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Deputy 175

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SITE DEVELOPMENT AGREEMENT

THIS AGREEMENT is made effective as of this 30th day of August, 2021, by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 ("City") and Walser Real Estate IV, LLC, a Minnesota limited liability company ("Applicant").

RECITALS

The Applicant is the owner of certain real property located at 4217 and 4401 American Boulevard West, 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 (the "Property").

The Applicant received approval for and completed multiple motor vehicle sales facility expansions over the years. The dealership site, under previous ownership, was initially approved in 1999 on the site of the former Lincoln Del restaurant located at 4401 American Boulevard West (Case #5751ABC-99). In 2004, the Applicant applied to reguide and rezone the adjoining property at 4301 American Boulevard West (Case #8133ABCD-03). Development plans were initially

submitted to expand the motor vehicle sales use by constructing additional surface parking. The City Council did not support the initial request. In response to the Council's rejection of additional surface parking in the 2004 approvals, the Applicant revised its development application by proposing Preliminary Development Plans for a five-story dealership building with a three-story parking ramp. The Comprehensive Plan Amendment was approved contingent on the future approval of Final Development Plans for the new dealership building. However, the larger dealership building was never constructed. In 2006, Final Development Plans were approved without the larger dealership building, memorializing, and completing the reguinding and rezoning of 4301 American Boulevard West. These actions resulted in substantial surface parking expansion utilized for automobile and inventory parking and storage without the commensurate expansion in building area and employment.

On June 7, 2021, the City approved a development application (Case #PL2021-42) that included a Comprehensive Plan Map Amendment, rezoning for a portion of the Property from Commercial Service 0.5 (PD) to Freeway Office and Service (PD) and Preliminary and Final Development Plans for a new 122,000 square foot class I and II motor vehicle sales facility and three story parking ramp with roof parking, representing the Applicant's third attempt to redevelop the Walser Toyota site in the last five years. The vacation and acquisition of the former Senser's restaurant property located at 4217 American Boulevard West presented an opportunity to construct a parking structure in a single phase, thereby saving significant money in the construction process while allowing for: 1) an expanded vehicle sales facility and vehicle storage and 2) continuous and uninterrupted dealership sales and service operation during the redevelopment of the Property. In its support for the Comprehensive Plan Amendment and rezoning requested by the Applicant, the City Council found that the public benefit associated with the aforementioned

approvals was contingent upon the development of the full project. Specifically, the Council Approval highlighted the increased floor area of the new motor vehicle dealership and office building coupled with future employment opportunities provided by the relocation of Walser Automotive Group's corporate headquarters. With these considerations in mind, the City and the Applicant have reached agreement to redevelop the Property as more fully set forth in this Agreement.

This Agreement sets forth the obligations of the parties and the conditions that govern the development and use of the Property for redevelopment. It is intended to address the parties' compliance with the conditions the City Council adopted with the approval of the redevelopment of the Property, at its regular meeting of June 7, 2021 ("Council Approval"). This Agreement does not address other issues relating to public improvements, assessments, storm water charges, tax increment financing, subsidies or other matters regarding or affecting the Property unless specifically set forth herein or incorporated herein by reference.

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. The Applicant agrees that development and redevelopment of the Property shall be in strict conformance with the application, conditions and development milestones ("Plans") detailed in the Council Approval as set forth in the Decision Notice, dated June 8, 2021. These conditions are set forth in **Exhibit B**, which is attached hereto and incorporated herein by reference. In the event there is a conflict between the Council Approval 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 from the Plans. The Applicant also agrees that any major or minor change to the Plans 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. In order to maintain existing vehicle sales and operation during the redevelopment of the Property, the Applicant will pursue the timely development of a new three-story dealership facility and corporate offices according to the development milestones set forth in Exhibit C of this Agreement. The City agrees to cooperate with the review of applications necessary for approval of the Plans, including without limitation, applications and submittals for environmental review, zoning, building permits, structured parking, stormwater facilities, and applications for any permit or grant requests to any other governmental jurisdiction or agency.

3. Event of Default.

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 cure the default or otherwise perform the Obligations of the Applicant within sixty (60) days after receipt by the Applicant of written notice of such default by the City.

4. 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 Plans by the Applicant requires City Council approval in accordance with Bloomington City Code Section 21.501.03. In addition, the City reserves its right to initiate reguiding or rezoning of the Property.

5. 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.

