

SITE DEVELOPMENT AGREEMENT

THIS AGREEMENT is made effective as of this 23rd day of February, 2015, by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (“City”) and Rosa Development Company, LLLP, a Minnesota limited liability limited partnership, 850 NE 5th Avenue, Boca Raton, Florida 33432 (“Applicant”).

RECITALS

The Applicant is the owner of certain real property located at 3700 American Boulevard East, in the City of Bloomington, County of Hennepin, Minnesota, which is legally described as set forth in Exhibit A which is attached hereto and incorporated herein by reference (collectively, the “Property”).

On August 8, 1988, the City Council for the City of Bloomington approved the Applicant’s request for a three-year temporary conditional use permit for remote airport parking at the Property (Case 9250B-88). On November 19, 1991, the Applicant’s request for renewal of

the aforesaid temporary conditional use permit was approved with an expiration date of August 8, 1994 (Case 9250A-91).

On March 21, 1994, the Applicant received City Council approval for a preliminary development plan for a phased office tower and structured parking facility (Case 9250A-94) on the Property. The 1994 Approval included approval of continued use of the Property for remote airport parking on an interim basis. The four-story parking structure was planned to provide parking, as well as a platform for the proposed office tower to be located at the northeast corner of the parking structure. Condition #9 of the City Council's terms and conditions of development approval in Case 9250A-94 tied the term of the temporary conditional use permit for remote airport parking at the Property to the construction of the approved office building. Condition #9 in that case states, "If the developer has not begun construction of an office building, or other development subsequently approved by the City Council, on the site prior to April 1, 2004, the conditional use permit for remote airport parking use of the premises shall expire and the operator shall cease use of the premises for remote airport parking by July 1, 2004."

On October 7, 2002, the City Council approved the Applicant's revised final development plan to revise the existing preliminary development plan for a phased office tower and structured parking facility on the property, and extended the term of the temporary conditional use permit to July 1, 2009 (Case 9250A-02). To date, the office building approved in Case 9250A-94 has not been constructed. On July 1, 2009, the temporary conditional use permit for remote airport parking on the Property expired. On August 3, 2009, the City Council approved the Applicant's request for an interim use permit to continue remote airport parking operations on the property until July 1, 2014. The August 3, 2009, approval was approved

subject to three conditions of approval, in addition to the original conditions placed on the approval of the preliminary development plans in cases 9250A-94 and 9250A-02. City Council Resolution 2009-82 approved an interim use permit for five years to operate a remote airport parking facility on the property, and denied the Applicant's request for a ten-year interim use permit for the same.

The Applicant has filed a development application for the City's approval of an Interim Use Permit ("IUP") for remote airport parking in an existing surface parking lot at that location through July 1, 2019. The City Council, at its regular meeting of February 23, 2015, approved the interim use permit subject to, and contingent upon, the Applicant's satisfaction of certain conditions relating to the Property.

This Agreement sets forth the obligations of the parties and the conditions that govern the development and use of the Property for remote airport parking pursuant to the interim use permit. It is intended to address the parties' compliance with the conditions the City Council placed on its February 23, 2015, approval. This Agreement does not address other issues relating to public improvements, assessments, storm water charges, or other matters regarding or affecting the Property unless specifically set forth herein or incorporated herein by reference. This Agreement terminates and supersedes all prior Agreements between the City and the Applicant as related to the use of the Property for remote airport parking. The ability to construct an office building as outlined in previous approvals remains in full force and effect.

NOW THEREFORE, in consideration of the recitals stated above and the mutual covenants stated below, the parties agree as follows:

1. Recitals. The foregoing recitals are correct and are incorporated herein.

2. Obligations of the Applicant.

(a) Compliance with Conditions of Approval for Interim Use Permit. The Applicant agrees that development of the Property shall be in strict conformance with all conditions set forth in the letter of transmittal dated February 24, 2015. These conditions are set forth in **Exhibit B**, which is attached hereto and incorporated herein by reference. The City and the Applicant agree that the Applicant will no longer be required to reserve up to 150 spaces for use by the immediately adjacent hotel use. The Applicant agrees that use and development of the Property shall also be in strict conformance with IUP as approved on February 23, 2015, by the City Council, all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval and letter of transmittal), and all applicable state and federal laws. In the event that there is a conflict between the IUP as approved by the City Council and the regulatory terms of this Agreement, the more restrictive standard shall apply. It shall be the obligation of the Applicant to provide advance written notice to the City of any aspect of the development that varies to any degree from the IUP. The Applicant also agrees that any major or minor change to the IUP must be approved by the City as provided in City Code Section 21.501.03, subdivisions (c) and (d).

