

When recorded return to:
City of Spokane
Attn: Planning Services Department
808 W Spokane Falls Blvd
Spokane, WA 99201

DEVELOPMENT AGREEMENT

This Development Agreement (this “**Agreement**”) is entered into by and between the CITY OF SPOKANE, a Washington Municipal Corporation (the “**City**”) and DALE M. KLEIST AND ANN L. KLEIST, husband and wife, TIMOTHY J. CARLBERG AND JULIE A. CARLBERG, as tenants in common, and TJRE, LLC, a Washington Limited Liability Company (collectively, the “**Owners**”), referred to collectively as “Parties.”

RECITALS

A. **WHEREAS**, Owners own that certain real property which is located East of Grand Blvd. and between 31st and 32nd Avenue in the Comstock Neighborhood of the City of Spokane, Washington, which is more fully described in **Exhibit “A”**, attached hereto and incorporated by reference herein (hereafter the “**Property**”);

B. **WHEREAS**, Dwight J Hume, on behalf of Owners, filed an application with the City of Spokane to change the Comprehensive Plan land use map designations for the Property from “Residential 4-10” and “Office” to “CC Core” and the zoning map’s corresponding designation from “RSF” and “O-35” to “CC1-DC” (collectively, “**the Carlberg Amendment**”);

C. **WHEREAS**, on September 23, 2013, the City Council conducted a public hearing on the Carlberg Amendment and others concurrently;

D. **WHEREAS**, on September 23, 2013, the City Council passed Ordinance C35027 (the “**Ordinance**”) approving the Carlberg Amendment, subject to a number of conditions including a requirement that Owners enter into a binding Development Agreement within one year of the effective date of the Council’s approval that includes certain design and development principles.

E. **WHEREAS**, the Owners have kept the Comstock Neighborhood Council, (CNC) and its representatives informed, by offering progress reports in attendance at their monthly meetings;

F. **WHEREAS**, CNC has been informed of the proposed language of the Development Agreement;

G. **WHEREAS**, the City is a Washington Municipal Corporation with land use planning and permitting authority over all land within its corporate limits and has the authority to enter into Development Agreements pursuant to RCW 36.70B.170(1);

H. **WHEREAS**, The City has promulgated regulations for Development Agreements in Section 17A.060 of the Spokane Municipal Code (SMC) and this Agreement is prepared in accordance with those provisions;

I. **WHEREAS**, the City and the Owners desire to enter into this Development Agreement to formally incorporate the conditions enunciated in Ordinance C35027 as development standards applicable to the Property; and

J. **WHEREAS**, this Agreement will provide increased predictability to both the Owner and the City for the future development of the Property;

NOW, THEREFORE, based on the foregoing Recitals, the Parties agree as follows:

TERMS

1. **Development Agreement:** This Agreement is a Development Agreement to be implemented in accordance with SMC 17A.060 *et seq* and RCW 36.70B.170 through RCW 36.70B.210. It shall become a contract between the Owners, their successors and assigns, and the City upon the City's approval by ordinance or resolution following a public hearing.
2. **Effective Date and Duration of Agreement:** This Agreement shall take effect immediately upon its adoption by the City Council and execution by all parties, provided that any time periods specified in this Agreement shall be tolled pending final resolution of any appeal of any city, state or federal land use decisions necessary to commence or complete development on the Property consistent with this Agreement ("**Effective Date**"). Unless terminated earlier as provided herein, this Agreement shall remain in effect until amended in writing by the City or until the land use designations established by the Ordinance are modified by further City Council legislative action, whichever first occurs (hereinafter, "**Term**").
3. **Zoning Designation and Development Standards:**
 - 3.1 Pursuant to Ordinance C35027, the execution of this Agreement shall satisfy the requirement for Owners to enter into a binding development agreement within the time specified in the Ordinance, the parties agreeing that all conditions set forth in the Ordinance having been satisfied and that Owners may develop the Property pursuant to the land use designation and zoning set forth in the Ordinance, subject to the limitations in this Agreement and all relevant State and local regulations including without limitation the Spokane Municipal Code ("**Land Use Approval**"). This Agreement shall not be construed as a waiver of conditions that would otherwise apply in the development of the Property.
 - 3.2 Based upon the substantial investment that will be necessary to develop and the desire by the City and the Owners for predictable Development Standards throughout the

