

PL201900011
PL2019-11



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SITE DEVELOPMENT AGREEMENT

THIS AGREEMENT is made effective as of this 23 day of April, 2019, 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, 334 NE 1st Avenue, Delray Beach, Florida 33444 (“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 (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 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 adjacent property owned by the Applicant. 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 adjacent 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, 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 filed a development application (Case 9250A-14) for the City's approval of an interim use permit for remote airport parking at that location through July 1, 2019. The City Council on February 23, 2015, approved the interim use permit subject to, and contingent upon, the Applicant's satisfaction of certain conditions relating to the Property.

The Applicant has now filed a development application (Case PL 2019-11) for the City's approval of an interim use permit for remote parking at that location through July 1, 2024. 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 and remote airport parking pursuant to a new interim use permit. It is intended to address the parties' compliance with the conditions the City Council adopted with the approval of an interim use permit for the Property, dated April 15, 2019 ("IUP"). 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 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 April 16, 2019. These conditions are set forth in **Exhibit B**, which is attached hereto and incorporated herein by reference. The Applicant agrees that use and redevelopment of the Property shall be in strict conformance with the IUP, all applicable code provisions, including but not limited to City Code, building code and fire code, and all applicable state and federal laws whether or not enumerated in the Council Approval and letter of transmittal. In the event 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. The Applicant agrees to develop a concept master plan to guide future development on the Property (the "Project"). Further, the Applicant has identified a development site of approximately three to four acres on which the Applicant will pursue a multifamily or mixed use project (the "Phase I Project") consistent with the regulations of the High Intensity Mixed Use With Residential (HX-R) District pursuant 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 Phase I Project, including without limitation, applications and submittals for environmental review,

zoning, building permits, structured parking, pedestrian amenities, stormwater facilities and applications for tax increment financing, livable community grants from the Metropolitan Council, as well as other state and local economic development programs and loans through the Minnesota Housing Finance Agency. In keeping with the goal of phased development on the Project site, the Applicant will provide the City with a development concept plan as described in Exhibit C (the “Phase II Project”).

3. 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 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 IUP by the Applicant requires City Council approval in accordance with Bloomington City Code Section 21.501.05. 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
Ejohnson@bloomingtonmn.gov

If to the Applicant:

Rosa Development Company, LLLP
Attn: Kristin Muir
334 NE 1st Avenue
Delray Beach, Florida 33444

(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 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 Council pursuant to Bloomington City Code Section 21.501.05. Once approved by the City Council, subsequent interim use permits and conditions relative to the Property 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.

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 June 1, 2019.

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, Superseding All Prior Agreements Related to the IUP.

This Agreement and the plans along with all attached exhibits hereto, represent the entire Agreement between the Applicant and the City, as related to the IUP. 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 until they are amended.

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]

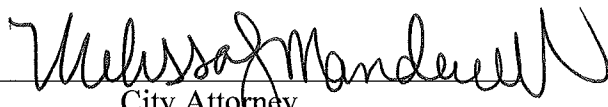
Signature Page for the City of Bloomington

CITY OF BLOOMINGTON, Minnesota

DATED: 4/15/19

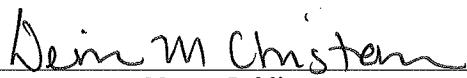
By: 
James D. Verbrugge
Its: City Manager

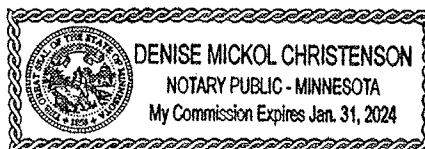
Reviewed and approved by the City Attorney.