6. 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
khenderson@bloomingtonmn.gov

If to the Applicant:

Walser Real Estate IV, LLC
ATTN: General Counsel
7700 France Avenue South, #410N
Edina, Minnesota 55435
legal@walser.com

(c) Nothing prevents a party from contemporaneously providing the same notice of demand by electronic mail.

7. Amendment/Additional Documents.

This Agreement may be amended, in writing, as the parties may mutually agree. The Plans, standards, stipulations, and other information including the interim use of the parking structure outline in the conditions placed on the of approval detailed in **Exhibit B** may be amended upon application by the Applicant and approval of the City Council pursuant to Bloomington City Code Section 21.501.05.

8. 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 that do not substantially conflict with those in force and effect on the effective date of this Agreement, nor shall this Agreement prevent the City from denying or conditionally approving any subsequent development or use application for the Property 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 or approval, except as expressly set forth therein.

9. 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.

10. 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. The rights and responsibilities of this Agreement are intended to run with the land. 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.

11. 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 provided to the City prior to its issuance of any permits.

12. 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.

13. Entire Agreement.

This Agreement and the plans along with all attached exhibits hereto, represent the entire Agreement between the Applicant and the City.

14. 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.

15. 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 Site Development Agreement the day and year first above written.

[left blank intentionally; signature pages follow]

Signature Page for the City of Bloomington

CITY OF BLOOMINGTON, Minnesota

DATED: 8/30/21

By: [Signature]
James D. Verbrugge
Its: City Manager

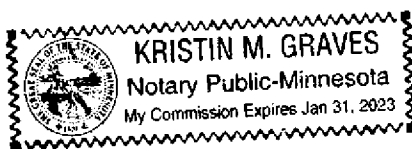
Reviewed and approved by the City Attorney.

[Signature]
City Attorney

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this 30th day of August, 2021,
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.

[Signature]
Notary Public



Signature Page for Walser Real Estate IV, LLC

WALSER REAL ESTATE IV, LLC

DATED: August 17, 2021

By: _____

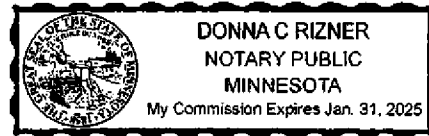
Andrew Walser

Chief Executive Officer

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me this 17 day of August, 2021, by Andrew Walser as Chief Executive Officer of Walser Real Estate IV, LLC a Minnesota limited liability company, on behalf of the company.

Notary Public



This instrument was drafted by:
City of Bloomington
City Attorney's Office
1800 W. Old Shakopee Road
Bloomington, MN 55431

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

LEGAL DESCRIPTION OF THE PROPERTY

Lot 1, Block 1, PA Walser Addition, Hennepin County, Minnesota, and
Lot 1, Block 1, France 494 4th Addition, Hennepin County, Minnesota

to be platted as:

PA Walser 2nd Addition, Hennepin County, Minnesota

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

DECISION NOTICE

Attached.



June 8, 2021

Walser Real Estate IV
ATTN: John Brennan
7700 France Avenue South, Suite #410 N
Edina, MN 55435

RE: Case # PL202100042 – Walser Toyota Redevelopment
4217 and 4401 American Boulevard West

Mr. Brennan:

At its regular meeting of June 7, 2021, the City Council approved the following applications (Case #PL202100042):

- 1) Comprehensive Plan Map Amendment to regrade 4217 American Boulevard West from Community Commercial to Regional Commercial;
- 2) Rezone a portion of 4217 American Boulevard West from CS-0.5(PD) to C-1(PD);
- 3) Preliminary and Final Development Plans for an approximately 122,000 square-foot, three-story auto dealership and office facility with a three-story parking structure with roof parking; and
- 4) Preliminary and Final Plat (Type II) to combine two lots into one lot.

The approval of the Preliminary and Final Development Plans is subject to the following conditions, many of which must be satisfied prior to the issuance of a Grading, Footing, Foundation or Building Permit. While the conditions list includes selected City Code requirements of particular interest, the development must comply with all applicable local, state and federal codes.

1. Prior to Permit A Site Development Agreement, including all conditions of approval and memorializing the project phasing and performance proposal, must be executed by the applicant and the City and must be properly recorded by the applicant with proof of recording provided to the Director of Community Development.
2. Prior to Permit A building permit for all required changes to accommodate the proposed use be obtained.
3. Prior to Permit Sewer Availability Charges (SAC) must be satisfied.
4. Prior to Permit Access, circulation and parking plans must be approved by the City Engineer.
5. Prior to Permit Sidewalk with a minimum width of eight feet must be installed along American Boulevard West in a location approved by the City Engineer at the developer's expense (Section 21.301.04(b)(1)).

