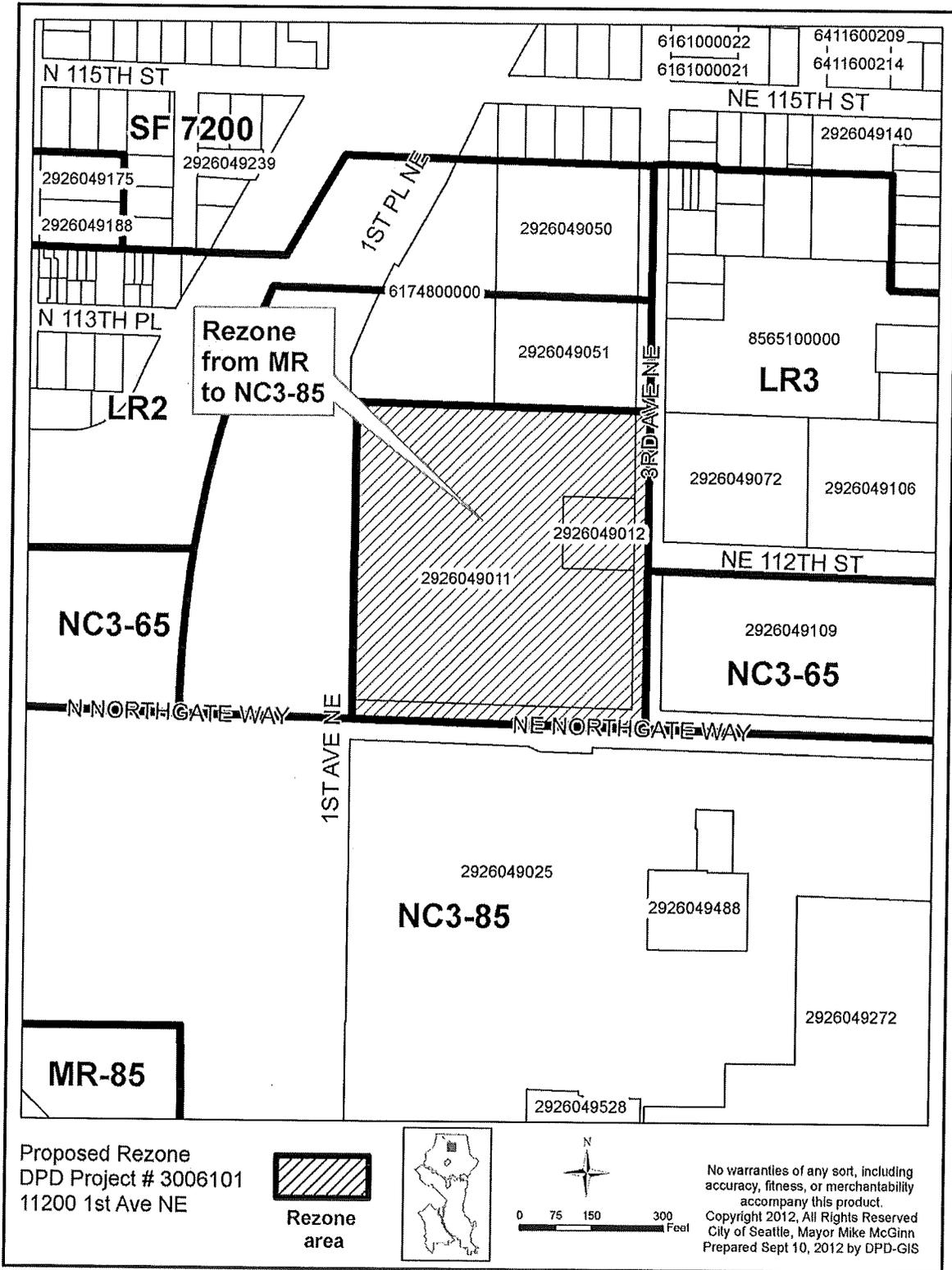
Janet M. Norman

Printed Name Janet M. Norman

NOTARY PUBLIC in and for the State of Washington, residing at Seattle

My Commission Expires 07/01/2013

ATTACHMENT A



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Legislative	Sara Belz, 4-5382	NA

Legislation Title:

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 15 of the Official Land Use Map to rezone property located at 11200 1st Avenue Northeast from Midrise (MR) to Neighborhood Commercial 3 with an 85 foot height limit (NC3-85), and accepting a Property Use and Development Agreement in connection therewith. (Petition by Northgate Plaza LLC and T&M Jenn LP, C.F. 311240, DPD Project 3006101)

Summary of the Legislation:

This legislation effectuates a quasi-judicial rezone of two parcels located at 11200 1st Avenue Northeast. The proposed rezone would change the zone designation of the parcels from MR to NC3-85. A Property Use and Development Agreement is associated with this rezone petition.

Background:

The legislation is a petitioner-generated rezone subject to the Council's rules for quasi-judicial decisions. The original petition, Department of Planning and Development (DPD) recommendation, Hearing Examiner Findings and Recommendation, and record established by the Hearing Examiner are contained in Clerk File 311240.

Please check one of the following:

This legislation does not have any financial implications.

This legislation has financial implications.



