

# Attachment B

This Instrument Drafted By:

Hoff Barry, P.A. (SBL)  
100 Prairie Center Drive, Ste. 200  
Eden Prairie, MN 55344

## DEVELOPER'S AGREEMENT FOR ARBOR LAKES BUSINESS PARK 3<sup>rd</sup> ADDITION

**THIS DEVELOPER'S AGREEMENT ARBOR LAKES BUSINESS PARK 3<sup>rd</sup> ADDITION** (hereinafter referred to as "**Agreement**") entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (hereinafter referred to as the "**Effective Date**") by and between ARBOR LAKES INDUSTRIAL OWNER, LLC, a Delaware limited liability company, (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 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 3<sup>rd</sup> 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**, the approvals under Resolution No. 21-018 and Resolution No. 22-061 (hereinafter collectively referred to as "**City Resolutions**") are the second building of the second phase of a 50-acre business park development. The Property is subject to a special assessment with an original principal of \$1,333,330.99 that is deferred under the City's MXD Deferral Policy (hereinafter referred to as the "**Special Assessments**"); and

**WHEREAS**, the City requires that certain on and off-site improvements be installed by Developer within the Property, which improvements typically include, but are not limited to,

boulevard sod, drainage swales, erosion control, monumentation, and street cleaning (hereinafter referred to as “**Escrow Items**”); and

**WHEREAS**, this Agreement is entered into for the purpose of setting forth and memorializing for the Parties and subsequent owners the understandings and agreements of the Parties concerning the development of the Property.

**NOW, THEREFORE**, it is hereby and herein mutually agreed, in consideration of each Party's promises and considerations herein set forth, as follows:

1. **INCORPORATION**. The above Recitals, the City Resolutions, the Plans, the Final Plat, and all exhibits attached to this Agreement are a material part of this Agreement and are incorporated herein.
2. **SPECIAL ASSESSMENTS**. Developer hereby acknowledges and agrees that the Property is subject to the current Special Assessments that have been deferred on a yearly basis pursuant to the City’s MXD Deferral Policy is in the current amount of principal and interest totaling \$1,404,025.52, which Special Assessments amount is valid until November 1, 2022. The Special Assessments shall be activated and certified to be payable in installments over a twenty (20) year period with interest of 5.25% per annum, with the first installment in the year 2023.
3. **SPECIAL ASSESSMENT - SURETY**. Developer herein agrees that Developer shall pay all installments of the Special Assessments when due. In the event Developer fails to timely pay any installment of the Special Assessments, the City may draw upon the Special Assessments Surety (defined below) in an amount equal to the installment due and any fee and cost incurred by the City in conjunction with the said delinquent Special Assessments. Any such draw may be used by the City to pay for any fee and cost incurred by the City in conjunction with the said delinquent Special Assessments and, if the City project is bonded, to pay the required yearly debt services payments, with the remainder to be held by the City. Said amount held by the City shall be liquated damages and become the property of City in the event the Developer continually fails to timely pay installments of Special Assessments and or any portion of the Property. Any Special Assessments Surety funds referred to herein that are withdrawn that will be used by City for payment of its herein-referred debt service payment when due will constitute a credit against the obligations for the Developer to pay such Special Assessments. Upon payment of the delinquent Special Assessments, City will repay to the surety, to the extent that the delinquent Special Assessments have been paid, the surety monies withdrawn, less any costs incurred by City in conjunction with the said delinquent Special Assessments.

Developer shall provide City with cash or letter of credit, with the form and provider of the letter of credit to be satisfactory to City, in the amount of 40% of the Special Assessments (herein referred to as the “**Special Assessments Surety**”). The Special Assessments Surety shall thus be in the amount of \$475,000.00 calculated as follows:

	\$1,404,025.52
	X <u>40%</u>
Surety Requirement:	\$561,610.21
USE:	\$475,000.00

The Special Assessments Surety may be utilized by the City in the manner stated above.

