

PL2019-139
PL201900139



Doc No **T05652825**

Certified, filed and/or recorded on
Oct 15, 2019 2:41 PM

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Martin McCormick, Registrar of Titles
Mark Chapin, County Auditor and Treasurer

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<i>Document Total</i>	\$46.00
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Existing Certs

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SITE DEVELOPMENT AGREEMENT

THIS SITE DEVELOPMENT AGREEMENT is made effective as of this 15 day of October, 2019, by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 ("City") and United Land LLC, a Minnesota limited liability company, 651 Nicollet Mall, Suite 450, Minneapolis, Minnesota 55402 ("Applicant").

RECITALS

On behalf of the Applicant, United Properties Development LLC (an entity affiliated with Applicant) filed a development application (Cases PL201800394 and PL201900139) for a two-phase senior housing development at the properties located at 5501 and 5601 American Boulevard West in the City of Bloomington, Hennepin County, Minnesota, and legally described as set forth in Exhibit A which is attached hereto and incorporated herein by reference ("Property"). For purposes herein, that portion of the Property located at 5501 American Boulevard is the "Phase I Property" and the portion of the Property located at 5601 American Boulevard is the "Phase II Property". The applications included the following requested approvals:

1. Comprehensive plan map amendment regarding the Property from Office to High Density Residential;
2. Rezoning the base zoning of the Property from C-4 to RM-50;
3. Major revision to the Preliminary Development Plan for the Property for a two phase senior assisted living and senior independent living development;
4. Conditional Use permit for 118 unit residential care facility at 5501 American Boulevard West (Phase I Property); and
5. Major revision to the Final Development Plan for a four story, 118 unit senior assisted living facility at 5501 American Boulevard West (Phase I Property); and

The City Council of the City, at its regular meetings of February 4, 2019 and September 23, 2019, approved the Applicant's request subject to, and contingent upon 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 ("Council Approvals").

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 Council Approvals. 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 development of the Property shall be in strict conformance with all conditions set forth in the decision notices dated February 5 and September 24, 2019, which are attached hereto and incorporated herein by reference as **Exhibit B.**

(b) **Conformance with Council Approvals.** The Applicant agrees that development of the Property shall also be in strict conformance with the Council Approvals of February 4 and September 23, 2019, all applicable code provisions, including but not limited to City Code, building code and fire code (whether or not enumerated in the Council Approvals and decision notice), and all applicable state and federal laws. In the event that there is a conflict between the Council Approvals 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 application approved by the City Council on February 4 and September 23, 2019. The Applicant also agrees that any major or minor change to the development 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 the Property may not be used in a manner that is prohibited under the City's zoning regulations.

(d) **Phasing of Development.** The City recognizes that the most efficient and economic development of the Property depends upon numerous factors and that it is beneficial to the Applicant to determine the rate of development. The Applicant acknowledges that because development will be phased, certain amenities associated with the Property must be available to all phases of the development, including but not limited to fire department access and sufficient parking. The Applicant agrees to submit a construction management plan for review by the City's planning department prior to issuance of permits.

3. **Obligations of the City.** The City will issue permits necessary for the approved development of the Property subject to the satisfaction of Conditions of Approval set forth in the attached **Exhibit B**, 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 Approvals or decision notices). 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, 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 to the proposed development of the Property 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, 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
ejohnson@bloomingtonmn.gov

If to the Applicant:

United Land LLC
ATTN: Dave Young, Senior Development
Manager
651 Nicollet Mall, Suite 450
Minneapolis, MN 55402
dave.young@uproperties.com

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

8. **Amendment/Additional Documents/Release of Phase II Property.** 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 approvals of the development as detailed in **Exhibit B** may also be amended upon application by the Applicant and approval of the City pursuant to Bloomington City Code Section 21.501.03. 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 Director of Community Development. At the time a Site Development Agreement is executed for the Phase II Property, the City shall, upon request by the then current Phase II Property Owner execute and record a document that serves to release the Phase II Property and its current owner from all obligations under this Site Development Agreement.

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.

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. **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. Facsimile or electronic signatures are not accepted by the City, or by Hennepin County for recording purposes. The City and the County require execution of multiple originals of this Agreement: three (3) originals for City records; one (1) original for recording with the Office of the County Recorder, and one (1) for recording with the Office of the Registrar of Titles.