Exhibit B: Property Use and Development Agreement – v.1

When Recorded, Return to:

THE CITY CLERK
600 Fourth Avenue, Floor 3
PO Box 94728
Seattle, Washington 98124-4728

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor: 1) <u>Northgate Plaza LLC</u> 2) <u>T&M Jenn LP</u> <input type="checkbox"/> Additional on page _____
Grantee: 1) <u>The City of Seattle</u> 2) _____ <input type="checkbox"/> Additional on page _____
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<input checked="" type="checkbox"/> Additional on : <u>pp.2-3</u>
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Reference Nos. of Documents Released or Assigned: <u>Not applicable.</u>



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RECITALS

A. Northgate Plaza LLC and T&M Jenn LP are the owners of that certain real property (the "Rezone Site") in the City of Seattle zoned Midrise (MR) shown in Attachment A and described as:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF NORTHEAST NORTHGATE WAY (EAST 110TH STREET) WITH THE CENTERLINE OF FIRST AVENUE NORTHEAST, AS SAID STREET AND AVENUE EXISTED PRIOR TO THEIR WIDENING BY DEED TO KING COUNTY DATED DECEMBER 27, 1949, RECORDED JANUARY 31, 1950 UNDER RECORDING NO. 3980663 AND RECORDED IN VOLUME 2911 OF DEEDS, PAGE 527, RECORDS OF KING COUNTY, WHICH INTERSECTION IS THE SOUTHWEST CORNER OF SAID SUBDIVISION;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID SUBDIVISION, 30 FEET, MORE OR LESS, TO INTERSECT THE NORTHERLY MARGIN OF SAID EAST 110TH STREET AS IT EXISTED PRIOR TO SAID WIDENING;

THENCE EASTERLY ALONG SAID NORTHERLY MARGIN, 30 FEET, MORE OR LESS, TO THE EASTERLY MARGIN OF SAID FIRST AVENUE NORTHEAST AS IT EXISTED PRIOR TO SAID WIDENING, WHICH IS THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

THENCE SOUTH 88°19'10" EAST ALONG THE NORTHERLY MARGIN OF SAID EAST 110TH STREET, 599.53 FEET TO THE WESTERLY MARGIN OF THIRD AVENUE NORTHEAST;

THENCE NORTH 00°06'30" EAST ALONG SAID WESTERLY MARGIN, 300 FEET;

THENCE NORTH 88°19'10" WEST 150 FEET;

THENCE NORTH 00°06'30" EAST 150 FEET;

THENCE SOUTH 88°19'10" EAST 150 FEET TO THE WESTERLY MARGIN OF SAID THIRD AVENUE NORTHEAST;

THENCE NORTH 00°06'30" EAST ALONG SAID WESTERLY MARGIN, 180 FEET;

THENCE NORTH 88°19'10" WEST, 598.26 FEET TO THE EASTERLY MARGIN OF SAID FIRST AVENUE NORTHEAST;

THENCE SOUTH 00°13'20" WEST ALONG SAID EASTERLY MARGIN, 630 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THE WESTERLY 10 FEET THEREOF FOR WIDENING SAID FIRST AVENUE NORTHEAST;



AND EXCEPT THE SOUTHERLY 10 FEET THEREOF FOR WIDENING SAID EAST 110TH STREET CONVEYED TO KING COUNTY BY THE ABOVE-MENTIONED DEED BEARING RECORDING NO. 3980663.

AND

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF NORTHEAST 110TH STREET AS SAID STREET EXISTED PRIOR TO ITS WIDENING BY DEED TO KING COUNTY RECORDED JANUARY 31, 1950, UNDER AUDITOR'S FILE NO. 3980663, WITH THE WEST LINE OF 3RD AVENUE NE; THENCE NORTH 300.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 150.00 FEET; THENCE WEST 150.00 FEET; THENCE SOUTH 150.00 FEET; THENCE EAST 150.00 FEET TO THE TRUE POINT OF BEGINNING.

B. On December 16, 2010, the Owners submitted to the City of Seattle an application under Project No. 3006101 for a rezone of the Rezone Site from MR to Neighborhood Commercial 3 with an 85 foot height limit (NC3-85). The purpose of the application is to allow the Rezone Site to accommodate future mixed-use, commercial, and multi-family residential development of greater density. No development proposal is associated with the rezone application.

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 Owners hereby covenant, bargain and agree, on behalf of themselves and their successors and assigns, that they will comply with the following conditions in consideration of the rezone of the Rezone Site from MR to NC3-85:

a. No development will be permitted on the Rezone Site prior to Seattle Public Utilities' approval of a sewer system engineering analysis and any required infrastructure improvements.

b. Future development on the Rezone Site shall be consistent with the mitigation described in massing Option 3 in Section II.D of the "Addendum to the Northgate Urban Center Rezone Final Environmental Impact Statement for Rezone of 11200 1st Avenue N.E. and 11205 3rd Avenue N.E. from the Midrise to Neighborhood Commercial 3-85'," dated November, 2011, and included in Clerk File 311240 as Hearing Examiner Exhibit 3.



c. The following conditions relate to affordable housing:

1. The Owners shall make land at the Rezone Site available for lease, for a minimum period of 75 years, with zero lease payments due for a minimum period of 20 years, for a low-income housing developer ("Lessee") to construct 66 rental units that are restricted to occupancy by households with incomes no higher than 50% of Median Income, for a minimum period of 50 years from the date of issuance of a Final Certificate of Occupancy for the 66-unit project ("Affordable Housing"). In determining the amount of land made available for lease pursuant to this provision, the following criteria shall be followed for the Affordable Housing, to the extent that these criteria are not inconsistent with then applicable provisions of the City of Seattle Land Use Code:

a) the units are contiguous within a single building;

b) "5 over 1" construction with no nonresidential use within the building; parking at a ratio of no more than .5 spaces per unit, with the parking to be constructed in one level below the building, with the exception of Code-required handicapped stalls which are to be provided on grade; and

c) the unit mix generally reflecting the current mix of units at the Rezone Site (which is 30% studios, 42% 1-bedrooms, and 28% 2-bedrooms), unless the Lessee determines that a different unit mix is needed for adequate funding of the Affordable Housing; provided, however, that a building with predominantly all studio units shall not be considered consistent with this Agreement unless there is no reasonable alternative.

