

This Instrument Drafted By:
Hoff Barry, P.A. (SBL)
100 Prairie Center Drive, Suite 200
Eden Prairie, MN 55344

**PLANNED UNIT DEVELOPMENT AGREEMENT
12575 ELM CREEK BOULEVARD**

THIS PLANNED UNIT DEVELOPMENT AGREEMENT 12575 ELM CREEK BOULEVARD (hereinafter referred to as “**Agreement**”) is entered into this ___ day of ____, 2022 (hereinafter referred to as the “**Effective Date**”), by and between _____, a _____, (hereinafter referred to as “**Developer**”) and the CITY OF MAPLE GROVE, a Minnesota municipal corporation (hereinafter referred to as “**City**” Developer and City sometimes individually referred to as “**Party**” and collectively “**Parties**”).

RECITALS:

WHEREAS, Developer is the fee owner and intends to develop a parcel or parcels of land lying within the City and legally described on attached Exhibit 1 (hereinafter referred to as the “**Property**”); and

WHEREAS, on February 22, 2022, the City Council passed Resolution No. 22-046 conditionally approving the Planned Unit Development (hereinafter referred to as “**PUD**”) – Concept Stage Plan amendment designating the existing building as retail/warehouse use and three (3) proposed buildings as retail/restaurant use and PUD - Development Stage Plan to develop the Property as retail/warehouse with a Floor & Décor store, which conditionally approval consists of: (i) Conceptual Site Plan, drafted by Kimley Horn, dated December 6, 2021 (hereinafter referred to as the “**CSP Plans**”); (ii) the plans for the Property drafted by ADG, last dated December 10, 2021 (hereinafter referred as the “**Plan Sheets**”), which Plan Sheets consists of the following pages:

- | | |
|---------|-----------------------------------|
| 1. C400 | Overall Site and Utility Plan |
| 2. C401 | Site and Utility Plan Enlargement |
| 3. C500 | Overall Grading Plan |
| 4. C501 | Grading Plan Enlargement |
| 5. L100 | Landscape Plan |
| 6. L101 | Landscape Enlargements |
| 7. L101 | Landscape Details |

(ii) Exterior Elevations drafted by ADG, last dated January 17, 2022 (hereinafter referred to as the “**Exterior Elevations**”); and (iii) Truck Turn Exhibit, drafted by MBKC Architects, dated January 25, 2022 (hereinafter referred to as the “**Turn Exhibit**”); hereinafter Plans Sheets, Exterior Elevations, and Turn Exhibit collectively referred to as the “**DSP Plans**”); and

WHEREAS, this Agreement is entered into for the purpose of setting forth and memorializing the understandings and agreements of the parties concerning the use of the Property as a PUD and in accordance with City Resolutions (defined below), previous approvals, and matters which are required by the City, and City Code, so that subsequent owners of the Property may know the limitations and obligations of the parties concerning the Property.

NOW, THEREFORE, it is hereby and herein mutually agreed, in consideration of promises and considerations of City and Developer herein set forth, as follows:

1. **INCORPORATION.** The above Recitals, Resolution No. 22-046 (hereinafter referred to as the “**City Resolutions**”), the Plans, and all exhibits attached to this Agreement are a material part of this Agreement and are incorporated herein.
2. **ZONING.** The Property is zoned PUD, Planned Unit Development and the DSP Plans, the City Resolutions, this Agreement, and applicable section of City Code shall govern the zoning of the Property.
3. **DEVELOPMENT; CONSTRUCTION; MAINTENANCE.** Development of, construction on and maintenance of the Property shall be done in accordance with and shall comply, at all times, with the DSP Plans, the City Resolutions, this Agreement and all applicable sections of the City Code and other governmental rules and regulations.
4. **PUD DEVELOPMENT STAGE PLAN REQUIREMENTS.** Unless otherwise expressly provided for in this Agreement or the City Resolutions, the Developer shall comply with, to the satisfaction of the City, all of the requirements set forth in the City Resolutions, including, but not limited to, Section 2 of the City Resolutions, to the satisfaction of the City and prior to the issuance of any permits for the development of the Property.
5. **PUD CONCEPT STAGE PLAN.** PUD Concept Stage Plan amendment has been granted under the City Resolutions for the uses on the CSP Plans with retail/warehouse use designated for the existing building and retail/restaurant use designated for the three (3) proposed buildings, limited, pursuant to City Code §36-64(a)(1), to the general location of major streets and pedestrian ways, general location and extent of public and common open space, general location of land uses and approximate type and intensities of development. At the time of PUD – Development Stage Plan of any of the three (3) proposed buildings, a detailed traffic study shall be required in order to determine the impacts to the adjacent roadway system and to determine if any improvements are necessary in order to accommodate the additional traffic. The timeframe for providing an application for PUD - Development Stage