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: 10/14/19

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

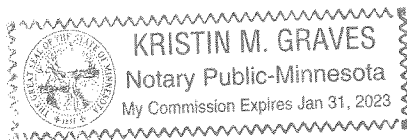
Reviewed and approved by the City Attorney.

[Signature]
City Attorney

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this 14th day of October, 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.

[Signature]
Notary Public



Signature Page for APPLICANT

**APPLICANT
UNITED LAND LLC**

DATED: 10/15/19

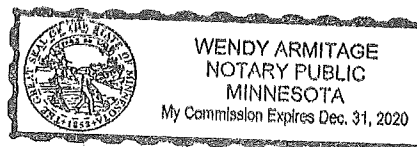
By: [Signature]
Mark W. Nelson
Its: Executive Vice President

By: [Signature]
James Alexander Hall
Its: Senior Vice President

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me this 15 day of October, 2019, by Mark W. Nelson and James Alexander Hall, the Executive Vice President and Senior Vice President, respectively of United Land LLC, a Minnesota limited liability company, on behalf of the limited liability company.

[Signature]
Notary Public



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

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

LEGAL DESCRIPTION OF THE PROPERTY

Lot 001, Block 001, Josten's Addition, Hennepin County, Minnesota (Torrens Property)
(5601 American Boulevard West, PID 1611621230005 Phase II Property)

Lot 002, Block 001, Josten's Addition , Hennepin County, Minnesota (Torrens Property)
(5501 American Boulevard West, PID 1611621240008 Phase I Property)

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

Decision Notice



February 05, 2019

Mr. Griffin Jameson
Kaas Wilson Architects
1301 American Boulevard East
Bloomington, MN 55425

RE: Case # PL2018-394
5501 & 5601 American Blvd. W.

Mr. Jameson:

At its regular meeting of February 4, 2019, the City Council approved: 1. A Negative Declaration regarding the need for an Environmental Impact Statement; 2. A Comprehensive Plan Map Amendment to regrade 5501 and 5601 American Boulevard West from Office to High Density Residential; 3. Rezoning the base zoning of 5501 and 5601 American Boulevard West from C-4 to RM-50; 4. Major Revision to the Preliminary Development Plan for a two-phase senior assisted living and senior independent living development; 5. Major Revision to the Final Development Plans for a four-story, 108-unit senior assisted living facility; and 6. A Conditional Use Permit for a 108-unit residential care facility located at 5501 American Boulevard West (Case # PL2018-394).

The Preliminary Development Plan, Final Development Plan and Conditional Use Permit approvals are 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 Access, circulation and parking plans must be approved by the City Engineer.
4. Prior to Permit Sewer Availability Charges (SAC) must be satisfied.
5. Prior to Permit A Nine Mile Creek Watershed District permit must be obtained and a copy submitted to the Engineering Division.
6. Prior to Permit An erosion control surety must be provided (16.08(b)).

PLANNING DIVISION
1800 W. OLD SHAKOPEE ROAD, BLOOMINGTON MN 55431-3027
PH 952-563-8920 FAX 952-563-8949 TTY 952-563-8740

AN AFFIRMATIVE ACTION/EQUAL
OPPORTUNITIES EMPLOYER

7. Prior to Permit Landscape plan must be approved by the Planning Manager and landscape surety must be filed (Sec 19.52).
8. 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.
9. 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).
10. Prior to Permit Food service plans must be approved by the Environmental Health Division (City Code Sec. 14.360).
11. Prior to Permit Exterior building materials must be approved by the Planning Manager (Sec. 19.63.08).
12. 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.
13. Prior to Permit Unit floor plans must demonstrate compliance with storage requirements in Section 21.302.09 of the City Code.
14. Prior to Permit Retaining walls must comply with the required setback except for the retaining wall along American Blvd. may have a height greater than four feet at a 20 feet setback.
15. Prior to Permit A protective border at least 4 feet in height must be installed between the retaining wall and the trail along American Blvd., as approved by the Planning Manager.
16. 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.
17. 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.
18. Prior to C/O Bicycle parking spaces must be provided and located throughout the site as approved by the City Engineer.
19. Prior to C/O Poured-in-place concrete curbs must be provided on the perimeter of parking lots and traffic islands (Sec 19.64).
20. 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).
21. Prior to C/O Eight-foot wide sidewalk must be installed along American Blvd. W. Six-foot sidewalk must be installed along Normandale Lake Blvd. along with the construction of Phase 2. Sidewalk must be installed at the developer's expense (Section 21.301.04(b)(1)).
22. Prior to C/O A sidewalk with a width equal or greater to five feet must be provided to link the primary entrance of each building on site with the public sidewalk network.
23. Ongoing Alterations to utilities must be at the developer's expense.