development of the Property (which could be several years), unless otherwise specified herein or through an amendment of this Agreement by mutual agreement of the Parties, during the Term, including the reservations of authority set out in Sections 3.3 and 3.4, the Owners shall have a vested right to develop, construct and repair the Property in accordance with and to the extent of the General Development Standards, except as otherwise provided in the Specific Development Standards described in Section 4, and subject to the conditions of this Agreement. Following the expiration or lawful termination of this Agreement, all land use applications affecting the Property shall be governed by the land use designations and regulations in effect for the Property at the time such application is filed with the City. Except as may be specifically set forth herein, nothing in this Agreement shall be construed as a waiver of any conditions of development approval.

3.3 Except as specifically provided otherwise in this Agreement, development of the Property shall be subject to the “General Development Standards”, which means the presently adopted ordinances of the City of Spokane that are in effect on the Effective Date of this Agreement and applicable to properties within the “CC1-DC” zone which govern the permitted uses of land, the density, design and intensity of use, including, but not limited to division of property. Amendments made from time to time by the City to the General Development Standards shall apply to the Property, provided such amendments are applicable city-wide to all properties within the “CC1-DC” zone.

3.4 Pursuant to RCW 36.70B.170, the City reserves the right to impose new or different regulations to the extent required by a serious threat to public health and safety.

3.5 Notwithstanding any other provision of this Agreement, the following shall apply to the development of the Property.

3.5.1 Regulations, which are strictly procedural and not substantive, relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

3.5.2 Regulations, other than land use and zoning standards addressed in Paragraph 3.2 above, governing construction standards and specifications, in effect at the time of permit submittal typically enforced, administered and interpreted by the City of Spokane.

3.5.3 Regulations which the City and Owners mutually agree, by written consent, can be applied to development of the Property.

4. Specific Development Standards:

4.1 The following Specific Development Standards identified in this paragraph shall apply to any development on the Property:

4.4.1 Project Description

The project consists of the westerly six (6) lots of a block bounded by 31st Avenue on the North, 32nd Avenue on the South and Grand Boulevard on the west (the “Project Area”) with the building area to be located within the westerly four (4) lots of the Project Area and parking to be located within the easterly two (2) lots of the Project Area and/or within portions of the westerly four (4) lots. (Note, Lots 3 & 4, Block 14 are part of the Ownership but not part of this Development Agreement, but are included for purposes of distinguishing among the westerly four (4) lots and easterly two (2) lots of the six-lot Project Area).

4.4.2 Mitigating Measures

A DNS was issued for the zone change on July 29, 2013. In addition, the Council conditioned approval of the Ordinance upon Owners entering into a binding development agreement between the City and Owners to ensure that development and use of the Property is done in a way that adequately buffers and provides reasonable transition into the single-family land uses to the east as expressed above in Sub-Section 4.4.1. See Ordinance #C-35027.

4.4.3 Development Standards

Development of the Property shall be consistent with the development standards set forth in Title 17 of the Spokane Municipal Code, including without limitation the General Development Standards, and this Agreement shall not be interpreted as a waiver of any conditions or standards set forth in said Title 17 or General Development Standards. In addition, development of the Property shall be subject to the following requirements and limitations:

- 1) Building footprint, including any appurtenances associated with drive thru uses, is limited to within the westerly 4 lots subject to the performance standards of the CC-1 DC zone – i.e., there shall be no building footprint, including any appurtenances associated with drive thru uses, in Lots 2 and 7, Block 14, Cook’s 4th Addition, according to Plat recorded in Volume “D” of Plats, page 73, in the City of Spokane, Spokane County, Washington.
- 2) Outdoor activity areas such as restaurant seating should be screened from adjacent residential and located on the westerly four lots.
- 3) Access to 32nd Avenue shall be limited to egress only and shall be designated to prohibit left turn movements onto 32nd from the Property. This shall be accomplished through signage, traffic direction improvements, or other appropriate measures acceptable to the City that meet this intent. Egress and right turn only movements onto 32nd Avenue from the Property are allowed.

