

PL201700039
PL2017-039



Doc No A10507056

Certified, filed and/or recorded on
Dec 6, 2017 11:00 AM

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

Deputy 26

Pkg ID 1631489C

Document Recording Fee

\$46.00

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\$46.00

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Certified, filed and/or recorded on
Dec 6, 2017 11:00 AM

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

Deputy 26	Pkg ID 1631481C
Certified Copy of any document	\$10.00
Document Recording Fee	\$46.00
Multiple Certificates Affected Fee	\$20.00
Document Total	\$76.00

Existing Certs

1450067, 1450068



STATE OF MINNESOTA, COUNTY OF HENNEPIN
Certified to be a true and correct copy of the
original on file and of record in my office

DEC -6 2017

Martin McCormick, Registrar of Titles

By *Mark Kuhl* Deputy

SITE DEVELOPMENT AGREEMENT

THIS SITE DEVELOPMENT AGREEMENT is made effective as of this 4th day of October, 2017, by and between the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 ("City"); and Friendly Palm Hospitality LLC, a Minnesota limited liability company, 2706 James Street, Coralville, Iowa, 52241, (the "Applicant").

RECITALS

Friendly Palm is the fee owner of certain real property located in the City of Bloomington, Hennepin County, Minnesota, and commonly known as 1225 and 1301 East 78th Street; 7830 and 7837 East 13th Avenue; and 7831 East 12th Avenue (collectively, the "Property"). The property is legally described as set forth in Exhibit A which is attached hereto and incorporated herein by reference.

The Applicant filed a development application (Case PL2017-39) for the City's approval of (1) rezoning of the Property; and of (2) Preliminary and Final Development Plan for a five-story, 171-room hotel on the Property (collectively, the "Rezoning and Plans").

At its regular meeting of May 22, 2017, the City Council of the City of Bloomington, Minnesota, approved the Rezoning and Plans 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 the Rezoning and Plans. 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 notice dated May 23, 2017, which is attached hereto and incorporated herein by reference as Exhibit B.

RETURN TO: 563 781
① LAND TITLE, INC.

(b) Conformance with the Rezoning and Plans. The Applicant agrees that development of the Property shall also be in strict conformance with the Rezoning and Plans as approved on May 22, 2017, 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 Rezoning and Plans 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 Rezoning and Plans. The Applicant also agrees that any major or minor change to the Rezoning and 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 Rezoning and 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 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.

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 Rezoning and 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:

Friendly Palm Hospitality LLC
ATTN: Jay Bhakta, Partner
2706 James Street
Coralville, Iowa 52241

With a copy to:

Jamie Cox
Vice Cox and Townsend
2303 River Road, Suite 301
Louisville, Kentucky 40206

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 City and the Applicant 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. The Applicant shall record the Agreement in the Office of the Hennepin County Recorder and the Office of the Hennepin County Registrar of Titles, with proof thereof shown to the City prior to its issuance of any permits hereunder.

13. **Governing Law.** The City and Applicant agree that the laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the undersigned parties and performance under it without regard to the principles of conflicts of law. The language of this Agreement is and shall be deemed the result of negotiation among the parties and their respective legal counsel and shall not be strictly construed for or against any party. Each party agrees that any action arising out of or in connection with this Agreement shall be brought solely in the courts of the State of Minnesota, Fourth Judicial District, or the United States District Court for the District of Minnesota.

14. **Entire Agreement.** This Agreement and the Rezoning and Plans represent the entire Agreement between the Applicant and the City and to the extent that its terms are in conflict with any other agreements, written or oral, between the parties governing the development of the Property, this Agreement supersedes and cancels those inconsistent terms.

15. **Severability.** If any provision or term of this Agreement for any reason is declared invalid, illegal or unenforceable, such decision shall not affect the validity of any remaining provisions, provided that: (i) each party receives the substantial benefit of its bargain with respect to the transaction completed hereby; and (ii) the ineffectiveness of such provision would not result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable for either party. The remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties that they would have executed the

remaining portions of this Agreement without including any such part or portion which may be hereafter declared invalid.

16. **Signatures/Execution.** Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. Facsimile or electronic signatures are not accepted by the City, or by Hennepin County for recording purposes. The City requires three originals of this Agreement for City records; Hennepin County will require one original for the Recorder and one original for the Registrar for recording.