City Attorney

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this 15 day of April, 2019,
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

**ROSA DEVELOPMENT COMPANY,
LLLP**

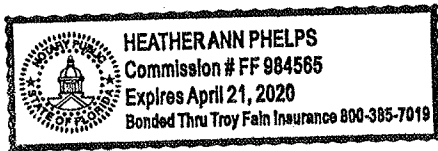
DATED: 04/23/2019

By: KM
Printed Name: Kristin Muir
Its: Managing Partner

STATE OF Florida)
COUNTY OF Palm Beach) SS.

This instrument was acknowledged before me this 23 day of April, 2019, by Kristin Muir, the President of Rosa Incorporation, which corporation is the General Partner of Rosa Development Company, LLLP, on behalf of the limited liability limited partnership.

Heather Ann Phelps
Notary Public



This instrument was drafted by:
Larkin Hoffman Daly & Lindgren
8300 Norman Center Drive, Suite 1000
Minneapolis, MN 55437
952-835-3800

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, Hennepin County, Minnesota

Abstract

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

CONDITIONS OF APPROVAL

1. Failure to meet any of the milestones identified in Exhibit C will result in termination of this interim use permit for remote airport parking, provided the City makes available sufficient sewer infrastructure capacity to be available. In any event, termination of this interim use permits is subject to Applicant's right to cure an event of default or otherwise undertake corrective measures. In no case may the use of the Property for remote airport parking extend beyond July 1, 2024, unless a subsequent interim use permit is issued; and
2. The conditions attached to this approval of an Interim Use Permit for remote airport parking (Case PL2019-11) replace and supersede all previous conditions of approval related to the remote airport parking use on the Property; and
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 PL2019-11 and confirms the interim nature of the use; and
4. Upon expiration of the Interim Use Permit (Case PL2019-11), 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 is limited to 1,063 vehicles; and
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; and
8. Landscaping and required screening must be maintained in the current state during the term of the interim use permit; and
9. No maintenance or cleaning of customer or employee vehicles is allowed; and
10. All trash and recyclable materials be stored inside the principal building. (Sec. 19.51); and
11. Fire lanes be posted as approved by the Fire Marshal. (Uniform Fire Code Sec. 901.4).

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

PROJECT MILESTONES

<u>Milestone</u>	<u>Description</u>	<u>Due</u>
Identify Phase I Project Site	Applicant will submit to the City the approximate boundaries of a three to four acre development site within the Property.	August 1, 2019
Amend Alternative Urban Areawide Review (AUAR)	Applicant and City will amend existing AUAR as needed to include the Project within the AUAR.	Concurrent with the City's five year AUAR update due in 2022
Concept Master Plan	Applicant will submit a concept master plan for entire site including 3700 American Blvd and 3750 American Blvd that identifies the proposed major uses, the development square footage projected, phasing, public and private infrastructure and location of structured parking.	October 31, 2019
Project Pro Forma	Applicant will submit a development proforma for the Phase I Project that identifies sources and uses of public and private funds and the need for public support of the Project.	October 31, 2019
Application for Public Financial Assistance	If public financial assistance is desired, Applicant will submit to the City, Port Authority and/or the Housing	December 31, 2019

	and Redevelopment Authority, as applicable, a written request for tax increment financing or other public subsidies requested for the Phase I Project.	
Revised Preliminary and Final Development Plans	Applicant will submit to the City a complete application for major revision to Preliminary Development Plans for the Property and Final Development Plans for the Phase I Project.	December 31, 2019
Preliminary and Final Plat	Applicant will submit an application for preliminary and final plat to subdivide the Property into parcels for phased development of the Project and for continued use of the remnant Property for remote airport parking in the interim or some other approved use. The application may be accompanied by a platting variance request to defer park dedication for future development phases.	March 31, 2020
Building Permit	Applicant will submit a complete application for a building permit for the Phase I Project.	June 1, 2020
Construction Start	Applicant will commence construction of the Phase I Project.	September 1, 2020

Development Concept Plan: Phase II	Applicant will submit a development concept plan for Phase II with projected uses, development schedules, projected cost and support requirements from the City.	July 1, 2022
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