

When Recorded, Return to

Seattle Department of Construction and Inspections

700 5th Avenue, Suite 2000

P.O. Box 34019

Seattle, WA 98124-4019

POTENTIAL LANDSLIDE AREA COVENANT

GRANTOR: 1) MCRT Investments LLC

2) _____

3) _____

☐ **Additional Owners/Grantors on page**

GRANTEE: THE CITY OF SEATTLE

LEGAL DESCRIPTION (ABBREVIATED):

LOTS 1 THROUGH 6, INCLUSIVE, AND LOTS 13 THROUGH 18, INCLUSIVE,
BLOCK 4 OF TERRY'S 4TH ADDITION TO THE CITY OF SEATTLE, AS PER
PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 54, RECORDS OF KING
COUNTY, WASHINGTON;

**The complete legal description is found on Exhibit A of the
Covenant.**

STREET ADDRESS: 1032 South Jackson Street, Seattle, WA

ASSESSOR'S TAX PARCEL ID 859190-0145
NO(S). _____

PERMIT APPLICATION 6873120-CN, 6899871-PH
NO(S). _____

**COVENANT RUNNING WITH THE LAND,
WITH ACKNOWLEDGEMENT AND ACCEPTANCE OF RISK,
DUTY TO INFORM, INDEMNITY AND WAIVER
(Potential Landslide Area)**

This Covenant is executed in favor of the City of Seattle ("City") by the undersigned owner(s) ("Grantor") of the real property described on Exhibit A (the "Property") on behalf of Grantor and Grantor's heirs, successors and assigns. The Property is located at the following street address:

1032 South Jackson Street

The Property is assigned the following assessor's tax parcel identification number(s):

859190-0145

The undersigned warrants that Grantor has bargained for and negotiated this Covenant with the City and that all owners of the Property have executed this document.

A. ACKNOWLEDGEMENT AND ACCEPTANCE OF RISK

1. Grantor acknowledges that the Property is located in or contains a potential landslide area as described in SMC 25.09.012, that the Property is subject to the provisions of SMC Chapter 25.09, SMC Chapter 22.170 and the rules and regulations adopted by the Director of the Seattle Department of Construction and Inspections, and that this Covenant is being executed pursuant to SMC 22.170.080.

2. Grantor understands and acknowledges that there are unique risks associated with the project for which Grantor seeks approval through SDCI Permit Numbers 6873120-CN and 6899871-PH ("Proposed Development"). Risks of developing in a potential landslide area include without limitation property damage, loss of use, personal injury and death resulting from soil movement (such as landslides and mudslides), water movement, and water collection occurring on the Property or on other property in the vicinity as a result of the location of the Proposed Development in a potential

landslide area (the "Landslide Related Risks"). Owner believes the Property has no history of landslide activity, and the Proposed Development has been designed and engineered to comply with all applicable ordinances; however, Grantor acknowledges that all risks may not have been eliminated by the design and engineering of the Proposed Development.

3. Grantor understands and acknowledges that the design and capacity of any public drainage system (existing or future) may not be sufficient to prevent system overflows, flooding, or ponding resulting from storm events and agrees on behalf of Grantor and Grantor's heirs, successors and assigns that the City has no obligation to Grantor or Grantor's heirs, successor or assigns to update or improve any such system or to construct a new system. Grantor also acknowledges and agrees on behalf of Grantor and Grantor's heirs, successors and assigns that the design and capacity of Grantor's private drainage system (existing or future) may not be sufficient to prevent system overflows, flooding, or ponding resulting from storm events and that the City has no obligation or liability to Grantor or Grantor's heirs, successors or assigns for such system.

4. Grantor has decided to proceed with the Proposed Development. Grantor agrees on behalf of Grantor and Grantor's heirs, successors and assigns to accept any and all risks of loss, damage and injury associated with (a) use of the Proposed Development; (b) development or construction of the Proposed Development; or (c) any combination thereof.

B. WAIVER

Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, hereby waives any right to assert any and all present and future claims against the City, whether known or unknown, for any loss or damage occurring either on or off the Property, including without limitation personal injury, death, property damage, and loss of use by reason of or arising out of (1) issuance of any permit or approval by the City for the Proposed Development, except only for such losses that directly result from the sole negligence of the City; and (2) the risks described in Section A above, except only for such losses that directly result from the sole negligence of the City. This waiver does not apply to a claim made by reason of or arising out of either: (1) a duty that

the City may owe to Grantor or Grantor's heirs, successors or assigns and that is unrelated to issuance of any permit or approval by the City for the Proposed Development; or (2) risks other than Landslide Related Risks.

C. INDEMNITY

1. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, agrees to indemnify, hold harmless and defend the City and its officers, agents and employees from and against all claims, losses, costs and damages, including without limitation personal injury, death, property damage, loss of use and attorneys' fees ("Losses") arising out of or relating to: (1) issuance of any permit or approval by the City for the Proposed Development (including but not limited to inspections of the Proposed Development); and/or (2) the risks described in Section A above.

(a) The agreement in Paragraph C(1) does not extend to Losses caused by or resulting from the sole negligence of the City.

(b) To the extent Losses result from the concurrent negligence of, on the one hand, the City or the City's agents or employees and, on the other hand:

(i) Grantor or Grantor's agent or employees,

(ii) Grantor's heirs, successors or assigns,

(iii) the agents or employees of Grantor's heirs, successors or assigns,

(iv) persons or entities involved in the design, construction or maintenance of the Proposed Development, or

(v) any combination thereof,

the agreement in Paragraph C(1) shall be enforceable only to the full extent of the negligence of the persons listed in (i) - (v) above.