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

DATED: 10/4/17

CITY OF BLOOMINGTON

By: Kristine Lynne Wilen
James D. Verbrugge
Its City Manager Acting City Manager

Reviewed and approved by the City Attorney,

Melissa Mandul
City Attorney

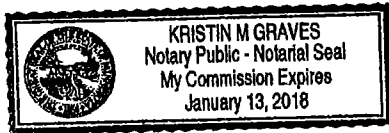
STATE OF MINNESOTA

COUNTY OF HENNEPIN

} ss.

This instrument was acknowledged before me on this 4th day of October, 2017, 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.

Kristin M Graves
Notary Public



Signature Page for Friendly Palm Hospitality, LLC

FRIENDLY PALM HOSPITALITY LLC

DATED: 9/27/2017

By: B.P.
Balvant Patel
Its: Manager

STATE OF Iowa)
COUNTY OF Johnson) SS.

This instrument was acknowledged before me this 27 day of September, 2017, by Balvant Patel, Manager, Friendly Palm Hospitality LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Lindsey Broome
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

Parcel A: (Torrens) Lot 1, Block 1, Sullivan's 1st Addition, Hennepin County, Minnesota.

Parcel B: (Torrens) The South 75 feet of that part of the Northwest 1/4 of the Northeast 1/4, Section 2, Township 27, Range 24, described as beginning at a point on the North line of the Northeast 1/4 of said Section 2 distant 459 feet East along said North line from the Northwest corner thereof; thence West along said North line 144 feet; thence South parallel to the West line of said Northeast 1/4 480.98 feet; thence East parallel to the North line of said Northeast 1/4, 144.4 feet to an intersection with a line running from the point of beginning to a point on the South line of said Northeast 1/4 distant 461 feet East along said South line from the Southwest corner thereof; thence North 480.98 feet to the point of beginning.

Parcel C: (Abstract)

Parcel 1: Lot 1, Block 1, Palm Plaza Addition, Hennepin County, Minnesota.

Parcel 2:

That part of the West 1/2 of the Northeast 1/4 of Section 2, Township 27, Range 24, described as follows:

Commencing at a point 280 feet South of the Northwest corner of the West 1/2 of the Northeast 1/4 of said Section 2; thence South along the West line of the West 1/2 of the Northeast 1/4 a distance of 75 feet, thence East parallel with the North line of said Northeast 1/4 of said Section 2 276 feet, thence North parallel with the West line of said West 1/2 of Northeast 1/4 of said Section a distance of 75 feet, thence West 276 feet to the point of beginning, Hennepin County, Minnesota.

AND

All that part of 13th Avenue South as described in Document Number 2322348, filed of record in the Office of the County Recorder, Hennepin County, Minnesota and as dedicated in the recorded plats of Sullivan's 1st Addition and Palm Plaza, according to the recorded plats thereof, Hennepin County, Minnesota, lying southerly of the following described lines:

Commencing at the northwest corner of Lot 1, Block 1, Sullivan's 1st Addition; thence South 00°14'46" West, along the west line of Lot 1, Block 1, Sullivan's 1st Addition, a distance of 63.58 feet to the point of beginning of the lines to be described; thence Northwesterly a distance of 77.33 feet along a non-tangential curve concave to the northeast, having a radius of 60.00 feet, a central angle of 73°50'24", and the chord of said curve is 72.08 feet in length and bears North 47°15'43" West; thence South 74°36'04" West, non-tangent to said curve, a distance of 7.04 feet to the most easterly northeast corner of Lot 1, Block 1, Palm Plaza Addition and there terminating and lying northerly of the following described lines: Commencing at the southwest corner of Lot 1, Block 1, Sullivan's 1st Addition; thence North 00°14'46" East, along the west

line of Lot 1, Block 1, Sullivan's 1st Addition; a distance of 44.82 feet to the point of beginning of the lines to be described; thence Southwesterly a distance of 32.31 feet along a non-tangential curve concave to the southeast having a radius of 60.00 feet, a central angle of $30^{\circ}50'58''$, and the chord of said curve is 31.92 feet in length and bears South $69^{\circ}59'08''$ West; thence North $00^{\circ}14'46''$ East, non-tangent to said curve, a distance of 17.15 feet; thence North $90^{\circ}00'00''$ West, a distance of 25.00 feet to the following described point: Commencing at a point 280 feet South of the northwest corner of the West 1/2 of the Northeast 1/4 of Section 2, Township 27, Range 24, Hennepin County, Minnesota; thence South along the west line of the West 1/2 of the Northeast 1/4 a distance of 75 feet; thence East parallel with the north line of said Northeast 1/4 a distance of 276 feet, and there terminating.

