

CASE #PL2018-206



Doc No **T05699045**

Certified, filed and/or recorded on
Mar 25, 2020 4:30 PM

Office of the Registrar of Titles
Hennepin County, Minnesota
Martin McCormick, Registrar of Titles
Mark Chapin, County Auditor and Treasurer

Deputy 129

Pkg ID 1970338E

Document Recording Fee \$46.00

Multiple Certificates Affected Fee \$20.00

Document Total \$66.00

Existing Certs

1491409, 1491410

SITE DEVELOPMENT AGREEMENT

THIS SITE DEVELOPMENT AGREEMENT is made effective as of this 2nd day of March, 2020, by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 ("City") and HOM Furniture, Inc. a Minnesota corporation, 10301 Woodcrest Drive, Coon Rapids, Minnesota, 55433 ("Applicant").

RECITALS

The Applicant filed a development application (Case PL201800206) for the City's approval of Rezoning, Preliminary and Final Plat, and Preliminary and Final Development Plans for a furniture store expansion and renovation at the properties located at 7800 Dupont Avenue South, 7850 Dupont Avenue South, and 1217 Clover Drive 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"). The application included the following requested approvals:

1. Rezoning of 1217 Clover Drive from I-3 to C-3 (PD); and
2. Type II Preliminary and Final Plat to combine three lots into one lot; and
3. Preliminary and Final Development plans for the renovation and expansion of an existing furniture store (Case#PL201800206).

The City Council of the City of Bloomington, Minnesota, at its regular meeting of September 10, 2018, approved the above-referenced Plans (the "Council 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 Council 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 its September 10, 2018, 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 development of the Property shall be in conformance with all conditions set forth in the decision notice dated September 12, 2018, which is attached hereto and incorporated herein by reference as **Exhibit B.**

(b) Conformance with Approved Plans. The Applicant agrees that development of the Property shall also be in conformance with the Plans as approved on September 10, 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 Council Approval and decision notice), and all applicable state and federal laws. In the event that there is a conflict between the Plans 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 Plans approved by the City Council on September 10, 2018. The Applicant also agrees that any major or minor change to the Plans 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 Plans.

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 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 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.

(b) Issuance of Certificate of Occupancy. The City will issue the Certificate of Occupancy for 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 Approval or decision notice).

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 in the Plans 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

If to the Applicant:

HOM Furniture
ATTN: John Pierce, Real Estate Manager
10301 Woodcrest Dr. NW
Coon Rapids, MN 55433

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 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 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.

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 certificate of occupancy 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. All previous agreements, whether written or oral, 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 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: 3/2/20

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

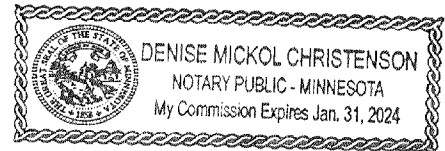
Reviewed and approved by the City Attorney.

[Signature]
City Attorney

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this 2 day of march, 2020, 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

DATED: 2/25/20

By: [Signature]
Rodney Johansen
Its: President
HOM Furniture, Inc. (fka The Bedroom Inc.)

STATE OF Minnesota)
COUNTY OF Anoka) SS.

This instrument was acknowledged before me this 25th day of February, 2020, by Rodney Johansen, the President of HOM Furniture, Inc. (fka The Bedroom Inc.), on behalf of the corporation.

[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 1, Block 1, HOM Addition, Hennepin County, Minnesota

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

[See attached – 3 pages]



September 12, 2018

HOM Furniture
ATTN: John Pierce
10301 Woodcrest Drive NW
Coon Rapids, MN 55433

RE: Case # PL201800206 – Rezoning, Preliminary and Final Plat, and Preliminary and Final Development Plans for a furniture store expansion and renovation
7800 and 7850 Dupont Avenue South and 1217 Clover Drive, Bloomington, MN 55420

Mr. Pierce:

At its regular meeting of September 10, 2018, the City Council approved the Rezoning of 1217 Clover Drive from I-3 to C-3(PD), a Type II Preliminary and Final Plat to combine three lots into one lot, and Preliminary and Final Development Plans for the renovation and expansion of an existing furniture store (Case # PL201800206).

