

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

**PLANNED UNIT DEVELOPMENT AGREEMENT
ARBOR LAKES BUSINESS PARK PHASE 2 BUILDING B**

THIS PLANNED UNIT DEVELOPMENT AGREEMENT ARBOR LAKES BUSINESS PARK PHASE 2 BUILDING B (hereinafter referred to as “**Agreement**”), is entered into this _____ day of _____, 2022 (hereinafter referred to as the “**Effective Date**”), by and between _____ (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 of that land located in Hennepin County, Minnesota, legally described on attached Exhibit 1 (hereinafter referred to as “**Property**”); and

WHEREAS, on February 16, 2021, the City Council passed Resolution No. 21-018 conditionally approving Planned Unit Development (hereinafter referred to as “**PUD**”) – Concept Stage Plan for buildings A and B on land that includes the Property; and

WHEREAS, on March 21, 2022, the City Council passed Resolution No. 22-061, conditionally approving the PUD – Development Stage Plan and final plat for the Property, which conditional approval includes the: (i) PUD – Development Stage Plan plans for the Property, drafted by Kimley-Horn and Associates, Inc., last dated December 8, 2021 (hereinafter referred to as the “**Plans**”), which Plans Cover Sheet (Sheet C000) is attached as Exhibit B to Resolution No. 22-061; (ii) the Plans also include the elevations attached as Exhibit C to Resolution No. 22-061; and (iii) the final plat for Arbor Lake Business Park 3rd Addition, drafted by Egan, Field & Nowak, Inc. (hereinafter referred to as the “**Final Plat**”), which Final Plat is attached as Exhibit D to Resolution No. 22-061; 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 the resolutions, 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. 21-018, Resolution No. 22-061 (hereinafter Resolution No. 21-018 and Resolution No. 22-061 collectively referred to as “**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 zoning classification for the Property is PUD. The City Resolutions, the Plans, this Agreement, and applicable sections 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 Plans, the City Resolutions, this Agreement and all applicable sections of the City Code and other applicable governmental rules and regulations.
4. **SITE IMPROVEMENT PERFORMANCE AGREEMENT.** The Developer shall enter into, prior to the issuance of any permits for the development of the Property, a Site Improvement Performance Agreement drafted by the City (hereinafter referred to as the “**SIPA**”), which SIPA shall establish site improvement items and terms of completion of said items. Under the SIPA, prior to the issuance of a Certificate of Occupancy for any portion of the Property, a surety shall be provided to the City for two full growing seasons to guaranty the proper installation and growth of all landscaping items.
5. **PLANNED UNIT DEVELOPMENT REQUIREMENTS.** Unless otherwise expressly provided for in this Agreement or City Resolution No. 22-061, the Developer shall comply with all of the requirements set forth in City Resolution No. 22-061, to the satisfaction of the City, prior to the issuance of any permits for the development of the Property (other than those already issued as of the date of this Agreement).
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 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 50 gallons per minute.

7. **DEVELOPER TO PAY ALL COSTS.** The Developer shall pay upon demand all expenses as determined by the City, that it incurs in relation to the development of the Property and this Agreement. Said expenses shall include, but are not limited to, staff time, including, but not limited to, hourly wage, overhead and benefits, engineering, legal and other consulting fees reasonably incurred in relation to the development of the Property and this Agreement.

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.

8. **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 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.
9. **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 or a courtesy copy of any notice may be sent by e-mail; provided, however, such courtesy copy shall not constitute a Notice. A Notice 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 55369
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:

10. **MISCELLANEOUS.**

- a. Agreement Effect. This Agreement shall be in full force and effect from and after the Effective Date. 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 on the Property that can be cured or satisfied through the payment of money or any other ownership interest in the Property. 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 (other than those already issued as of the date of this Agreement).
- b. 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.
- c. 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.
- d. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- e. 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 Phase 1 Plans, this Agreement, the City Resolutions, and City Code, on or before March 21, 2024. In such event of failure of the Developer to meet the above time frame, the Phase 1 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.

- 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. 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 and indemnify 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. Upon termination and/or completion of this Agreement, Developer agrees to return all data to the City, as requested by the City.
- j. 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.

- k. 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 on 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
TO
PLANNED UNIT DEVELOPMENT AGREEMENT**

Lot 1, Block 1, Arbor Lakes Business Park 3rd Addition, according to the recorded plat thereof, Hennepin County, Minnesota