4. ON AND OFF-SITE IMPROVEMENTS/ESCROW ITEMS; SURETY. Developer shall also perform all on and off-site improvements as it relates to the Third Final Plat Property set forth on Exhibit 2 as “Escrow Items”. Developer will provide City with cash or letter of credit, with the form and provider of the letter of credit to be satisfactory to City, in the sum of \$5,000.00, which figures represents 110% of the estimated cost of said Escrow Items (hereinafter referred to as the “**Escrow Items Surety**”; hereinafter the Special Assessments Surety and Escrow Items Surety collectively referred to as “**Surety**”). The Escrow Items Surety shall be a guaranty to City that, except for boulevard improvements (sod and trees), the construction and completion of the Escrow Items by Developer, to City's satisfaction, will be completed on or before June 30, 2024, as may be reasonably extended for delays caused by the City. The boulevard improvements for each lot or parcel shall be completed to City’s satisfaction within sixty (60) days of the date that a Certificate of Occupancy (temporary or permanent) is issued by City for a building located on the lot, unless the Certificate of Occupancy is issued after October 1st or before April 30th in any given year, in which case the boulevard improvements shall be so completed by the following July 1st. The Escrow Items Surety shall be maintained continuously by Developer until Escrow Items are completed to the City’s reasonable satisfaction. The City will not accept replacement cash or letters of credit from an individual lot owner who has purchased lots within the Final Plat. The Escrow Items Surety shall be released upon certification of the Engineer of City that such items are satisfactorily completed pursuant to this Amendment. Periodically, as payments are made by Developer for the completion of improvements described under Escrow Items and when it is reasonably prudent, Developer may request of City that the Escrow Items Surety be reduced for that portion thereof which has been fully completed and payment made therefor.
  
5. SURETY RELEASE – SPECIAL ASSESSMENTS SURETY. Developer may make application to City to reduce or release all or a portion of the Special Assessments Surety as follows:

- A. When another surety reasonably acceptable to the City is furnished to the City by Developer to replace a prior surety; or
  - B. The surety shall be eliminated if the application clearly establishes:
    - (i) More than one (1) year has passed after the special assessments against the Property have been certified to the County for collection; or
    - (ii) That forty percent (40%) or more of the principal on the certified Special Assessments, as levied on the Property, has been paid; or
    - (iii) When the Property receives a Certificate of Occupancy.
6. SURETY DEFICIENCY. In the event that, pursuant to the terms of this Agreement, the City has the right to draw against any Surety, and in the event that the funds available thereunder are deficient in amount to pay or reimburse City the amounts due from Developer as required herein, Developer agrees that upon being billed by City, Developer will pay said deficient amount to the City within thirty (30) days of said billing to Developer. If there should be an overage in the amount of utilized security City will, upon making said determination, within a reasonable time period refund to Developer any monies which City has in its possession which are in excess of the Surety needed by City. All Surety money deposited with City shall be used by City for the purposes for which the Surety was given.
7. DRAW ON EXPIRING LETTER OF CREDIT. If a Surety is in the form of an irrevocable letter of credit, which by its terms will become null and void prior to the time at which all money or obligation of Developer is paid or completed, it is agreed that Developer shall provide City with a new letter of credit, acceptable to City as to provider and form, or a cash deposit, at least thirty (30) days prior to the expiration of the said expiring letter of credit. If a new letter of credit is not received as required above, City may declare a default in the terms of this Agreement and thence draw in part or in total, at City's discretion, upon the expiring letter of credit solely to avoid the loss of surety for the continued obligation, with such withdrawal considered thereafter as a cash escrow surety.
8. DEVELOPER TO PAY ALL COSTS. The Developer shall pay upon demand all actual expenses incurred by the City in relation to the development of the Property. 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 development of the Property.

9. EROSION AND SILTATION CONTROL.

- A. FINANCIAL GUARANTEE. Before any grading is started on any site, all erosion control measures as shown on the approved erosion control plan, which is part of the Plans, shall be installed pursuant thereto. If the Developer has provided a financial security pursuant to City Code, Chapter 14, Article IV, for a grading permit for the Property prior to the execution of this Agreement (hereinafter referred to as the “**Grading Security**”), then, if the Grading Security is less than the Escrow Items Surety: (i) the Grading Security amount shall be deducted from the amount required for the Escrow Items Surety; or (ii) the Developer may replace the Grading Security with the full amount of the Escrow Items Surety. The Grading Security and Escrow Items Surety shall be held to insure, among other things, compliance with this Agreement and City Code and policies during construction. The Grading Security shall not be returned to Developer until all disturbed areas have permanent surfacing, buildings or permanent vegetation re-established.

In the event permanent surfacing, buildings or vegetation are not placed or re-established upon any disturbed area within the time established therefor by the City, City shall provide written notice of such failure to Developer, and Developer shall cure such default within thirty (30) days thereafter. Developer agrees that, if Developer fails to cure such default within such 30-day period, City is hereby granted permission to enter the Property and use the Grading Security and/or the Escrow Items Surety to place vegetation on said disturbed area in the manner prescribed by the approved landscaping plans, or in any other manner the City reasonably deems appropriate. Developer further agrees that should the Grading Security and/or Escrow Items Surety be insufficient to defray all of City’s costs related to such action, Developer will promptly pay City any additional and reasonable costs related thereto. City shall promptly return any portion of the Grading Security remaining after City has reimbursed itself for all reasonable costs related to City’s placement of vegetation pursuant to this Section.