6. Prior to Permit Bicycle parking spaces must be provided and located throughout the site as approved by the City Engineer.
7. Prior to Permit Grading, Drainage, Utility and Erosion Control plans must be approved by the City Engineer.
8. Prior to Permit Storm Water Management Plan must be provided that demonstrates compliance with the City's Comprehensive Surface Water Management Plan. A maintenance plan must be signed by the property owners and must be filed of record with Hennepin County.
9. Prior to Permit A Nine Mile Creek Watershed District permit must be obtained and a copy submitted to the Engineering Division.
10. Prior to Permit A National Pollutant Discharge Elimination System (NPDES) construction site permit and a Storm Water Pollution Prevention Plan (SWPPP) must be provided if greater than one acre is disturbed (State of MN and Federal regulation).
11. Prior to Permit An erosion control surety must be provided (16.08(b)).
12. Prior to Permit A Minnesota Pollution Control Agency (MPCA) Sanitary Sewer Extension or Modification Permit must be obtained or notification from the MPCA that this permit is not required must be submitted to the City (State of MN).
13. Prior to Permit A Minnesota Department of Health (MDH) watermain review and approval must be obtained or notification from MDH that this permit is not required must be submitted to the City (State of MN).
14. Prior to Permit Utility plan showing location of existing and proposed water main and fire hydrant locations must be approved by the Fire Marshal and Utilities Engineer (City Code Sec. 6.20, Minnesota State Fire Code Sec. 508).
15. Prior to Permit Tier 2 Transportation Demand Management plan must be submitted (Sec. 21.301.09(b)(2)).
16. Prior to Permit A parking signage and striping plan must be provided designating off-street parking spaces available for customer or employee parking, spaces for automobiles awaiting repair, and automobile inventory storage spaces.
17. Prior to Permit Surface parking lot must have parking islands consistent with design standards and requirements of Section 21.301.06(c)(2)(H) of the City Code.
18. Prior to Permit Landscape plan must be approved by the Planning Manager and landscape surety must be filed (Sec 19.52).
19. Prior to Permit Parking lot and site security lighting plans must be revised to satisfy the requirements of City Code Section 21.301.07.
20. Prior to Permit Exterior building materials must be approved by the Planning Manager (Sec. 19.63.08).
21. Prior to Permit The parking structure must be designed to block vehicle headlights at a minimum height consistent with the MN State Building Code on all floors and elevations except for the northern elevation and the northerly 20 feet of the eastern and western elevations as approved by the Planning Manager.
22. Prior to Permit All trash and recyclable materials must be stored inside the principal building (Sec. 21.301.17).
23. Prior to Permit The properties must be platted per Chapter 22 of the City Code and the approved final plat must be filed with Hennepin County prior to the issuance of any permits (22.03(a)(2)).

24. Prior to Permit A common parking agreement must be provided dedicating a minimum of 19 parking stalls to 4201 and 4209 American Boulevard West as approved by the City Engineer, and proof of filing must be provided to the Manager of Building and Inspection.
25. Prior to Permit A revised private common access agreement or easement for the eastern driveway shared with to 4201 and 4209 American Boulevard West be filed with Hennepin County and proof of filing provided to the Engineering Division.
26. Prior to Permit The applicant shall provide letters of commitment from Walser, Toyota Motor North America, Inc., and Bank of America, N.A. (or another major financial institution) to demonstrate its intent and financing commitments necessary to construct the Parking Structure and Office Structure.
27. Prior to C/O Building must be provided with an automatic fire sprinkler system as approved by the Fire Marshal (MN Bldg. Code Sec. 903, MN Rules Chapter 1306; MN State Fire Code Sec. 903).
28. Prior to C/O Buildings shall meet the requirements of the Minnesota State Fire Code Appendix L (Emergency Responder Radio Coverage) adopted through City Ordinance to have approved radio coverage for emergency responders based upon the existing coverage levels of the public safety communication systems.
29. Prior to C/O Fire lanes must be posted as approved by the Fire Marshal (MN State Fire Code Sec. 503.3).
30. Prior to C/O Prior to occupancy, life safety requirements must be reviewed and approved by the Fire Marshal.
31. Prior to C/O The developer must submit electronic utility as-builts to the Public Works Department prior to the issuance of the Certificate of Occupancy.
32. Prior to C/O All rooftop equipment must be fully screened (Sec. 21.301.18).
33. Ongoing The interim use for up to two years of Lot 1, Block 1, France 494 4th Addition, as it may be replatted, for motor vehicle sales, including accessory parking and storage whether on the surface or in a structured facility along with the City's issuance of a certificate of occupancy ("CO") for Phase I ("Parking Structure") shall be contingent on 1) issuance of a full building permit for a dealership/office building consistent with plans approved in Case File #PL2021-42 and 2) receipt of proof of a deposit on major structural elements for the dealership/office building. Permanent use of Lot 1, Block 1, France 494 4th Addition, as it may be replatted, for motor vehicle sales, including accessory parking and storage, is allowed only after issuance of a certificate of occupancy ("CO") for a dealership/office building consistent with plans approved in Case File #PL2021-42. The Community Development Director may, at her reasonable discretion, extend the interim use period beyond two years in the event of unforeseen circumstances provided substantial progress is being made on the construction of the dealership/office building.
34. Ongoing The motor vehicle sales and repair facility and associated car wash must comply with the noise source requirements of Section 10.29.02 of the City Code.