The definition of "Median Income" in SMC 23.84A.025, as it exists on the date of this Agreement, shall apply.

2. Following the 20-year period of zero lease payments, the Owners may charge rent to the Lessee, provided that rents shall be discounted from prevailing market rents for an additional 20 years, with rents not to reach market level until year 41 from the commencement of the Lease. Rent increases during the second, 20-year period shall be incremental. Unless the Owners and Lessee agree otherwise, rents shall be increased to no more than 25% of market rate during the first five-year interval (years 21 to 25), increasing to no more than 50% of market rate during the second five-year interval (years 26 to 30), increasing to no more than 75% of market rate during the third five-year interval (years 31 to 35), and increasing to 85% of market rate during the final five-year interval (years 36 to 40). "Market rate" shall be determined by a method agreed to by the Owners and Lessee based on commercially reasonable practices, such as a land appraisal or with reference to the Consumer Price Index. The Owners shall consult with Lessee regarding



the market rate before these rent increases are established and also during the term of the lease beyond year 40.

3. Construction of the Affordable Housing shall commence no later than eight years from issuance of a demolition permit for demolition of the first 50 or more existing units on the Rezone Site.

4. The Owners intend for the Affordable Housing to be constructed on the Rezone Site. However, in the event the Owners cannot come to an agreement with an acceptable Lessee for the Affordable Housing at the Rezone Site, then in lieu of making land available for lease at the Rezone Site, the Owners shall instead make a payment to a low-income housing developer or developers selected by the Owners in consultation with the City, Seattle Displacement Coalition, and the Maple Leaf Community Council for construction at an off-site location or locations (following the priorities set forth below) of 66 rental units that are restricted to occupancy by households with incomes no higher than 50% of Median Income, as defined herein, for a minimum period of 50 years from the date of issuance of a Final Certificate of Occupancy for that 66-unit project ("Payment"). The Payment amount shall be equal to the present value of both the 20-year period of zero lease payments and the present value of any discounted incremental lease payments, as described in Section 1(c)(2), that are reasonably likely from the second, 20-year period of discounted rent, as calculated by the City of Seattle Office of Housing at the time of the Payment. The Payment shall be made no later than seven years from issuance of a demolition permit for demolition of the first 50 or more existing units on the Rezone Site. The Payment agreement with the low-income housing developer shall require that the affordable housing built with the Payment be within the City limits, with the following priorities for location:

- a) within the Northgate Urban Center;
- b) within 0.5 miles of light rail or bus rapid transit stations in northeast Seattle;
- c) within 0.25 miles of a bus stop in northeast Seattle; or
- d) within 0.5 miles of a light rail or bus rapid transit station or within 0.25 miles of a bus stop elsewhere inside the Seattle city limits.

5. In addition to the Affordable Housing or Payment, the Owners shall allow an additional 10% of the residential units developed on the Rezone Site in excess of 660 residential units (not including assisted living or hotel rooms which shall not be considered residential units) to be affordable to households with incomes no higher than 80% of Median Income, as defined herein ("10% Units"). This obligation is satisfied if the Owners make a



reasonable effort for a developer to lease a portion of the Rezone Site at market rate to develop the 10% Units. This opportunity shall be provided by the time of issuance of a Master Use Permit allowing development of the 660th residential unit on the Rezone Site.

6. This Section 1(c) shall apply in the event that the City has not enacted or expanded an affordable housing incentive program providing for the development of low-income housing at the Rezone Site before a Master Use Permit is considered vested under City law. If the City has enacted or expanded such a program that applies to a Master Use Permit on the Rezone Site according to City vesting law, then that program shall apply instead of this Section 1(c); provided, however, that if the newly enacted or expanded affordable housing incentive program requires fewer affordable units than this Section 1(c) while still allowing a Floor Area Ratio of at least 4.5 for a single use building and at least 6.0 for a mixed use building on the Rezone Site, then the Owners nonetheless agree to implement this Section 1(c), and further, if a Lease has been entered into for the Affordable Housing or the 10% Units, or the Payment has been made for affordable housing at an off-site location, then the Affordable Housing or Payment, and the 10% Units, shall be credited toward compliance with the applicable affordable housing incentive program, as determined by DPD in consultation with the City of Seattle Office of Housing.

Section 2. Reporting. If the Owners have not used the Payment option provided in Section 1(c)(4), and no City-adopted affordable housing reporting requirement otherwise applies, then the Owners shall include the following requirements in the lease described in Section 1(c)(1):

a. the lessee shall submit a report to the City of Seattle Office of Housing annually, starting with the first year of the lease described in Section 1(c)(1), that documents compliance with Sections 1(c)(1) and 1(c)(2), and shall pay a fee equivalent to any then-applicable fee for reports required to determine compliance with affordable housing incentive programs; and

b. the lessee shall submit documentation to the City of Seattle Office of Housing sufficient to demonstrate compliance with Section 1(c)(3) no later than one month after commencement of construction of the Affordable Housing.

Section 3. 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 Owners, their heirs, successors and assigns, and shall apply to after-acquired title of the Owners of the Property.

Section 4. Termination of Zoning Designation. The NC3-85 zoning designation applicable to the Rezone Site shall not expire unless the City Council changes the zoning designation of the Rezone Site by ordinance.



Section 5. Termination of Conditions.

a. If the NC3-85 zoning designation expires or otherwise no longer applies to the Rezone Site, the conditions in Sections 1(a) and 1(b) shall terminate automatically.

b. The conditions in Sections 1(c) and 2 shall terminate as follows:

1. Section 1(c)(1), (2) and (4) shall terminate upon the earliest of either:

a) the conclusion of the 75th year of the lease described in Section 1(c)(1), or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).