The preliminary and final development plan 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 building permit for all required changes to accommodate the proposed use be obtained.
2. Prior to Permit Sewer Availability Charges (SAC) must be satisfied.
3. Prior to Permit Access, circulation and parking plans must be approved by the City Engineer.
4. Prior to Permit Grading, Drainage, Utility and Erosion Control plans must be approved by the City Engineer.
5. 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.
6. Prior to Permit A Nine Mile Creek Watershed District permit must be obtained and a copy submitted to the Engineering Division.
7. Prior to Permit An erosion control surety must be provided (16.08(b)).
8. Prior to Permit A Proof of Parking Agreement to provide 299 Code-compliant parking spaces must be approved and filed with Hennepin County.
9. Prior to Permit Sidewalk must be constructed to complete the connection around Fremont Avenue and must be constructed to link the front door with the existing

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

- sidewalk along Dupont Avenue. All sidewalks must comply with Section 21.301.04 of the City Code.
10. Prior to Permit Bicycle parking spaces must be provided and located throughout the site as approved by the City Engineer.
 11. Prior to Permit Landscape plan must be approved by the Planning Manager and landscape surety must be filed (Sec 19.52).
 12. Prior to Permit All trash and recyclable materials must be stored inside the principal building (Sec. 19.51).
 13. 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.
 14. Prior to Permit Exterior building materials must be approved by the Planning Manager (Sec. 19.63.08).
 15. Prior to Permit The properties must be platted per Chapter 22 of the City Code and the approved final plat must be filed with Hennepin County prior to the issuance of any permits (22.03(a)(2)).
 16. Prior to Permit 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).
 17. 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).
 18. 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.
 19. Prior to C/O Fire lanes must be posted as approved by the Fire Marshal (MN State Fire Code Sec. 503.3).
 20. Prior to C/O Prior to occupancy, life safety requirements must be reviewed and approved by the Fire Marshal.
 21. 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.
 22. Prior to C/O 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.
 23. Ongoing Preliminary and Final Development Plans in Case File #PL2018-206 fully replace the approved plans in Case File # 09334ABC-15.
 24. Ongoing Alterations to utilities must be at the developer's expense.
 25. Ongoing All construction related pickup, drop-off, loading, unloading, staging and parking must occur on-site and off public streets.
 26. Ongoing All rooftop equipment must be fully screened (Sec. 19.52.01).
 27. Ongoing With exception of a deviation allowing for a setback of 13.5 feet to Clover Drive for a pylon sign, all signage must be in compliance with the requirements of Chapter 19, Article X of the City Code.

Page 3
HOM Furniture
September 12, 2018

28. Ongoing Development must comply with the Minnesota State Accessibility Code.

The approval of the Final Plat of HOM ADDITION is subject to the following conditions:

1. Prior to Recording A title opinion or title commitment that accurately reflects the state of title of the property being platted, dated within 6 months of requesting City signatures, must be provided.
2. Prior to Recording A consent to plat form from any mortgage company with property interest must be provided.
3. Prior to Recording Public drainage and utility easements must be provided as approved by the City Engineer.
4. Prior to Recording A public 10-foot sidewalk and bikeway easement must be provided along the street frontages of Fremont Avenue South and Dupont Avenue South as approved by the City Engineer.
5. Prior to Recording Park dedication must be satisfied.

Should you have any questions regarding this action, please contact Nick Johnson, Planner, at (952) 563-8925 or njohnson@BloomingtonMN.gov. If you have any questions pertaining to the platting procedures, please contact Bruce Bunker, Engineering Technician, at (952) 563-4546 or bbunker@BloomingtonMN.gov.

Sincerely,



Glen Markegard, AICP
Planning Manager

CONSENT BY OWNER

The undersigned, the owner of the Property described in the Site Development Agreement (the "Agreement") to which this Consent is attached, hereby consents to the Agreement; provided, that the consenting to this Agreement, the undersigned does not in any manner constitute itself or obligate itself as the Applicant as defined in the Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Consent to be executed on the 25th day of February 2020.

OWNER

DATED: 2/25/20

By: [Signature]
Rodney Johansen
Its: President
KKMBA Bloomington, LLC

STATE OF Minnesota)
COUNTY OF Anoka) SS.

This instrument was acknowledged before me this 25th day of February, 2020, by Rodney Johansen, the President of KKMBA Bloomington, LLC, on behalf of the company.

[Signature]
Notary Public

