

LAND USE AGREEMENT

This Land Use Agreement is made this ____ day of July 2017 among Rochelle Ave., LLC (hereinafter "Developer") a Pennsylvania Corporation with an address at 83 Greenbriar Lane, Newtown, PA 18940 and Wissahickon Interested Citizens Association ("WICA") a Pennsylvania Non Profit Corporation with offices at 123 Kalos Street, Philadelphia, PA 19128.

WHEREFORE, Developer is owner of the properties at 5102-04 Rochelle Avenue and 5116 Rochelle Avenue in Philadelphia, PA (the "Subject Properties"); and

WHEREAS, Developer desires to demolish any remaining structures on the Subject Properties, consolidate the two properties into one property and redevelop the Subject Properties for a mixed use (multi-family residential with commercial/retail on a portion of the first floor) building with accessory parking and amenities (the Redevelopment Project"); and

WHEREAS, WICA is a community association composed of concerned neighbors who became involved in issues regarding land use and other health safety and welfare issues in the Wissahickon community bounded by Ridge Avenue, Hermit Street, Henry Avenue and the Wissahickon Creek; and

WHEREAS, the Subject Properties fall within the geographic boundaries of WICA; and

WHEREAS Developer and WICA on behalf of its members and the residents who are interested in the immediate neighborhood surrounding the Subject Properties are desirous of reaching an agreement as to the land use of the Subject Properties; and

WHEREAS, Developer believes that the Redevelopment Project is a responsible Transit Oriented Development as it is located adjacent to the SEPTA Wissahickon Train Station. Developer expects that residents will be interested in living in the Redevelopment Project as its immediate access to mass transit makes it possible for residents to potentially live a car free lifestyle which in turn will limit the need for on-street and off-street parking. In addition, the Redevelopment Project will include a robust interior bike storage area and Developer is desirous of working with WICA and the immediate neighbors and any relevant government officials/entities in order to obtain a car sharing space; and

WHEREAS, Developer believes that the Redevelopment Project will not only attractively redevelop the currently vacant Subject Properties and bring beneficial pedestrian activity and the resulting safety and security, but also help to strengthen the nearby commercial/retail businesses corridors; and

WHEREAS, Developer is seeking zoning relief from the Philadelphia Zoning Board of Adjustment ("ZBA") with regard to ZBA Calendar No. 29903 (Zoning Appeal); and

WHEREAS, this Land Use Agreement is intended to set forth the understanding between the parties as to Developer's use of the Subject Properties; and

NOW THEREFORE, in consideration of the mutual promises contained herein including WICA's support of Developer's zoning appeal (as further outlined within) and one dollar (\$1.00) consideration which has been received from Developer, the Developer and WICA hereby agree that the following conditions, restrictions and limitations on the form, manner and use of the Subject Properties shall be binding upon Developer and WICA and their assigns, successors, licensees and lessees.

I. **GENERAL OVERVIEW OF REDEVELOPMENT PROJECT: USES AND STRUCTURES**

1. With regards to the Subject Properties, Developer desires to demolish any remaining structures and consolidate the Subject Properties so that they can be used for a four story mixed use building as set forth in the zoning and land use plans that are generally attached as Exhibits A thru C. The first floor would be used for, among other things, accessory parking, commercial/retail uses (as further detailed below), building lobby, trash and bike rooms, elevator, and other accessory uses. The upper floors will include up to 30 residential dwelling units and a resident roof top deck. A partial cellar floor will house building storage and building utility areas.
2. Due to the underlying zoning district and relevant zoning overlay(s), zoning relief from the ZBA will be necessary in order to develop the Redevelopment Project.
3. As a result of numerous meetings and extensive consultations with WICA the following Provisos have been agreed to:

II. **REDEVELOPMENT PROJECT PROVISOS- SIZE, SCOPE AND EXTERIOR OF THE REDEVELOPMENT PROJECT.**

These provisos with regards to the size and scope and exterior materials of the Redevelopment Project have been agreed upon by the Developer and WICA's Zoning Committee.

