

SITE DEVELOPMENT AGREEMENT

THIS SITE DEVELOPMENT AGREEMENT is made effective as of this 17 day of October, 2018, by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 ("City") and McGough Development, LLC, a Delaware limited liability company, 2737 Fairview Avenue North, St. Paul, Minnesota 55113 ("Applicant").

RECITALS

The Applicant filed a development application (Case # PL2018-21) for the City's approval of a Final Development Plan for a six-story, mixed-use building with 402 residential units and approximately 2,100 square feet of commercial space (the "FDP") on the property located at 8051 – 33rd Avenue South in the City of Bloomington, Hennepin County, Minnesota, and legally described as

Lot 1, Block 1, Bloomington Central Station 6th Addition, Hennepin County, Minnesota.

The same shall be referred to herein as the "Property."

The City Council of the City of Bloomington, Minnesota, at its regular meeting of March 19, 2018, approved the FDP (the "Approval") subject to, and contingent upon, the Applicant's satisfaction of certain conditions relating to the Property, and made subject to those conditions, as well as all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Approval).

This Agreement sets forth the obligations of the parties and the conditions that govern the development and use of the Property. It is intended to address the parties' compliance with the conditions the City Council placed on the 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.

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, except as provided in subsection (d) below, development of the Property shall be in strict conformance with all conditions set forth in the decision notice dated March 20, 2018, which is attached hereto and incorporated herein by reference as Exhibit A (collectively, the "Conditions of Approval").

(b) Conformance with Approved FDP. The Applicant agrees that development of the Property shall also be in strict conformance with the FDP as approved on March 19, 2018, 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 Approval and decision notice), and all applicable state and federal laws. In the event that there is a conflict between the FDP 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 FDP approved by the City Council on March 19, 2018. The Applicant also agrees that any major or minor change to the FDP as approved by the City Council must be approved by the City as provided in City Code Section 21.501.03, subdivisions (c) and (d).

(c) Compliance with Zoning Regulations. The Applicant agrees that any change to a use of the Property that is prohibited under the City's zoning regulations will require City Council approval of a revision of the zoning code and approval of a revision to the FDP.

(d) Additional Terms Relating to Conditions of Approval. Notwithstanding anything in this Agreement to the contrary, the City and the Applicant agree that the following additional terms shall apply with respect to the Conditions of Approval:

(i) For Condition No. 8 within the Conditions of Approval, the Environmental Health Division's approval of food service plans is only a condition for the Applicant obtaining a building permit for the buildout of the interior portion of the retail space located within the project on the Property, and will not be a condition for Applicant obtaining a building permit or certificate of occupancy for any other portions of such project.

(ii) For Condition No. 13 within the Conditions of Approval, the Utilities Engineer's approval of the design of any external grease interceptor required for the project on the Property is only a condition for the Applicant obtaining a building permit for the buildout of the interior portion of the retail space within such project, and will not be a condition for Applicant obtaining a building permit or certificate of occupancy for any other portions of such project; provided, however, at the time the Applicant obtains a building permit for the core and shell of the retail space within the project, the Applicant must provide the Utilities Engineer a conceptual plan showing where a grease interceptor could be located within the retail space if ultimately needed as part of the build-out of such space.

(iii) For Condition No. 29 within the Conditions of Approval, the City Engineer may approve one or more alternate locations where construction stockpiling, staging, and parking may occur within the Bloomington Central Station Planned Development and/or within public right of way adjacent to such development. Applicant must comply with all other aspects of the City Code related to stockpiling, staging, and parking.

(iv) For Condition No. 30 within the Conditions of Approval, the City Engineer may approve one or more alternate locations where loading and unloading may occur within the Bloomington Central Station Planned Development and/or within public right of way adjacent to such development. Applicant must comply with all other aspects of the City Code related to loading and unloading.

(v) For Conditions No. 22 and 28, unless and until Applicant seeks a building permit for the buildout of the interior portion of the retail space located within the project on the Property, Applicant will not need to satisfy such conditions with respect to the unfinished retail space to obtain a certificate of occupancy for the residential housing components within such project.