2. Section 1(c)(3) shall terminate upon the earliest of either:

a) the written certification by the City of Seattle Department of Planning and Development that the Owners have satisfied the obligation in Section 1(c)(3); or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).

3. Section 1(c)(5) shall terminate upon the written certification by the City of Seattle Office of Housing that the Owners have satisfied the obligation in Section 1(c)(5), if applicable, by making a reasonable effort to provide an opportunity (by the time of issuance of a Master Use Permit allowing development of the 660th residential unit, as defined therein, on the Rezone Site) for a developer to lease a portion of the Rezone Site at market rate to develop the 10% Units.

4. Section 2 shall terminate upon the earliest of either:

a) written certification by the City of Seattle Office of Housing that the lease described in Section 1(c)(1) includes the provisions required by Section 2; or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).



c. Notwithstanding the termination events described in Section 5(b), the conditions in Sections 1(c) and 2 shall terminate upon the effective date of a City Council ordinance that either:

1. applies a new zoning designation to the Rezone Site (or amends the regulations applicable within the NC3-85 zoning designation) in a manner that allows a Floor Area Ratio of less than 4.5 for a single use building or less than 6.0 for a mixed use building; or

2. releases the Rezone Site from the conditions in Sections 1(c) and 2, following application of a new zoning designation to the Rezone Site.

d. Upon termination of the conditions as provided herein, and as verified by the City, the Owners may record in the records of King County a notice of such termination.

Section 6. Amendment. This Agreement may be amended or modified by agreement between Owners and the City; provided, such amendment agreement shall be approved by the legislative authority of the City by ordinance.

Section 7. 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 8. 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 9. Repeal as Additional Remedy. Owners acknowledge that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owners avail themselves of the benefits of this rezone but then fail to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may:

a. revoke the rezone by ordinance and require the use of the Rezone Site to conform to the requirements of the MR zoning designation or some other zoning designation imposed by the City Council; and/or

b. pursue specific performance of this Agreement.

Section 10. References to City Departments. References in this Agreement to the City of Seattle Office of Housing and to Seattle Public Utilities shall be deemed references to any department or office that succeeds the City of Seattle Office of Housing or Seattle Public Utilities, respectively.



SIGNED this _____ day of _____, 2012.

Northgate Plaza LLC
a Washington limited liability company

By: _____
John Mullally
Its: Managing Member

T&M Jenn LP
a Washington limited partnership

By: _____
Mari Lyn Spearbeck
Its: General Partner



STATE OF WASHINGTON

}

ss.

COUNTY OF KING

On this day personally appeared before me John Mullally, to me known to be the Managing Member, of Northgate Plaza 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 _____, 2012.

Printed Name _____

NOTARY PUBLIC in and for the State of Washington, residing at _____

My Commission Expires _____

STATE OF WASHINGTON

}

ss.

COUNTY OF KING

On this day personally appeared before me Mari Lyn Spearbeck, to me known to be the General Partner, of T&M Jenn LP, a Washington limited partnership, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited partnership, 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 _____, 2012.