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Griffin Jameson
February 05, 2019

- 24. Ongoing All loading and unloading must occur on site and off public streets.
- 25. Ongoing All trash and recyclable materials must be stored inside the principal building (Sec. 19.51).
- 26. Ongoing All rooftop equipment must be fully screened (Sec. 19.52.01).
- 27. Ongoing Signs must be in compliance with the requirements of Chapter 19, Article X of the City Code and Uniform Design Plan.

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



September 24, 2019

Griffin Jameson
Kaas Wilson Architects
1301 American Boulevard East
Bloomington, MN 55425

RE: Case # PL2019-139
5501 American Blvd. W. - Cherrywood Pointe

Mr. Jameson:

At its regular meeting of September 23, 2019, the City Council approved a Major Revision to Final Development Plans to increase the number of units from 108 to 118 within the proposed Cherrywood Pointe Senior Housing Development and a Conditional Use Permit for a 118-Unit Residential Care Facility located at 5501 American Boulevard West (Case # PL2019-139).

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 Access, circulation and parking plans must be approved by the City Engineer.
4. Prior to Permit Sewer Availability Charges (SAC) must be satisfied
5. Prior to Permit A Nine Mile Creek Watershed District permit must be obtained and a copy submitted to the Engineering Division.
6. Prior to Permit An erosion control surety must be provided (16.08(b)).
7. Prior to Permit Minimum landscape yard setbacks must be met. A Landscape plan must be approved by the Planning Manager and landscape surety must be filed (Sec 19.52).
8. 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.
9. 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).
10. Prior to Permit Food service plans must be approved by the Environmental Health Division (City Code Sec. 14.360).
11. Prior to Permit Exterior building materials must be approved by the Planning Manager (Sec.

PLANNING DIVISION
1800 W. OLD SHAKOPEE ROAD, BLOOMINGTON MN 55431-3027
PH 952-563-8920 FAX 952-563-8949 MN Relay 711

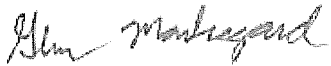
AN AFFIRMATIVE ACTION/EQUAL
OPPORTUNITIES EMPLOYER

Page 2
Griffin Jameson
September 24, 2019

- 19.63.08).
12. 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.
 13. Prior to Permit Unit floor plans must demonstrate compliance with storage requirements in Section 21.302.09 of the City Code.
 14. Prior to C/O Buildings shall meet the requirements of the Minnesota State Fire Code Appendix I, (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.
 15. 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.
 16. Prior to C/O Bicycle parking spaces must be provided and located throughout the site as approved by the City Engineer.
 17. Prior to C/O Poured-in-place concrete curbs must be provided on the perimeter of parking lots and traffic islands (Sec 19.64).
 18. 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).
 19. Prior to C/O Eight-foot wide concrete, or 10-foot wide asphalt sidewalk must be installed along American Blvd. W. Six-foot wide concrete sidewalk must be installed along Normandale Lake Blvd. along with the construction of Phase 2. Sidewalk must be installed at the developer's expense (Section 21.301.04(b)(1)).
 20. Prior to C/O A sidewalk must be provided to link the primary entrance of each building on site with the public sidewalk network.
 21. Ongoing All loading and unloading must occur on site and off public streets.
 22. Ongoing All trash and recyclable materials must be stored inside the principal building (Sec. 19.51).
 23. Ongoing All rooftop equipment must be fully screened (Sec. 19.52.01).
 24. Ongoing Signs must be in compliance with the requirements of Chapter 19, Article X of the City Code and Uniform Design Plan.
 25. 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