- 35. Ongoing Development must comply with the Minnesota State Accessibility Code.
- 36. Ongoing Alterations to utilities must be at the developer's expense.
- 37. Ongoing Three foot high parking lot screening must be provided along American Boulevard West as approved by the Planning Manager (Sec. 19.52).
- 38. Ongoing All construction related pick-up, drop-off, loading, unloading, parking, staging and stockpiling must occur on site and off public streets.
- 39. Ongoing A Uniform Sign Design (USD) must be approved prior to the issuance of sign permits. All signs must be in compliance with the requirements of Chapter 19, Article X of the City Code and the approved USD.

The approval of the Preliminary and Final Plat of PA WALSER 2ND ADDITION is subject to the following conditions:

- 40. Prior to Recording A title opinion or title commitment that accurately reflects the state of title of the property being platted, dated within 6 months of requesting City signatures, must be provided.
- 41. Prior to Recording A consent to plat form from any mortgage company with property interest must be provided.
- 42. Prior to Recording Public drainage and utility easements must be provided as approved by the City Engineer.
- 43. Prior to Recording Public sidewalk and bikeway easements must be provided along all street frontages as approved by the City Engineer.
- 44. Prior to Recording Park dedication must be satisfied.

Should you have any questions regarding this action, please contact Nick Johnson, Planner, at (952) 563-8925 or nmjohnson@BloomingtonMN.gov.

Sincerely,



Glen Markegard, AICP
Planning Manager

C: Don Schilling, Walser Automotive Group
David Phillips, Phillips Architects & Contractors, Ltd.

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

PROJECT MILESTONES

<u>Milestone</u>	<u>Description</u>	<u>Due</u>
Letters of Commitment	Applicant shall provide letters of commitment from Walser and Toyota Motor North America, Inc. demonstrating its intent and commitment to construct the Parking Structure and Office Structure.	September 1, 2021
Interim use of 4217 American Boulevard West (Lot 1, Block 1, France 494 4 th Addition, to be replatted as a portion of Lot 1, Block 1, PA Walser 2nd Addition) for motor vehicle sales	Interim use of the property for up to two years* for motor vehicle sales, including accessory parking and storage whether on the surface or in a structured facility along with the City's issuance of a certificate of occupancy ("CO") for the parking structure (Phase I)	Eligible upon receipt of full building permit for a dealership/office building consistent with the Plans and receipt of proof of deposit for major structural elements and materials needed to construct the dealership/office building.
Permanent use of 4217 American Boulevard West (Lot 1, Block 1, France 494 4 th Addition, to be replatted as a portion of Lot 1, Block 1, PA Walser 2nd Addition) for motor vehicle sales (Phase II)	Permanent use of the property for motor vehicle sales, including accessory parking and storage	Eligible upon issuance of a Certificate of Occupancy for the new Dealership/Office Building consistent with the approved Plans
*Pursuant to City Council approvals, dated June 7, 2021 (Case #PL202100042), the Community Development Director may, at her reasonable discretion, extend the interim use period beyond two years in the event of unforeseen circumstances provided substantial progress is being made on the construction of the dealership/office building.		