Printed Name _____

NOTARY PUBLIC in and for the State of Washington, residing at _____

My Commission Expires _____



ATTACHMENT A

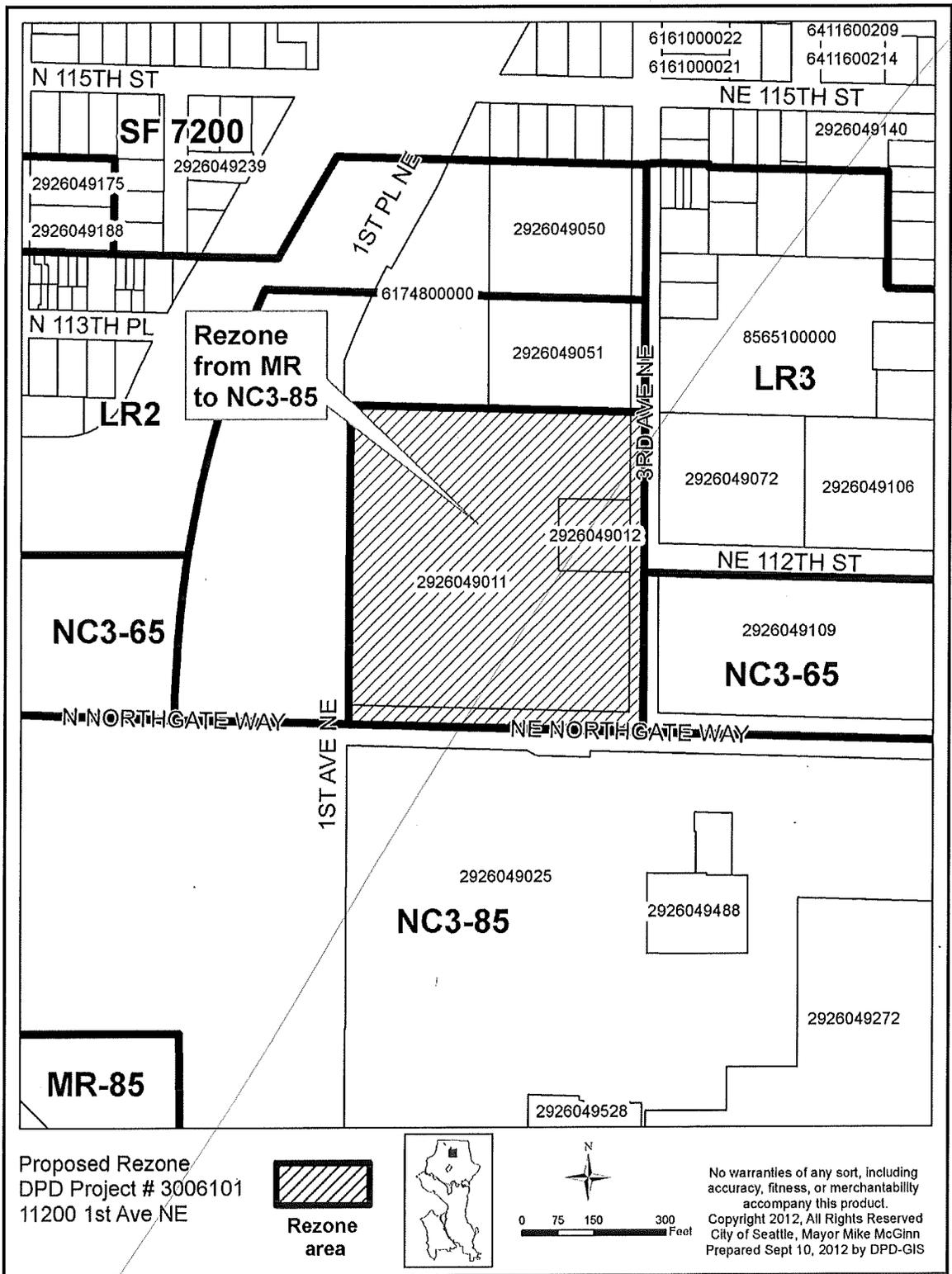


Exhibit B: Property Use and Development Agreement – v.1

When Recorded, Return to:

THE CITY CLERK
600 Fourth Avenue, Floor 3
PO Box 94728
Seattle, Washington 98124-4728



20121116001764

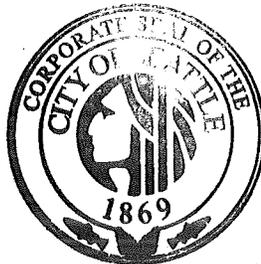
SEATTLE CITY CLERK
PAGE-001 OF 011
11/16/2012 13:47
KING COUNTY, WA

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor:	1) <u>Northgate Plaza LLC</u>	2) <u>T&M Jenn LP</u>
	<input type="checkbox"/> Additional on page _____	
Grantee:	1) <u>The City of Seattle</u>	2) _____
	<input type="checkbox"/> Additional on page _____	
Legal Description (abbreviated):	PORTIONS OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON	
	<input checked="" type="checkbox"/> Additional on : <u>pp.2-3</u>	
Assessor's Tax Parcel ID #:	<u>2926049011, 2926049012</u>	
Reference Nos. of Documents Released or Assigned:	<u>Not applicable.</u>	

State of Washington,
County of King

I, Jarret Polaty certify that this is a true and correct
copy of PUDA to Ordinance 124025 on file in the records
of the City of Seattle, Office of the City Clerk



Signed by: [Signature]
Signature
Title: Legislative Information Specialist II
Date: November 14, 2012

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this 31ST day of October, 2012, in favor of the **CITY OF SEATTLE** (the "City"), a Washington municipal corporation, by **NORTHGATE PLAZA LLC**, a Washington limited liability company, and **T&M JENN LP**, a Washington limited partnership (the "Owners").

RECITALS

A. Northgate Plaza LLC and T&M Jenn LP are the owners of that certain real property (the "Rezone Site") in the City of Seattle zoned Midrise (MR) shown in Attachment A and described as:

THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF NORTHEAST NORTHGATE WAY (EAST 110TH STREET) WITH THE CENTERLINE OF FIRST AVENUE NORTHEAST, AS SAID STREET AND AVENUE EXISTED PRIOR TO THEIR WIDENING BY DEED TO KING COUNTY DATED DECEMBER 27, 1949, RECORDED JANUARY 31, 1950 UNDER RECORDING NO. 3980663 AND RECORDED IN VOLUME 2911 OF DEEDS, PAGE 527, RECORDS OF KING COUNTY, WHICH INTERSECTION IS THE SOUTHWEST CORNER OF SAID SUBDIVISION;

THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID SUBDIVISION, 30 FEET, MORE OR LESS, TO INTERSECT THE NORTHERLY MARGIN OF SAID EAST 110TH STREET AS IT EXISTED PRIOR TO SAID WIDENING;

THENCE EASTERLY ALONG SAID NORTHERLY MARGIN, 30 FEET, MORE OR LESS, TO THE EASTERLY MARGIN OF SAID FIRST AVENUE NORTHEAST AS IT EXISTED PRIOR TO SAID WIDENING, WHICH IS THE TRUE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

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THENCE NORTH 00°06'30" EAST ALONG SAID WESTERLY MARGIN, 300 FEET;

THENCE NORTH 88°19'10" WEST 150 FEET;

THENCE NORTH 00°06'30" EAST 150 FEET;

THENCE SOUTH 88°19'10" EAST 150 FEET TO THE WESTERLY MARGIN OF SAID THIRD AVENUE NORTHEAST;

THENCE NORTH 00°06'30" EAST ALONG SAID WESTERLY MARGIN, 180 FEET;

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THENCE SOUTH 00°13'20" WEST ALONG SAID EASTERLY MARGIN, 630 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THE WESTERLY 10 FEET THEREOF FOR WIDENING SAID FIRST AVENUE
NORTHEAST;

AND EXCEPT THE SOUTHERLY 10 FEET THEREOF FOR WIDENING SAID EAST 110TH STREET
CONVEYED TO KING COUNTY BY THE ABOVE-MENTIONED DEED BEARING RECORDING
NO. 3980663.