Plan shall be governed by City Code §36-64(a)(5).

6. **IRRIGATION**. An irrigation reduced pressure zone (hereinafter referred to as “RPZ”) is required for any irrigation systems and must be installed by the Developer and/or eventual lot owner and tested in accordance with the Minnesota Department of Health Guidelines for Designing Backflow Prevention Assembly Installations (hereinafter referred to as “Guidelines”). The initial test results and certification shall be submitted to the City of Maple Grove Public Works Department. Subsequently, the RPZ must be tested, per the Guidelines, at least annually by a certified tester with the results reported to the City of Maple Grove Building Department and the RPZ must be rebuilt as needed in accordance with the Guidelines. Test/rebuilt reports shall be mailed or faxed to the City of Maple Grove Building Department at (763) 494-6424. The irrigation system shall be designed and the DSP Plans shall be modified accordingly, prior to the issuance of any permits for the development of the Property, to accommodate a 1-inch water meter and a maximum flow of fifty (50) gallons per minute.
7. **DEVELOPER TO PAY ALL COSTS**. Developer shall pay, within thirty (30) days of demand, all reasonable expenses that the City incurs in direct relation to the development of the Property and this Agreement. Said expenses shall include, but are not limited to, staff, engineering, legal and other consulting fees reasonably incurred in relation to this Agreement.
8. **VIOLATION OF AGREEMENT**. In the event the Developer, or its respective successors or assigns, violates any of the covenants or agreements herein contained, and such violation is not corrected, or commenced to be corrected (which correction shall be diligently and promptly pursued and completed), within thirty (30) days after written notice specifying such violation, and unless a different cure period applies pursuant to another section of this Agreement, the City is hereby granted the right and privilege to declare a default in any or all of the terms of this Agreement, pursue any remedies at law or equity, which include, but are not limited to, termination of this Agreement and the approvals granted under the City Resolutions.
9. **CERTIFICATE OF OCCUPANCY**. No Certificate of Occupancy shall be issued for any building constructed on any lot within the Property until the Developer has complied with all of the terms of this Agreement and the City Resolutions with respect to the Property. If Developer is in default under this Agreement, City may, among other remedies set forth in this Agreement, withhold future Certificates of Occupancy issued for the Property.
10. **NOTIFICATION INFORMATION**. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (hereinafter each referred to as a “Notice”) shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); or (b) when received or rejected by the addressee if sent by a nationally recognized overnight courier

(receipt requested); or (c) when received or rejected by the addressee if sent by United States Postal Service (receipt requested); provided, that Notices may be sent by e-mail where expressly permitted by this Agreement. Notices must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a Notice given in accordance with this Section):

If to City:

City of Maple Grove
Attn: City Clerk
12800 Arbor Lakes Parkway
Maple Grove, MN 55311
Email: adietl@maplegrovern.gov

With copy to:

Hoff Barry, P.A.
Attn: Scott B. Landsman
100 Prairie Center Drive, Ste. 200
Eden Prairie, MN 55344
Email: slandsman@hoffbarry.com

If to Developer:

11. MISCELLANEOUS.

- a. Attorney’s Fees. If any action is brought to enforce the terms of this Agreement and the City prevails, Developer will pay the City’s costs and reasonable attorneys' fees to be fixed by the Court.