(b) Compliance with Zoning Regulations. The Applicant agrees that the Property may not be used in a manner that is prohibited under the City's zoning regulations and, except as set forth in paragraph 14 of this Agreement, the Applicant has no vested right to continue a use that is prohibited by the City's zoning regulations.

3. Acknowledgement of Interim Nature of the Remote Airport Parking Use. The Applicant acknowledges that the remote airport parking use has no right to exist on the site following the expiration of the interim use permit. The Applicant also agrees to cease use of the

site for remote airport parking upon expiration of the interim use permit. The Applicant may pursue additional interim use permits for remote airport parking on the site, however the Applicant acknowledges that additional interim use permits may or may not be approved by the Bloomington City Council.

4. Event of Default.

(a) The term “event of default” shall mean, whenever it is used in this Agreement (unless the context provides otherwise), the failure of the Applicant to perform the obligations set forth in paragraph 2 (“Obligations of the Applicant”) of this Agreement and to commence corrective measures to perform the obligations within sixty (60) days after receipt by the Applicant of written notice of such default by the City.

5. Remedies of the City.

(a) Whenever any event of default of the Applicant occurs, the City may take whatever action at law or in equity as may appear necessary or desirable to the City to enforce performance and observance of this Agreement.

(b) A change in the IUP by the Applicant shall require City Council approval in accordance with Bloomington City Code Section 21.501.03(c), and the City reserves the right to initiate such proceedings. In addition, the City reserves its right to initiate rezoning or rezoning of the Property.

6. Remedies of the Applicant.

Whenever any event of default by the City occurs, the Applicant may take whatever action at law or in equity may appear necessary or desirable to the Applicant to enforce performance or observance of this Agreement.

7. Notices and Demands.

(a) A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given if it is dispatched by registered or certified mail, postage pre-paid, return receipt requested, and addressed to the party at the addresses listed below with receipt thereof presumed on the third business day thereafter. Either party may designate another address, or attorney for receipt of notices pursuant to this Agreement by designating in writing and forwarding such writing to the other party as provided in this section.

(b) Notices, demands, or other communications to a party under this Agreement shall be sufficiently given if sent by registered or certified mail, postage pre-paid, return receipt requested, and addressed to the party as follows:

If to the City:

City of Bloomington
ATTN: Director of Community Development
1800 West Old Shakopee Road
Bloomington, Minnesota 55431

If to the Applicant:

Robert Muir Company
ATTN: President
7650 Edinborough Way, Suite 375
Edina, Minnesota 55435

and to:

Robert Muir
850 NE 5th Avenue
Boca Raton, Florida 33432

8. Amendment/Additional Documents.

This Agreement may be amended, in writing, as the parties may mutually agree. The plans, standards, stipulations, and other information constituting the interim use permit and the conditions placed on the approval of the interim use permit as detailed in **Exhibit B** may also be amended upon application by the Applicant and approval of the City pursuant to Bloomington City Code Section 21.501.05. Once approved by the City Council, subsequent interim use

permits and conditions shall become part of this Agreement and shall be fully binding upon the parties as if set forth herein. All such additional documents affecting the development and use of this property shall be kept on file as a public record by the City of Bloomington, Director of Community Development.

9. Application of City Code Provisions, Rules, Regulations and Policies.

This Agreement shall not prevent the City, in subsequent actions applicable to the Property, from applying new City Code provisions, rules, regulations or policies, nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development or use application on the basis of such existing or new City Code provisions, rules, regulations or policies. No rights shall be deemed to vest in the Applicant or any other person, under any site development agreement, except as expressly set forth therein.

10. Relationship of the Parties.

No partnership or joint venture is established between the parties hereto by or under this Agreement or any agreement referenced herein.

11. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including without limitation any and all future and present Applicants, tenants, occupants, licensees, mortgagees and any other parties with any interest in the Property. Upon sale or conveyance of any portion of the Property, the transferee shall be liable for all obligations of the Applicant which relate to such portions of the Property and the transferor shall be automatically released from any further obligation, liability, right or responsibility under this Agreement relating to the transferred portion of the Property.

12. Recording of Document.

This Agreement shall run with the Property and shall be recorded in the Office of the Hennepin County Recorder or Registrar of Titles, as appropriate, by the Applicant with proof thereof shown to the City prior to March 15, 2015.

13. Governing Law.

The City and Applicant agree that the laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the undersigned parties and performance under it without regard to the principles of conflicts of law. The language of this Agreement is and shall be deemed the result of negotiation among the parties and their respective legal counsel and shall not be strictly construed for or against any party. Each party agrees that any action arising out of or in connection with this Agreement shall be brought solely in the courts of the State of Minnesota, Fourth Judicial District, or the United States District Court for the District of Minnesota.