AND

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE
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BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF NORTHEAST 110TH STREET AS
SAID STREET EXISTED PRIOR TO ITS WIDENING BY DEED TO KING COUNTY RECORDED
JANUARY 31, 1950, UNDER AUDITOR'S FILE NO. 3980663, WITH THE WEST LINE OF 3RD
AVENUE NE; THENCE NORTH 300.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE
NORTH 150.00 FEET; THENCE WEST 150.00 FEET; THENCE SOUTH 150.00 FEET; THENCE EAST
150.00 FEET TO THE TRUE POINT OF BEGINNING.

B. On December 16, 2010, the Owners submitted to the City of Seattle an
application under Project No. 3006101 for a rezone of the Rezone Site from MR to
Neighborhood Commercial 3 with an 85 foot height limit (NC3-85). The purpose of the
application is to allow the Rezone Site to accommodate future mixed-use, commercial, and multi-
family residential development of greater density. No development proposal is associated with the
rezone application.

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
Owners hereby covenant, bargain and agree, on behalf of themselves and their successors and
assigns, that they will comply with the following conditions in consideration of the rezone of the
Rezone Site from MR to NC3-85:

a. No development will be permitted on the Rezone Site prior to Seattle Public
Utilities' approval of a sewer system engineering analysis and any required infrastructure
improvements.

b. Future development on the Rezone Site shall be consistent with the mitigation
described in massing Option 3 in Section II.D of the "Addendum to the Northgate Urban

Center Rezone Final Environmental Impact Statement for Rezone of 11200 1st Avenue N.E. and 11205 3rd Avenue N.E. from the Midrise to Neighborhood Commercial 3-85’,” dated November, 2011, and included in Clerk File 311240 as Hearing Examiner Exhibit 3.

c. The following conditions relate to affordable housing:

1. The Owners shall make land at the Rezone Site available for lease, for a minimum period of 75 years, with zero lease payments due for a minimum period of 20 years, for a low-income housing developer (“Lessee”) to construct 66 rental units that are restricted to occupancy by households with incomes no higher than 50% of Median Income, for a minimum period of 50 years from the date of issuance of a Final Certificate of Occupancy for the 66-unit project (“Affordable Housing”). In determining the amount of land made available for lease pursuant to this provision, the following criteria shall be followed for the Affordable Housing, to the extent that these criteria are not inconsistent with then applicable provisions of the City of Seattle Land Use Code:

a) the units are contiguous within a single building;

b) “5 over 1” construction with no nonresidential use within the building; parking at a ratio of no more than .5 spaces per unit, with the parking to be constructed in one level below the building, with the exception of Code-required handicapped stalls which are to be provided on grade; and

c) the unit mix generally reflecting the current mix of units at the Rezone Site (which is 30% studios, 42% 1-bedrooms, and 28% 2-bedrooms), unless the Lessee determines that a different unit mix is needed for adequate funding of the Affordable Housing; provided, however, that a building with predominantly all studio units shall not be considered consistent with this Agreement unless there is no reasonable alternative.

The definition of “Median Income” in SMC 23.84A.025, as it exists on the date of this Agreement, shall apply.

2. Following the 20-year period of zero lease payments, the Owners may charge rent to the Lessee, provided that rents shall be discounted from prevailing market rents for an additional 20 years, with rents not to reach market level until year 41 from the commencement of the Lease. Rent increases during the second, 20-year period shall be incremental. Unless the Owners and Lessee agree otherwise, rents shall be increased to no more than 25% of market rate during the first five-year interval (years 21 to 25), increasing to no more than 50% of market rate during the second five-year

interval (years 26 to 30), increasing to no more than 75% of market rate during the third five-year interval (years 31 to 35), and increasing to 85% of market rate during the final five-year interval (years 36 to 40). "Market rate" shall be determined by a method agreed to by the Owners and Lessee based on commercially reasonable practices, such as a land appraisal or with reference to the Consumer Price Index. The Owners shall consult with Lessee regarding the market rate before these rent increases are established and also during the term of the lease beyond year 40.

3. Construction of the Affordable Housing shall commence no later than eight years from issuance of a demolition permit for demolition of the first 50 or more existing units on the Rezone Site.

4. The Owners intend for the Affordable Housing to be constructed on the Rezone Site. However, in the event the Owners cannot come to an agreement with an acceptable Lessee for the Affordable Housing at the Rezone Site, then in lieu of making land available for lease at the Rezone Site, the Owners shall instead make a payment to a low-income housing developer or developers selected by the Owners in consultation with the City, Seattle Displacement Coalition, and the Maple Leaf Community Council for construction at an off-site location or locations (following the priorities set forth below) of 66 rental units that are restricted to occupancy by households with incomes no higher than 50% of Median Income, as defined herein, for a minimum period of 50 years from the date of issuance of a Final Certificate of Occupancy for that 66-unit project ("Payment"). The Payment amount shall be equal to the present value of both the 20-year period of zero lease payments and the present value of any discounted incremental lease payments, as described in Section 1(c)(2), that are reasonably likely from the second, 20-year period of discounted rent, as calculated by the City of Seattle Office of Housing at the time of the Payment. The Payment shall be made no later than seven years from issuance of a demolition permit for demolition of the first 50 or more existing units on the Rezone Site. The Payment agreement with the low-income housing developer shall require that the affordable housing built with the Payment be within the City limits, with the following priorities for location:

- a) within the Northgate Urban Center;
- b) within 0.5 miles of light rail or bus rapid transit stations in northeast Seattle;
- c) within 0.25 miles of a bus stop in northeast Seattle; or

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6. This Section 1(c) shall apply in the event that the City has not enacted or expanded an affordable housing incentive program providing for the development of low-income housing at the Rezone Site before a Master Use Permit is considered vested under City law. If the City has enacted or expanded such a program that applies to a Master Use Permit on the Rezone Site according to City vesting law, then that program shall apply instead of this Section 1(c); provided, however, that if the newly enacted or expanded affordable housing incentive program requires fewer affordable units than this Section 1(c) while still allowing a Floor Area Ratio of at least 4.5 for a single use building and at least 6.0 for a mixed use building on the Rezone Site, then the Owners nonetheless agree to implement this Section 1(c), and further, if a Lease has been entered into for the Affordable Housing or the 10% Units, or the Payment has been made for affordable housing at an off-site location, then the Affordable Housing or Payment, and the 10% Units, shall be credited toward compliance with the applicable affordable housing incentive program, as determined by DPD in consultation with the City of Seattle Office of Housing.