Abstract/Torrens Property

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

[left blank intentionally; Exhibit B pages follow]



PL201700039

May 23, 2017

Mr. Jay Bhakta
JR Hospitality
813 Great Oaks Trail
Eagan, MN 55123

RE: Case # PL2017-39
7830 13TH AVE S
7831 12TH AVE S
7837 13TH AVE S
1301 E 78TH ST
1225 E 78TH ST

Dear Mr. Bhakta:

At its regular meeting of May 22, 2017, the City Council approved: 1) rezoning 1225 and 1301 East 78th Street, 7830 and 7837 East 13th Avenue, and 7831 East 12th Avenue from FD-2(AR-22) Freeway Development(Airport Runway Overlay) to C-4(PD)(AR-22) Freeway Office(Planned Development)(Airport Runway Overlay); and 2) Preliminary and Final Development Plan for a five story, 171 room hotel (Case # PL2017-39).

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 Sewer Availability Charges (SAC) must be satisfied.
4. Prior to Permit A Nine Mile Creek Watershed District permit must be obtained and a copy submitted to the Engineering Division. (or) Approval by the Lower Minnesota Watershed District must be provided. (Could also be Richfield, Bloomington or Riley Purgatory.)
5. 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

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Jay Bhakta
May 23, 2017

- issuance of any permits (22.03(a)(2)). Drainage and utility easement must be adequate width to provide utility maintenance access.
6. Prior to Permit Ten-foot foot sidewalk easement must be provided by document along public rights-of-way as approved by the City Engineer and proof of filing must be provided to the Manager of Building and Inspection.
 7. Prior to Permit An erosion control surety must be provided (16.05(b)).
 8. Prior to Permit Landscape plan must be approved by the Planning Manager and landscape surety must be filed (Sec 19.52). Landscaping must be compatible with utilities infrastructure.
 9. Prior to Permit Three foot high parking lot screening must be provided along 13th Avenue South as approved by the Planning Manager (Sec. 19.52).
 10. Prior to Permit A uniform sign design must be submitted for approval by the Planning Manager (Section 19.109). All signs must meet Chapter 19, Article X of the City Code and receive sign permits prior to installation.
 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 A Minnesota Pollution Control Agency (MPCA) Sanitary Sewer Extension or Modification Permit must be obtained or notification from the MPCA that this permit is not required must be submitted to the City (State of MN).
 14. Prior to Permit A Construction Management Plan must be submitted for review and approval by the City.
 15. Prior to Permit An Airport Zoning Permit must be approved by the Community Development Director for any crane or structure on site that exceeds 110 feet in height above existing grade (MSP Airport Zoning Ordinance Section VIII (A)).
 16. Prior to C/O A minimum eight-foot sidewalk must be installed within a sidewalk/bikeway easement along 12th Avenue South and a minimum six-foot sidewalk along other public rights-of-way, within a sidewalk/bikeway easement, at the developer's expense (Section 21.301.04(b)(1)).
 17. Prior to C/O Tier 1 Transportation Demand Management plan must be submitted (Sec. 21.301.09(b)(2)).
 18. Ongoing All construction stockpiling, staging and parking must take place on site and off adjacent public streets and public right-of-way.
 19. Ongoing Bicycle parking spaces must be provided and located on the site as approved by the City Engineer.
 20. Ongoing Poured-in-place concrete curbs must be provided on the perimeter of parking lots and traffic islands (Sec 19.64).
 21. Ongoing 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).
 22. Ongoing Development must comply with the Minnesota State Accessibility Code.

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Jay Bhakta

May 23, 2017

23. Ongoing. Hotel Airport parking must not be established without meeting the minimum parking requirements of the City Code.
24. Code Requirement. Vacation of existing drainage and utility easement is recommended upon the dedication of new drainage and utility easements on the new plat.

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