1. The Redevelopment Project will have four stories along with roof deck, access pilot house and an elevator and stair overrun areas. All elevations are as attached collectively at Exhibit B.
2. The design and exterior materials of the Redevelopment Project have been designed in close consultation with WICA. The material specificity on street facing facades is as follows: a) Ground Floor Level: cast stone or limestone block with cast stone horizontal band delineating ground floor from floors above; glass storefront at commercial space and glass storefront with translucent film at wide expanse with parking area beyond; b) Second, Third, and Fourth Floor Levels: brick veneer with cast stone or limestone block piers; c) Bays: wood or azek panels painted (charcoal gray); d) Balconies: wood or azek trimmed base with painted metal guard; and e) Main Stair Tower (Lantern): painted metal horizontal bands at floor line; full height glass store front between horizontal bands.

Developer has prepared a rendering (attached as Exhibit C) and an annotated building materials elevation plans (attached as Exhibit B). The Redevelopment Project will be constructed substantially similar to Exhibits B and C in terms of design and materials subject to any relevant city building or zoning code provisions or Developer's inability to reasonably obtain such materials or suitability of particular products in the field. Any substantial change in the exterior design or materials selection of the Redevelopment Project will first be discussed with WICA subject to the resolution mechanism provisions of Paragraph VI below. It is understood that the rendering is aspirational and that the colors it depicts may not fully reflect the final built condition.

3. The first floor of the Redevelopment Project includes an area Designated Commercial Space of approximately 2300 square feet (the "Commercial Space"). Applicant reserves the right to subdivide this Commercial Space into one or more separate commercial/retail spaces as leasing and market conditions warrant. The use(s) of the Commercial Space is addressed below.
4. Any exterior accessory sign(s) will be in conformity with the underlying base zoning and any relevant zoning overlays. In the event that zoning relief is needed, Developer agrees to consult with WICA at the time a zoning application is filed and a zoning refusal is issued by the Philadelphia Department of Licenses and Inspections.
5. The first floor of the Redevelopment Project will also include accessory parking spaces. At the same time, in order to reduce the need for on-street and off-street parking, the Redevelopment Project includes a robust bike storage area as generally depicted in Exhibit A. In addition, Applicant is desirous of working with WICA, immediate neighbors, and any relevant City governmental entities or officials in order to obtain a car sharing space in close proximity to the Subject Properties. Accordingly, Applicant will apply for a car sharing space in close proximity to the Subject Properties and will use commercially reasonable efforts to obtain it, with the support of WICA.
6. All trash will be stored inside of the Redevelopment Project in a dedicated Trash Storage room.

III. REDEVELOPMENT PROJECT PROVISOS- ALLOWABLE USES OF THE COMMERCIAL SPACE

1. Use of the Commercial Space will be primarily subject to the underlying zoning district and any relevant zoning overlays. Nonetheless, Developer and WICA agree that the highest and best use for the Commercial Space is for community beneficial purposes such as 1) food beverages, and groceries; 2) a sit down restaurant; 3) prepared food shop; 4) professional office, or 5) coffee shop/café. Accordingly, Developer agrees to aggressively market the Commercial Space as such for a period of at least 90 days beginning at the time Developer obtains final

and unappealable approvals (the “Complete Approvals”) (as defined below) until 120 days before a project Certificate of Occupancy date.

2. In the event any portion of the Commercial Space remains vacant at the conclusion of the above period, Developer may seek uses allowable under the underlying base zoning and any relevant zoning overlays other than religious assembly, wireless service facility, medical marijuana dispensary. It is understood that any “drug store or convenience store” will be designed and operated in a responsible manner appropriate for the Redevelopment Project and community. In the event that zoning relief is needed for a use, Developer agrees to consult with WICA when a zoning application is filed and a zoning refusal is issued by the Philadelphia Department of Licenses and Inspections.