This list shall not be interpreted as a waiver of any requirement set forth in the General Development Standards.

4.4.4 Pre-requisites to Development and Use

No development permits will be issued on this property until the following action is taken:

- 1) This development Agreement is adopted by the City Council in accordance with Chapter 36.70B RCW and Spokane Municipal Code Section 17A.060;

5. Transportation Fees

5.1. Mitigation of Off-Site Transportation Impacts. Project specific impacts will be evaluated and mitigated according to the City's normal procedures and ordinances. In addition, development of the Property shall be subject to the assessment and payment of transportation impact fees according to Chapter 17D.075 SMC.

6. Miscellaneous

6.1 Effect of Delay. In addition to any specific provisions of this Agreement, performance by either party of its obligations hereunder shall be excused during any period of delay caused at any time before termination or expiration of this Agreement by reason of acts of God or civil commotion, riots, strikes, picketing, or other labor disputes, national shortages of materials or supplies, or damage to work in process by reason of fire, floods, earthquake, or other casualties or any other cause beyond the reasonable control of the delaying party. Further, if any City approvals required hereunder shall be unreasonably delayed beyond the normal time period through no fault of Owners or their assigns, the term of this Agreement shall be extended by a period equal to the time of the delay.

6.2 Non-Waiver. Failure by either party at any time to require performance by the other party of any of the provisions hereof shall in no way affect the Parties' rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this non-waiver clause.

6.3 Covenants Run with the Land. During the term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Each covenant to do or refrain from doing some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon the Property, (b) runs with the Property, and (c) is binding upon each successive owner during its ownership of Property or any portion thereof, and each person having any interest therein derived in any manner through any owner of the property or any portion thereof, and shall benefit such party and the Property hereunder, and each other person succeeding to an interest in such Property.

6.4 Relationship of Parties. It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that Owners are an independent contractor and not an agent of City. Nothing contained herein or in any document executed in connection herewith shall be construed as making City and Developer joint venturers or partners. Owners shall defend, indemnify and hold City and its officers and employees harmless from and shall process and defend at its own expense all claims, demand or lawsuits for damages arising in whole or in part from the Land Use Approval and this Agreement.

6.5 Amendments. This Agreement may only be amended in writing signed by the City and the Owners.

6.6 Recordation of Agreement. Owner shall cause this Agreement and any amendment(s) or termination to it to be recorded with the Spokane County Auditor.

6.7 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable by a court of competent jurisdiction the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement or the rights and obligations of the Parties have been materially altered or abridged.

6.8 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of Washington. If any portion of the Spokane Municipal Code is deemed to be inconsistent with any provisions of this Agreement, the provisions of this Agreement shall prevail.

6.9 Assignment.

6.9.1 The Parties acknowledge that development of the Property may involve sale, conveyance, or assignment of all or portions of the Property to third parties who will own, develop and/or occupy portions of the Property and buildings thereon. Subject to Paragraph 6.3 above, Owners shall have the right from time to time to assign or transfer all or any portion of its respective interests, rights, or obligations under this Agreement or in the Property to other parties acquiring an interest or estate in all or any portion of the Property, including a transfer of all interests through foreclosure (judicial or non-judicial) or by deed in lieu of foreclosure. Consent by the City shall not be required for any assignment or transfer of rights pursuant to this Agreement.

6.9.2 In any such transfer or assignment, the transferee or assignee shall agree in writing to assume the obligations herein pertaining to the Property transferred or assigned, and shall thereafter be entitled to all interests and rights and be subject to all obligations under this Agreement, and Owners who have so transferred or assigned its rights, shall be thereupon be deemed released of liability under this Agreement for the property transferred or assigned, whether or not such release is expressly stated in such transfer or assignment; provided, however, that such Owners shall remain liable for any breach that occurred prior to the transfer or assignment of rights to another party and for those portions of the Property still owned by such

Owners; and, provided further, nothing in this Paragraph 6.9.2 shall be construed as limiting the effect of Paragraph 6.3 of this Agreement in the event of such transfer or assignment.