(c) Except as may be limited by Paragraph C(1)(b),

the agreement in Paragraph C1) includes but is not limited to Losses caused by or resulting from the negligence of any and all persons or entities involved in the design, construction or maintenance of the Proposed Development.

2. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, specifically and expressly agrees to waive Grantor's and Grantor's heirs', successors' and assigns' immunity under industrial insurance, Title 51 of the Revised Code of Washington, to the extent necessary to provide the City with a full and complete indemnity from claims for which the City is entitled to indemnity pursuant to Paragraph C(1) and made by employees of Grantor or Grantor's heirs, successors and assigns. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, specifically and expressly agrees that such waiver of immunity was mutually negotiated by the parties.

D. DUTY TO INFORM

1. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, agrees to inform all subsequent heirs, successors and assigns of the Property that: (a) the Property is in or contains a potential landslide area, and (b) that there are risks associated with the Property and the Proposed Development, as described above in Section A.

2. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, agrees to provide a copy of this Covenant to any prospective purchaser or assignee of the Property prior to closing or assignment.

3. Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, agrees to inform all subsequent heirs, successors and assigns of the Property of: (a) any conditions or prohibitions on the Proposed Development and of any features of the Proposed Development, natural or constructed, that will require monitoring, maintenance, modification or replacement; (b) to help identify any such conditions, prohibitions, or features, the advisability of reviewing the City records of any City permit or approval for development or alteration of the Property; and (c) **if this box is checked** [☐], the specific conditions, prohibitions, or features listed in Exhibit B.

4. Recording of this Covenant, as required by Section F, shall satisfy the obligations of this Section D.

E. ADVISABILITY OF INSURANCE

Grantor, on behalf of Grantor and Grantor's heirs, successors and assigns, agrees to further inform all subsequent heirs, successors and assigns of the advisability of obtaining insurance to specifically cover the risks posed by proposed development in a potential landslide area, including without limitation those risks described above in Section A.

Recording of this Covenant, as required by Section F, shall satisfy the obligations of this Section E.

F. RECORDING

This Covenant shall be recorded in the real estate records of the Office of Records and Elections of King County, Washington.

G. RUNNING COVENANT

The parties intend that this Covenant shall run with the land and be binding on Grantor and on Grantor's heirs, successors and assigns.

H. SEVERABILITY

If any provision of this Covenant is held invalid, the remainder of the Covenant is not affected. If the application of this Covenant to any person or circumstance is held invalid, the application of the Covenant to other persons or circumstances is not affected.

**EXHIBIT A
TO COVENANT RUNNING WITH THE LAND WITH ACKNOWLEDGEMENT AND
ACCEPTANCE OF RISK, DUTY TO INFORM, NEED FOR INSURANCE,
INDEMNITY AND WAIVER**

COMPLETE LEGAL DESCRIPTION OF PROPERTY SUBJECT TO COVENANT:

LOTS 1 THROUGH 6, INCLUSIVE, AND LOTS 13 THROUGH 18, INCLUSIVE, BLOCK 4 OF TERRY'S 4TH ADDITION TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 54, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THE SOUTH 15 FEET OF LOTS 1 THROUGH 6, CONDEMNED IN KING COUNTY SUPERIOR COURT CASE NO. 56407 FOR JACKSON STREET AS PROVIDED IN ORDINANCE NO 15291 OF THE CITY OF SEATTLE.

EXHIBIT B
TO COVENANT RUNNING WITH THE LAND WITH ACKNOWLEDGEMENT AND
ACCEPTANCE OF RISK, DUTY TO INFORM, NEED FOR INSURANCE,
INDEMNITY AND WAIVER

SPECIFIC CONDITIONS, PROHIBITIONS, OR FEATURES, IF ANY,
THAT WILL REQUIRE MONITORING, MAINTENANCE, MODIFICATION OR
REPLACEMENT

(TO BE COMPLETED BY CITY STAFF ONLY):

**(CORPORATE OWNER, PARTNERSHIP OWNER, LIMITED LIABILITY COMPANY
OWNER/OTHER LEGAL ENTITY OWNER—attach more pages if
needed)**

Date: _____

MCRT Investments LLC
Owner/Grantor

By Meredith Holzemer

Printed Name

I Managing
t Director
s _____

State of Washington)

)
ss County of _____)

I certify that I know or have satisfactory evidence that _____ 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 _____ (type of authority, e.g., partner, trustee, title of officer, personal representative, guardian, attorney in fact for a principal, etc.) of _____ (name of owner/entity on behalf of whom instrument was executed), to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: _____

NOTARY PUBLIC in and for the State of
Washington Residing at _____
My commission expires: _____

PRINT NAME: _____

Use this space for Notary Seal

Date: _____

Owner/Grantor

By _____

Printed Name

Its _____

State of Washington)

)ss
County of _____)

I certify that I know or have satisfactory evidence that _____ 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 _____ (type of authority, e.g., partner, trustee, title of officer, personal representative, guardian, attorney in fact for a principal, etc.) of _____ (name of owner/entity on behalf of whom instrument was executed), to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: _____

NOTARY PUBLIC in and for the State of
Washington Residing at _____
My commission expires: _____

PRINT NAME: _____