3. Obligations of the City.

(a) Issuance of Permits. The City will issue permits necessary for the approved development of the Property subject to the satisfaction of Conditions of Approval set forth in Exhibit A, and compliance with all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approval or decision notice). No permits will be issued until the Applicant has submitted all appropriate permit applications, which are subject to City review and approval.

4. Event of Default.

(a) The term "event of default" shall mean, whenever it is used in this Agreement (unless the context provides otherwise), any of the following events:

(i) 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.

(ii) The failure of the City to perform the obligations set forth in paragraph 3 ("Obligations of the City") of this Agreement and to commence corrective measures to perform the obligations within sixty (60) days after receipt by the City of written notice of such default by the Applicant.

5. Remedies of the City.

(a) Whenever any event of default of the Applicant occurs and is continuing, 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 major change in the FDP 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 of the Property if the Applicant changes the Property to a use prohibited in the approved zoning district.

6. Remedies of the Applicant. Whenever any event of default by the City occurs and is continuing, 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:

McGough Development, LLC
ATTN: Dave Higgins, Vice President
2737 Fairview Avenue North
St. Paul, Minnesota 55113

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 development plan and the conditions placed on the approval of the plans as detailed in Exhibit A may also be amended upon application by the Applicant and approval of the City pursuant to Bloomington City Code Section 21.501.03. Once approved by the City Council, subsequent development plans 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 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. Notwithstanding anything herein to the contrary, the Applicant may assign its rights under this Agreement, without the City's prior consent, to any third-party that owns fee title to 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 its issuance of any permits hereunder.

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. This Agreement and the Plans represent the entire Agreement between the Applicant and the City relating to the development of the Property. All previous agreements, whether written or oral, relating to the development of the Property are superseded by and merged into this Agreement. Subsequent changes shall not be binding unless reduced to writing and signed by the parties hereto.

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. Facsimile or electronic signatures are not accepted by the City, or by Hennepin County for recording purposes. The City requires execution of multiple originals

of this Agreement: three (3) originals for City records, and one (1) original for recording with the Office of the County Recorder.

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

[left blank intentionally; signature pages follow]

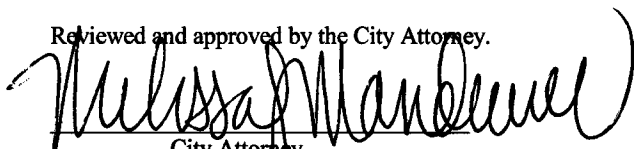
Signature Page for the City of Bloomington, Minnesota

CITY OF BLOOMINGTON

DATED: 10/17/18

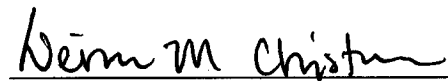
By: 
James D. Verbrugge
Its City Manager

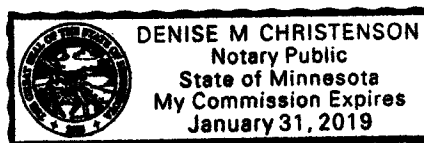
Reviewed and approved by the City Attorney.


City Attorney

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this 17 day of October, 2018, 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 MCGOUGH DEVELOPMENT, LLC

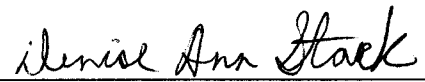
MCGOUGH DEVELOPMENT, LLC

DATED: 10/12/18

By: 
Mark Fabel
Its: Executive Vice President

STATE OF MN)
COUNTY OF Ramsey) SS.

This instrument was acknowledged before me this 12th day of OCTOBER, 2018, by Mark Fabel, the Executive Vice President of McGough Development, LLC, on behalf of the limited liability company.


Notary Public

DENISE ANN STARK
COMM.#20488364
Notary Public
State of Minnesota

This instrument was drafted by: **My commission Expires 1/31/2020**
Legal Dept. – City of Bloomington
1800 W. Old Shakopee Rd.
Bloomington, MN 55431
(952) 563-8753

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

[left blank intentionally; Exhibit pages follow]



March 20, 2018

Mr. David Higgins
McGough Development
2737 Fairview Avenue North
St. Paul, MN 55113

RE: Case # PL2018-21
8041 and 8051 33rd Avenue South

Mr. Higgins:

At its regular meeting of March 19, 2018, the City Council approved a Final Development Plan for a six-story, mixed use building with 402 residential units and approximately 2,100 square feet of commercial space (Case # PL2018-21).