IV. REDEVELOPMENT PROJECT PROVISOS- CONSTRUCTION STAGING

1. Developer desires to construct the Redevelopment Project in a manner that to the extent possible limits impacts to the immediate neighbors and general community in terms of pedestrian and vehicular flow as well as days and hours of construction.
2. Accordingly, to the extent possible, Developer will seek to utilize the Subject Properties themselves for construction staging purposes. Once construction begins, to the extent possible, the first floor garage will be used for construction vehicle parking and materials storage and other construction staging activities.
3. Sidewalk and Street Closures: At the same time, due to the Subject Properties’ unique triangular shape, challenging topography, location adjacent to a Septa train station and active Septa train tracks and supporting infrastructure, it is understood that areas beyond the Subject Properties will be needed in order to construct the Redevelopment Project. Accordingly, Developer reserves the right to seek approvals from the Philadelphia Streets Department and any other governmental entity/body to restrict public access to the sidewalk and use the existing parking lane in front of the Subject Properties as a dedicated delivery and service lane. It will be a condition of all contractors and subcontractors working on the Redevelopment Project that double parking or other actions that impede vehicular traffic on Rochelle Street shall be prohibited and Developer will use commercially reasonable efforts to enforce compliance, provided, however, that up to ten (10) minutes of double parking shall be acceptable for exigent circumstances. Moreover, Developer will provide his contact information (i.e., cell phone number) to WICA.
4. Construction hours will be as allowed by the City of Philadelphia. Nonetheless Developer intends that most construction activities will take place from 7AM to 5:00 PM with no Sunday hours. On a limited basis, in an emergency situation, or if required by any governmental entity, Developer reserves the right to conduct construction activities beyond these limits and only after it has first attempted to consult with WICA and explained the need.

5. In the event that construction related activities result in consistent, regular traffic impediments on Rochelle Avenue, at the request of WICA, Developer agrees to provide Flagger services at rush hour periods during the foundation and structural framing phase of construction (approximately the first three months of construction).

V. **WICA SUPPORT OF REDEVELOPMENT PROJECT**

1. In consideration of the Developer's assumption of the obligations herein, WICA shall take a position of support with regards to the Redevelopment Project before the Philadelphia Planning Commission, Philadelphia City Council, Zoning Board of Adjustment, Philadelphia Streets Department, Philadelphia Water Department, SEPTA, Department of Licenses and Inspections (zoning and building permits) and any other local, state or federal entity for which the Developer needs to obtain approvals, waivers, zoning/building code relief or permits in order to develop the Redevelopment Project (collectively the "Complete Approvals").
2. In the event that additional minor ZBA relief (administrative approvals or otherwise) is needed in order to complete the Redevelopment Project, WICA agrees to not unreasonably withhold its support/non-opposition after consultation with Developer.
3. In the event that the 1) Developer does not obtain any of the Complete Approvals in a final and unappealable manner; or 2) the Developer decides to ultimately sell or otherwise transfer title to the Subject Properties (or any one of the Properties) to an entity that seeks to redevelop the Subject Properties in a manner substantially different than as contained in the attached Exhibits; or 3) the Developer elects not to develop the Project or elects to develop the Project in a manner substantially different from as depicted in the attached Exhibits; or 4) any challenge or appeal (legal or otherwise) is filed by any entity, person, or party contesting any of the Complete Approvals, the Developer, at its sole discretion, will not be subject to the provisions contained within this Land Use Agreement. Substantially different is not triggered by a similarly sized building that includes different exterior materials and/or non-residential uses that are prohibited in this Agreement.

VI. **MECHANISM FOR CONTINUED COMMUNICATION BETWEEN THE PARTIES**

It is recognized that:

1. There will be a continuing need for Developer and WICA to be available to meet and discuss any questions or concerns throughout the term of this Agreement (meet and discuss).
2. All disputes arising out of the interpretation of this document and/or the maintenance and operation of the Subject Properties shall initially be discussed,

between Developer and WICA before either party can resort to any available legal and/or equitable remedies.