14. Entire Agreement, Superseding All Prior Agreements Related to the IUP.

This Agreement and the Plans represent the entire Agreement between the Applicant and the City, as related to the IUP. The portions of all previous Agreements between the City that are specifically related to the former temporary conditional use permit or the former or current IUP are hereby terminated and superseded by this Agreement. The approvals and Agreements related to the construction of the office building that do not relate to the remote airport parking use remain in full force and effect.

15. Severability.

If any provision or term of this Agreement for any reason is declared invalid, illegal or unenforceable, such decision shall not affect the validity of any remaining provisions,

provided that: (i) each party receives the substantial benefit of its bargain with respect to the transaction completed hereby; and (ii) the ineffectiveness of such provision would not result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable for either party. The remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties that they would have executed the remaining portions of this Agreement without including any such part or portion which may be hereafter declared invalid.

16. Signatures/ Execution.

Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

[left blank intentionally; signature pages follow]

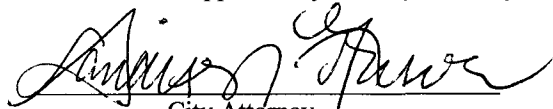
Signature Page for the City of Bloomington

CITY OF BLOOMINGTON

DATED: 2/23/15

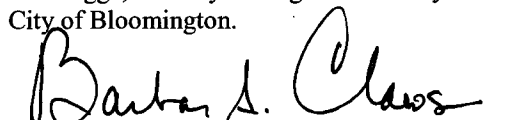
By: 
James D. Verbrugge
Its City Manager

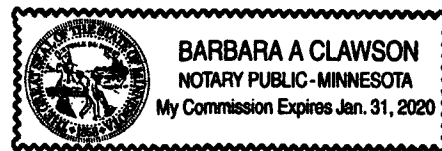
Reviewed and approved by the City Attorney.


City Attorney

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this 23rd day of February, 2015, by James D. Verbrugge, the City Manager of the City of Bloomington, under the laws of the State of Minnesota, on behalf of the City of Bloomington.


Notary Public

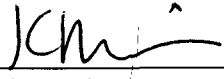


Signature Page for Rosa Development Company, LLLP

Dated: February 23, 2015

**ROSA DEVELOPMENT COMPANY,
LLLP**, a Minnesota limited partnership

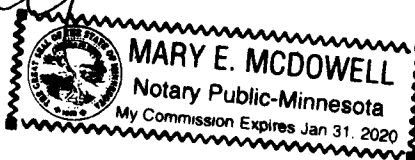
By: Rosa Incorporated,
a Minnesota corporation
Its: General Partner

By: 
Kristin Muir
Its: President

STATE OF Minnesota _____)
) SS.
COUNTY OF Hennepin _____)

This instrument was acknowledged before me this 23rd day of February, 2015, by Kristin Muir, the President of Rosa Incorporated, a Minnesota corporation, which corporation is the General Partner of Rosa Development Company, LLLP, on behalf of the limited liability limited partnership.


Notary Public



This instrument was drafted by:
Legal Dept. – City of Bloomington
1800 W. Old Shakopee Rd.
Bloomington, MN 55431
(952) 563-8753

EXHIBIT A
TO DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BLOOMINGTON & APPLICANT

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1, Block 1 – International Airport Park 5th Addition

EXHIBIT B
TO SITE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BLOOMINGTON & APPLICANT

CONDITIONS OF APPROVAL

1. The use of the property for remote airport parking must terminate on July 1, 2019;
2. The conditions attached to this approval of an Interim Use Permit for remote airport parking (Case 9250A-14) replace and supersede all previous conditions of approval related to the remote airport parking use on this site;
3. The applicant must sign a new Site Development Agreement relating to the remote airport parking use with the City that incorporates all conditions of approval attached to Case 9250A-14 and confirms the interim nature of the use;
4. Upon expiration of the Interim Use Permit, the physical surface parking lot and the physical parking ramp may remain on site and be used in support of uses allowed in the base zoning district, however, the use of the site for remote airport parking must cease;
5. The remote airport parking use on 3700 American Boulevard East is limited to 1,122 vehicles as approved in Case 9250A-14;
6. Any physical changes to the site must follow the relevant approval process outlined in the City Code; and
7. Motor vehicles must be parked at all times in a manner that allows Fire Department access.
8. Landscaping and required screening must be maintained during the term of the interim use permit.
9. No maintenance or cleaning of customer or employee vehicles is allowed.