The approval is subject to conditions that 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, 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 Grading, Drainage, Utility and Erosion Control plans must be approved by the City Engineer.
3. Prior to Permit An erosion control surety must be provided (16.08(b)).
4. 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.
5. Prior to Permit Sewer Availability Charges (SAC) must be satisfied.
6. Prior to Permit Landscape plan must be approved by the Planning Manager and landscape surety must be filed (Sec 19.52).
7. Prior to Permit Parking lot and site security lighting plans must be revised to satisfy the requirements of Section 21.301.07 of the City Code.
8. Prior to Permit Food service plans must be approved by the Environmental Health Division (City Code Sec. 14.360).
9. Prior to Permit Signs must be in compliance with the requirements of Chapter 19, Article X

- of the City Code and Uniform Design Plan.
10. Prior to Permit Exterior building materials must be approved by the Planning Manager (Sec. 19.63.08).
 11. Prior to Permit During plan review for building permits and during construction, the developer's consultant will provide installation instructions for the windows and doors, have the contractors prepare a mock up, evaluate the mock up and verify correct installation of 10 percent of the units constructed and share these evaluation reports with the Building and Inspections Division to ensure that the windows and doors are being installed appropriately.
 12. Prior to Permit Plans submitted for building permits must include documentation that unit construction will provide a Sound Transmission Class (STC) rating in accordance with Table 7 in the Exterior Facade Acoustical Design memorandum from Veneklasen Associates, dated January 16, 2018. In addition, provide documentation that the HVAC equipment and vents passing through the unit's walls to the building exterior provide a noise reduction of at least 30 dBA within the dwelling units.
 13. Prior to Permit An external grease interceptor must be provided if the proposed tenant will have food preparation and service that will produce fats, oils, grease or wax in excess of 100 mg/L. The external grease interceptor design must be approved by the Utilities Engineer. A grease interceptor maintenance agreement must be filed with the Utilities Division, if an external grease interceptor is installed.
 14. Prior to Permit An Airport Zoning Permit must be approved by the Community Development Director for any crane or structure on site that exceeds 80 feet in height above existing grade (MSP Airport Zoning Ordinance Section VIII (A)).
 15. Prior to Permit Federal Aviation Administration review is required through the 7460 airspace analysis process.
 16. 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).
 17. Prior to Permit Haul Route and Construction Traffic Control Plans must be approved by the City Engineer or their designee.
 18. 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).
 19. 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).
 20. 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).
 21. Prior to Permit A parking management plan must be approved by the City Engineer.
 22. 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.
23. Prior to C/O Bicycle parking spaces must be provided and located throughout the site as approved by the City Engineer.
 24. Prior to C/O Fire lanes must be posted as approved by the Fire Marshal (MN State Fire Code Sec. 503.3).
 25. 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).
 26. Prior to C/O The Tier 1 Transportation Demand Management plan for Bloomington Central Station must be updated to accomodate this new phase of development (Sec. 21.301.09(b)(2)).
 27. 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.
 28. Prior to C/O Prior to occupancy, life safety requirements must be reviewed and approved by the Fire Marshal.
 29. Ongoing All construction stockpiling, staging and parking must take place on site and off adjacent public streets and public right-of-way.
 30. Ongoing All loading and unloading must occur on site and off public streets.
 31. Ongoing All trash and recyclable materials must be stored inside the principal building (Sec. 19.51).
 32. Ongoing All rooftop equipment must be fully screened (Sec. 19.52.01).
 33. Ongoing Alterations to utilities must be at the developer's expense.

Should you have any questions regarding this action, please contact Mike Centinario, Planner, at (952) 563-8921 or mcentinario@BloomingtonMN.gov.

Sincerely,



Glen Markegard, AICP
Planning Manager