Section 2. Reporting. If the Owners have not used the Payment option provided in Section 1(c)(4), and no City-adopted affordable housing reporting requirement otherwise applies, then the Owners shall include the following requirements in the lease described in Section 1(c)(1):

a. the lessee shall submit a report to the City of Seattle Office of Housing annually, starting with the first year of the lease described in Section 1(c)(1), that documents compliance with Sections 1(c)(1) and 1(c)(2), and shall pay a fee equivalent to any then-applicable fee for reports required to determine compliance with affordable housing incentive programs; and

b. the lessee shall submit documentation to the City of Seattle Office of Housing sufficient to demonstrate compliance with Section 1(c)(3) no later than one month after commencement of construction of the Affordable Housing.

Section 3. 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 Owners, their heirs, successors and assigns, and shall apply to after-acquired title of the Owners of the Property.

Section 4. Termination of Zoning Designation. The NC3-85 zoning designation applicable to the Rezone Site shall not expire unless the City Council changes the zoning designation of the Rezone Site by ordinance.

Section 5. Termination of Conditions.

a. If the NC3-85 zoning designation expires or otherwise no longer applies to the Rezone Site, the conditions in Sections 1(a) and 1(b) shall terminate automatically.

b. The conditions in Sections 1(c) and 2 shall terminate as follows:

1. Section 1(c)(1), (2) and (4) shall terminate upon the earliest of either:

a) the conclusion of the 75th year of the lease described in Section 1(c)(1), or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).

2. Section 1(c)(3) shall terminate upon the earliest of either:

a) the written certification by the City of Seattle Department of Planning and Development that the Owners have satisfied the obligation in Section 1(c)(3); or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).

3. Section 1(c)(5) shall terminate upon the written certification by the City of Seattle Office of Housing that the Owners have satisfied the obligation in Section 1(c)(5), if applicable, by making a reasonable effort to provide an opportunity (by the time of issuance of a Master Use Permit allowing development of the 660th residential unit, as defined therein, on the Rezone Site) for a developer to lease a portion of the Rezone Site at market rate to develop the 10% Units.

4. Section 2 shall terminate upon the earliest of either:

a) written certification by the City of Seattle Office of Housing that the lease described in Section 1(c)(1) includes the provisions required by Section 2; or

b) written certification by the City of Seattle Office of Housing that the Owners have made the Payment and executed the Payment agreement described in Section 1(c)(4).

c. Notwithstanding the termination events described in Section 5(b), the conditions in Sections 1(c) and 2 shall terminate upon the effective date of a City Council ordinance that either:

1. applies a new zoning designation to the Rezone Site (or amends the regulations applicable within the NC3-85 zoning designation) in a manner that allows a Floor Area Ratio of less than 4.5 for a single use building or less than 6.0 for a mixed use building; or

2. releases the Rezone Site from the conditions in Sections 1(c) and 2, following application of a new zoning designation to the Rezone Site.

d. Upon termination of the conditions as provided herein, and as verified by the City, the Owners may record in the records of King County a notice of such termination.

Section 6. Amendment. This Agreement may be amended or modified by agreement between Owners and the City; provided, such amendment agreement shall be approved by the legislative authority of the City by ordinance.

Section 7. 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 8. 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 9. Repeal as Additional Remedy. Owners acknowledge that compliance with the conditions of this Agreement is a condition of the subject rezone and that if Owners avail themselves of the benefits of this rezone but then fail to comply with the conditions of this Agreement with the City, in addition to pursuing any other remedy, the City may:

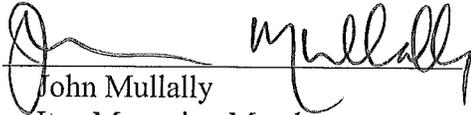
a. revoke the rezone by ordinance and require the use of the Rezone Site to conform to the requirements of the MR zoning designation or some other zoning designation imposed by the City Council; and/or

b. pursue specific performance of this Agreement.

Section 10. References to City Departments. References in this Agreement to the City of Seattle Office of Housing and to Seattle Public Utilities shall be deemed references to any department or office that succeeds the City of Seattle Office of Housing or Seattle Public Utilities, respectively.

SIGNED this 31st day of October, 2012.

Northgate Plaza LLC
a Washington limited liability company

By: 
John Mullally
Its: Managing Member

T&M Jenn LP
a Washington limited partnership

By: 
Mari Lyn Spearbeck
Its: General Partner

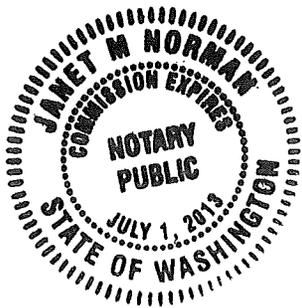
STATE OF WASHINGTON

COUNTY OF KING

}
SS.

On this day personally appeared before me John Mullally, to me known to be the Managing Member, of Northgate Plaza 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 31st day of October, 2012.



Janet M. Norman

Printed Name Janet M. Norman

NOTARY PUBLIC in and for the State of Washington, residing at Seattle

My Commission Expires 07/01/2013

STATE OF WASHINGTON

COUNTY OF KING

}
SS.