3. Either Developer or WICA MUST present a request to the other for an interpretation and/or resolution of a dispute under the terms and conditions of this Land Use Agreement. WICA and Developer shall hold a first meeting together within fifteen (15) days of any request of either party to this Land Use Agreement. Following the prompt meeting Developer and WICA shall advise each other in writing within ten days (10) days as to whether a resolution can be reached. If a resolution can be reached, a twenty (20) day cure period shall be allowed before either party may resort to any available legal and equitable remedies. It is the express intent of the parties that this process serve as a way of mediating any differences that may arise between the parties.
4. If a dispute cannot be resolved in accordance with this Section, and in the event that Developer continues with conduct identified by WICA as a dispute as defined here, Developer shall, so long as the offending conduct continues, pay to WICA as liquidated damages the following: \$500.00 per week provided, however, that the liquidated damages for disputes arising under this Agreement shall not exceed the sum of \$15,000.00. Nothing herein shall prevent Developer, or WICA, from seeking a judicial resolution of the dispute and, to the extent WICA is successful in such legal action, the parties agree that any liquidated damages paid by Developer would be credited toward any legal fees due to WICA. Notwithstanding the above, the parties may resort to any available legal and equitable remedies as set forth below to resolve any dispute following the resolution procedures above.
5. In the event of any violation of these covenants or restrictions on operations, all legal and equitable remedies, including without limitation, injunctive relief, specific performance and damages shall be available to WICA and Developer. Neither the failure of WICA to enforce any covenant or condition herein, nor the waiver of any right hereunder, shall discharge or invalidate such covenant or provision, nor disable WICA from enforcement in the event of any subsequent breach of such covenant or provision. It is further agreed that if WICA shall have a decision in its favor than Developer shall reimburse WICA attorney fees.
6. The execution of this Agreement does not constitute a waiver by WICA of any right hereafter acquired to initiate or support other community efforts to enforce the requirements of the Code including those requirements pertaining to nuisance suits.

VII. INTENTION OF PARTIES TO THIS LAND USE AGREEMENT

1. This Land Use Agreement shall act as a set of provisos which can be considered by the ZBA. It is understood and agreed by all parties that based on this Land Use Agreement representatives of WICA will appear before and forward a letter to the ZBA and any other approval entity as listed above in Section V, stating WICA's

support for the Redevelopment Project granting of all required variances and other governmental approvals that are necessary. This Land Use Agreement is binding regardless of whether the ZBA incorporate it as provisos to any zoning approval it might issue.

VIII. FUTURE REQUEST

Developer agrees not to make any changes, additions or alterations other than those as expressly provided in this Land Use Agreement without first consulting with WICA before any application is made to the City of Philadelphia. Developer further agrees not to make any changes, alterations and/or additions to the Redevelopment Project including signage without obtaining appropriate governmental approvals. This Agreement expires six (6) months after a final Certificate of Occupancy is issued for the Redevelopment Project in all respects other than those specific terms that address prohibited uses and accessory signs.

IX. NOTICES

All notices and other communication under this Land Use Agreement shall be in writing and shall be deemed to have been given if delivered by facsimile, email, or mailed first class postage prepaid to the following addresses (or to such other address as a party may hereafter designate for itself by notice to the other party:

- a) Brett D. Feldman
Klehr Harrison Harvey Branzburg LLP
1835 Market Street, Suite 14000, Philadelphia, PA 19128
T (215) 569-3697 | F (215) 568-6603 | BFeldman@Klehr.com

- b) Wissahickon Interested Citizens Association
132 Kalos Street
Philadelphia, PA 19128
Phone #: 215-560-3627

Email:

- c) Rochelle Avenue LLC
c/o Nate Torok
83 Greenbriar Road
Newtown, PA 18940

Email: natetorok@gmail.com

X. EFFECT OF AGREEMENT

This Land Use Agreement shall be binding upon the parties, their heirs, successors, partners assigns and tenants. The owner of the Subject Properties for itself, its subsidiaries

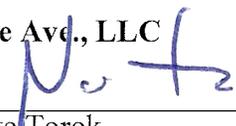
partners, assigns and successors further agree that these covenants and restrictions shall apply to and be enforceable against the owners, its successors, transferees, assigns, licensees and lessees; and shall run with the land as detailed above.

XI. **ENTIRE AGREEMENT**

The Land Use Agreement represents the entire agreement by and between the parties. Any other terms and conditions must be reduced in writing. Any oral understanding which are not reduced to writing are not to be considered a part of this Land Use Agreement. The parties are permitted to amend the terms of this Land Use Agreement only by a mutually agreed upon writing.

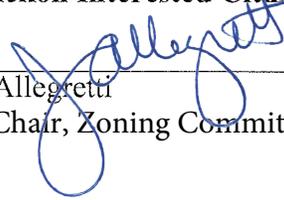
Developer:

Rochelle Ave., LLC


By: Nate Torok
Title: President

7/18/17

Wissahickon Interested Citizens Association


Jeffrey Allegretti
Title: Chair, Zoning Committee

NY