- b. Agreement Effect. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties hereto, their respective successors and assigns and the benefits and burdens shall run with the Property. Developer shall record this Agreement against the title to the Property along with the recording of the Final Plat. Developer warrants and guarantees that this Agreement shall have priority on the property records over any other lien or encumbrance. Developer shall provide the City with evidence, which sufficiency shall be determined by the City, that this Agreement is recorded and all conditions herein have been satisfied prior to the City processing or approving any building permits or other permits

applicable to the development of the Property.

- c. Governing Law. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota.
- d. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- e. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- f. Time is of the Essence. Time is of the essence in the performance of the terms and obligations of this Agreement.
- g. Modification. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party.
- h. Warrant of Authority. Developer warrants and guarantees that it has the authority to enter into this Agreement and to make it a covenant on the Property binding all current and future owners.
- i. Compliance with City Code Section 36-64(b)(5). Pursuant to City Code Section 36-64(b)(5), the Developer shall make application for and receive (on the condition that the Developer complies with the requirements of the City Resolutions, this Agreement and City Code) a building permit and construction activities on the Property shall commence, pursuant to the DSP Plans, this Agreement, the City Resolutions and City Code, on or before February 22, 2024. In such event of failure of the Applicant to meet the above time frame, the DSP Plans, the City Resolutions, this Agreement and the approvals there under for the development of the Property shall become null and void with no further action required by either Developer or City.
- j. Data Practices Compliance. Developer may have access to data collected or maintained by the City to the extent necessary to perform Developer's obligations under this Agreement. Developer agrees to maintain all data obtained from the City in the same manner as the City is required under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 or other applicable law (hereinafter referred to as the "**Act**"). Developer will not release or disclose the contents of data classified as not public to any person except at the written direction of the City. Upon receipt of a request

to obtain and/or review data as defined in the Act, Developer will immediately notify the City. The City shall provide written direction to Developer regarding the request within a reasonable time, not to exceed ten (10) days. The City agrees to indemnify, hold harmless and defend Developer for any liability, expense, cost, damages, claim, and action, including attorneys' fees, arising out of or related to Developer's compliance with the City's direction. Subject to the aforementioned, Developer agrees to defend, indemnify and hold harmless the City from any claim, liability, damage or loss asserted against the City as a result of Developer's failure to comply with the requirements of the Act and the direction of the City. Upon termination and/or completion of the development of the Property, Developer agrees to return all data to the City, as requested by the City.

- k. Non-Waiver. The action or inaction of the City shall not constitute a waiver or amendment of the provisions of this Agreement. The waiver by or the failure of the City to enforce any particular section, portion or requirement of this Agreement at any particular time shall not in any way constitute a waiver of any other section, provision, requirement, time element, or the right to enforce such provision at a subsequent time. To be binding, any amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.

- l. Cumulative Rights. Each right, power, or remedy herein conferred upon the City is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereinafter arising, available to the City, at law or in equity, or under any other agreement, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and will not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy.

The remainder of this page intentionally left blank; signature pages follow

IN WITNESS WHEREOF, the Parties herein have executed this Agreement as of the Effective Date.

CITY OF MAPLE GROVE,
A Minnesota municipal corporation

BY: _____
Mayor

AND: _____
City Clerk

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)ss.
CITY OF MAPLE GROVE)

On this ____ day of _____, 2022, before me personally appeared Mark Steffenson and Amy Dietl to me known to be the persons described in the foregoing instrument and who did say they are, respectively, the Mayor and City Clerk of the CITY OF MAPLE GROVE, Minnesota, a municipal corporation, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and that said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council, and said Mark Steffenson and Amy Dietl acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

EXHIBIT 1

[insert legal description]