On this day personally appeared before me Mari Lyn Spearbeck, to me known to be the General Partner, of T&M Jenn LP, a Washington limited partnership, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited partnership, 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 31st day of October, 2012.



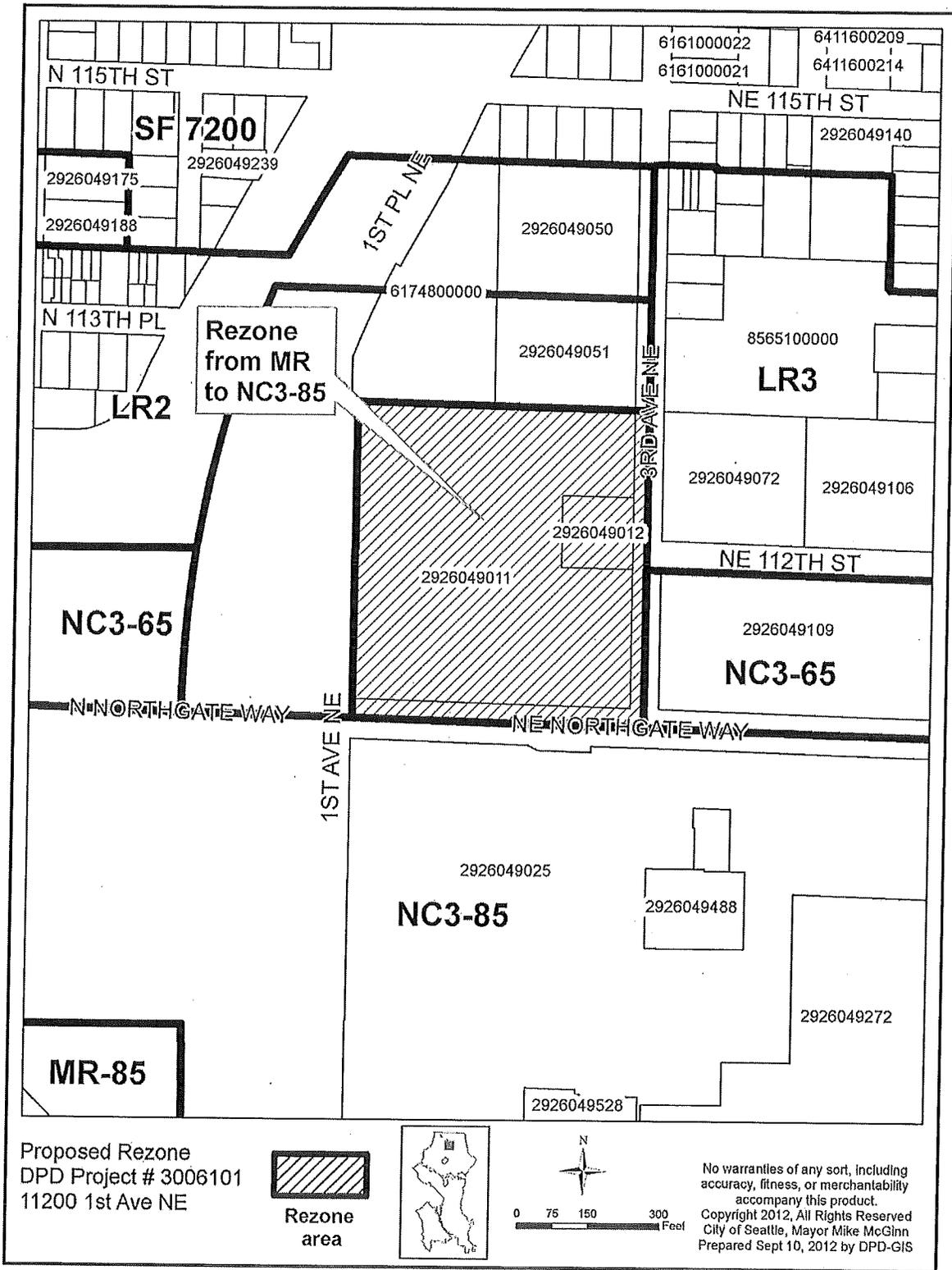
Janet M. Norman

Printed Name Janet M. Norman

NOTARY PUBLIC in and for the State of Washington, residing at Seattle

My Commission Expires 07/01/2013

ATTACHMENT A



Received
DEC 10 2012
City of Seattle
Office of the City Clerk

STATE OF WASHINGTON – KING COUNTY

--SS.

290563
CITY OF SEATTLE, CLERKS OFFICE

No.

Affidavit of Publication

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

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

CT:124025-26 TITLE ONLY

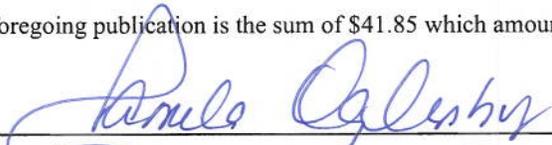
was published on

11/16/12

The amount of the fee charged for the foregoing publication is the sum of \$41.85 which amount has been paid in full.



Affidavit of Publication



Subscribed and sworn to before me on
11/16/2012 

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

The full text of the following legislation, passed by the City Council on November 5, 2012, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>. Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 124025

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 15 of the Official Land Use Map to rezone property located at 11200 1st Avenue Northeast from Midrise (MR) to Neighborhood Commercial 3 with an 85 foot height limit (NC3-85), and accepting a Property Use and Development Agreement in connection therewith. (Petition by Northgate Plaza LLC and T&M Jenn LP, C.F. 311240, DPD Project 3006101)

ORDINANCE NO. 124026

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

Date of publication in the Seattle Daily Journal of Commerce, November 16, 2012.

11/16(290563)