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CITY CLERK

**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**

<b>Grantor(s):</b>	(1) Martin Liebowitz	(2) 34th and Spring LLC
<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>	THE SOUTH 25 FEET OF LOT 2 AND LOT 3, BLOCK 2, MARION HIGHLANDS ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 15 OF PLATS, PAGE 61, RECORDS OF KING COUNTY, WASHINGTON	
<input type="checkbox"/> Additional legal description on page _____:		
<b>Assessor's Tax Parcel ID #:</b>	5157700040 (part) and 5157700055	
<b>Reference Nos. of Documents Released or Assigned:</b>		

THIS PROPERTY USE AND DEVELOPMENT AGREEMENT (the "Agreement") is executed this \_\_\_\_th day of September 2017, in favor of the CITY OF SEATTLE (the "City"), a Washington municipal corporation, by Martin Liebowitz and 34TH AND SPRING LLC, a Washington limited liability company (the "Owners").

### RECITALS

A. The Owners are the owner of that certain real property (the "Rezone Area") in the City of Seattle zoned Lowrise 2 (LR2) shown in Attachment A and legally described as:

THE SOUTH 25 FEET OF LOT 2 AND LOT 3, BLOCK 2, MARION HIGHLANDS ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 15 OF PLATS, PAGE 61, RECORDS OF KING COUNTY, WASHINGTON

B. On December 10, 2016, the Owners submitted to the City of Seattle an application under Project No. 3020405 for a rezone of the Rezone Area from Lowrise 2 (LR2) to Neighborhood Commercial 1 with a 30 foot height limit (NC1-30). The purpose of the application is to allow the Rezone Area to accommodate commercial and residential uses, consistent with the adjacent zoning for the Madrona neighborhood commercial center north of Spring Street. 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" and restrictions applying the provisions of Chapters 23.58B and 23.58C to 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 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 Area from LR2 to NC1-30 (M):

Development of the Rezone Area shall be subject to the requirements of SMC Chapters 23.58.B and 23.58.C. For purposes of application of Chapter 23.58C, future development of the Rezone Area shall be subject to the following performance or payment requirements:

6% of units for the performance option or \$13.25 per square foot for the payment option.

**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 Owners, their heirs, successors and assigns, and shall apply to after- acquired title of the Owners of the Rezone Area.

**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 Owners 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 the Rezone Area and this Agreement is not intended to establish precedent for other rezones in the surrounding area.

**Section 8. 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:

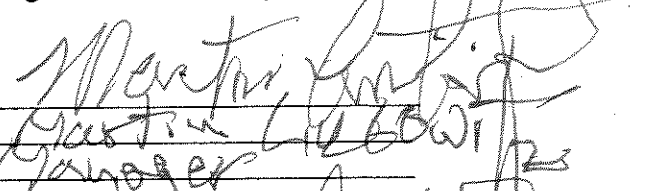
- a. revoke the rezone by ordinance and require the use of the Rezone Area to conform to the requirements of the previous LR2 zoning designation or some other zoning designation imposed by the City Council; and/or
- b. pursue specific performance of this Agreement.

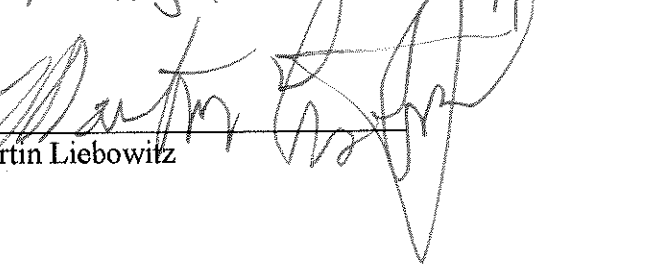
*[Signature Pages Follow]*

SIGNED this 25<sup>th</sup> day of September, 2017.

OWNERS:

34TH AND SPRING LLC,  
a Washington limited liability company

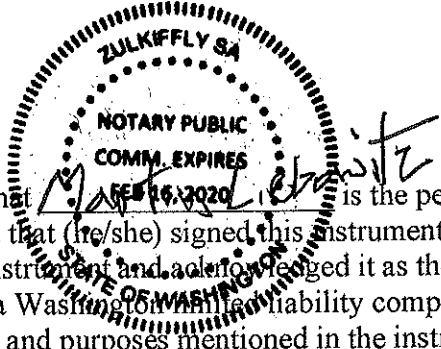
By:   
Name: Martin Liebowitz  
Its: Manager

By:   
Martin Liebowitz

STATE OF WASHINGTON

} ss.

COUNTY OF KING



I certify that I know or have satisfactory evidence that Martin Liebowitz is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Manager of 34th and Spring LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

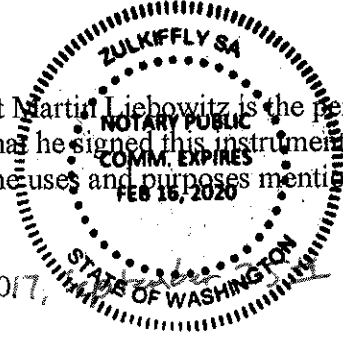
Dated this day of , 2017, September 25<sup>th</sup>

Zulkifly Sa  
Printed Name  
Notary Public in and for the State of Washington,  
residing at  
My Commission Expires

STATE OF WASHINGTON

} ss.

COUNTY OF KING



I certify that I know or have satisfactory evidence that Martin Liebowitz is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this day of , 2017,

Zulkifly Sa  
Printed Name  
Notary Public in and for the State of Washington,  
residing at  
My Commission Expires

ATTACHMENT A

Attachment A: Rezone Map