6.10 No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement, except as otherwise contemplated under RCW 36.70B.170 through .210.

6.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and shall constitute one and the same instrument. All Exhibits hereto are hereby incorporated by specific reference into this Agreement, and their terms are made a part of this Agreement as though fully recited herein.

6.12 Voluntary Agreement. The Parties hereby represent and acknowledge that this Agreement is given and executed voluntarily and is not based upon any representation by any of the Parties to another Party as to the merits, legal liability, or value of any claims of the Parties or any matters related thereto.

6.13 Conflicts. No officer, employee or agent of the City who exercises any function or responsibilities in connection with the authorization, permitting, or approval of the Development, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance. The Developer shall comply with all state conflict of interest laws, statutes and regulations as they shall apply to all Parties and beneficiaries under this Agreement, as well as to officers, employees or agents of the City.

6.14 Authority. The undersigned covenant and represent that they are fully authorized to enter into and to execute this Agreement.

6.15 Termination. This Agreement shall be deemed terminated and of no further effect upon the entry of a final judgment (and the exhaustion of all appeals setting aside such final judgment), voiding or annulling the Land Use Approval or the ordinance approving this Agreement. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder.

6.16 Non-Enforcement not Waiver. Failure by any one of the Parties to enforce this entire Agreement or any provision of it with regard to any provision contained herein shall not be construed as a waiver by that party of any right to do so.

CITY OF SPOKANE, WASHINGTON

By (person signing) _____
Title _____

Attest:

Approved as to form:

Clerk

Assistant City Attorney

Owners of Record

Dale M Kleist, Owner Lot 2, Block 14

Ann L. Kleist, Owner Lot 2, Block 14

TJRE LLC, Owner Lot 5, Block 14

Timothy J Carlberg, Owner Lot 6 & 7, Block 14

Julie A Carlberg, Owner Lot 6 & 7, Block 14

STATE OF WASHINGTON)
) ss.
County of Spokane)

I certify that I know or have satisfactory evidence that _____ and TERRI L. PFISTER, are the persons who appeared before me and said persons acknowledged that they signed this document, on oath stated that they were authorized to sign it and acknowledged it as the _____ and the City Clerk, respectively, of the CITY OF SPOKANE, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes therein mentioned.

DATED: _____

Notary Public in and for Washington State,

residing at _____

My appointment expires _____

STATE OF WASHINGTON :
: ss.
County of Spokane :

I hereby certify that I know or have satisfactory evidence that, on this _____ day of _____, 20_____, _____ signed this instrument,
(Print name)
on oath state that (she/he/they) is/are authorized to execute the instrument as a _____ of _____
(Position/Title) (Name of entity)
and acknowledge it to be (her/his/their) free and voluntary act of such party for uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Notary Public in and for the State of
Washington, residing at Spokane
My commission expires: _____

STATE OF WASHINGTON :
: ss.
County of Spokane :

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(Print name)
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STATE OF WASHINGTON :
: ss.
County of Spokane :

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(Print name)
on oath state that (she/he/they) is/are authorized to execute the instrument as a _____ of _____
(Position/Title) (Name of entity)
and acknowledge it to be (her/his/their) free and voluntary act of such party for uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

EXHIBIT “A”

THE PROPERTY
Legal Description

Legal Description:

LOTS 2, 5, 6 AND 7, BLOCK 14, COOK'S 4TH ADDITION, ACCORDING TO PLAT RECORDED IN VOLUME "D" OF PLATS, PAGE 73, IN THE CITY OF SPOKANE, SPOKANE COUNTY, WASHINGTON.

Owners of Record:

Title is vested in:

Lot 2

DALE M. KLEIST AND ANN L. KLEIST, HUSBAND AND WIFE AND TIMOTHY J. CARLBERG AND JULIE A. CARLBERG, AS TENANTS IN COMMON, AS TO LOT 2;

Lot 5

TJRE, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, AS TO LOT 5;

Lots 6 & 7

TIMOTHY J. CARLBERG AND JULIE A. CARLBERG, AS TENANTS IN COMMON, AS TO LOTS 6 AND 7

DRAFT

DRAFT