- B. EROSION CONTROL. Developer shall be responsible for compliance with the approved erosion control plan, which is part of the Plans. Developer will be given telephone or e-mail notice when an unsatisfactory condition exists that is determined to be a Developer's responsibility. Work to correct said unsatisfactory condition shall commence within 48 hours from the time of the telephone or e-mail notice. If said corrective work is not commenced within 48 hours of said telephone or e-mail notice, Developer hereby grants City permission to proceed with said corrective work and agrees to pay all reasonable expenses incurred by City in relation thereto. If it is determined, by the City that the unsatisfactory condition could result in degradation of downstream water quality, Developer shall, upon telephone notice, immediately proceed to correct said unsatisfactory condition. If Developer does not immediately respond to said unsatisfactory condition, Developer

hereby grants City the right to enter upon the Property and correct said condition at Developer's expense. City shall be entitled to all of its costs and expenses including, but not limited to actual legal, fiscal, administrative and engineering. For reimbursement for said costs and expenses, City may, at its option and in addition to other remedies available, invoice Developer for direct payment from the Grading Security or the Escrow Items Surety.

10. *This Section intentionally left blank.*
11. MAINTAIN PUBLIC PROPERTY DAMAGED OR CLUTTERED DURING CONSTRUCTION. Developer agrees to assume full financial responsibility for any damage which may occur to public property including, but not limited to, streets, street subbase, base, bituminous surface, curb, utility system including, but not limited to, watermain, sanitary sewer or storm sewer when said damage occurs as a result of the activity which takes place during the development of the Property, except for damage caused by the City, its employees, agents or contractors in connection with City's construction of the Petition Items or its willful misconduct or gross negligence. Developer further agrees to pay all costs required to repair the streets and/or utility systems damaged or cluttered with debris when occurring as a direct or indirect result of the construction that takes place in the Property by Developer, its agents, employees and contractors. In the event Developer fails to maintain or repair the damaged public property referred to aforesaid, the City shall provide written notice of such failure to Developer and, if such failure is not cured within thirty (30) days thereafter, Developer hereby agrees that City may undertake making or causing said damage or clutter to be repaired or cleaned. When City undertakes such repair, Developer shall reimburse City for all of its expenses within thirty (30) days of its billing to Developer. If Developer fails to pay said bill within thirty (30) days of being billed, the City may, among other remedies available, draw from the Escrow Items Surety.
12. STREET CLEANING.
  - A. Developer shall contract with a street cleaning firm to provide street cleaning services within and immediately adjacent to the Property. A copy of said contract shall be submitted to and approved by City prior to the issuance of a grading permit. This contract shall name City as an authorized agent to order street cleaning services as City deems necessary. The cost of the street cleaning under the contract shall be paid for by Developer.

- B. During development of the Property, Developer shall keep the streets adjoining its development free of dirt and debris caused by its development. In the event dirt and/or debris has accumulated on streets within or adjacent to the Property, City is hereby authorized to immediately commence street cleaning operations if the streets are not cleaned by the Developer by 3:30 PM the day of the violation. If conditions are such that street cleaning operations are immediately necessary, City may perform the necessary street cleaning. City will then bill the delinquent party for all associated street cleaning costs. Failure to reimburse City for street cleaning costs within thirty (30) days of such billing may result in, among other remedies available, City drawing funds from the Escrow Items Surety.
13. VIOLATION OF AGREEMENT. In the event that Developer, its successors or assigns violates any of the covenants and agreements herein contained, City shall give written notice thereof to the Developer. Unless otherwise expressly provided for herein, if Developer fails to cure such violation within thirty (30) days after such notice, City, in addition to all other remedies available by law or under this Agreement, is hereby granted the right and privilege to declare all of the Special Assessments levied as taxes or otherwise and any deficiencies governed by this Agreement due and payable immediately to the City in full and may exercise any other rights in this Agreement. Developer hereby grants City and City's employees, representatives or agents the right to enter the Property to perform any act deemed necessary by City to complete Developer's obligations created herein.
14. 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 via certified or registered mail (receipt requested); provided, that notices may be sent by e-mail or telephone 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  
c/o City Clerk  
12800 Arbor Lakes Parkway  
Maple Grove, Minnesota 55369  
[Adietl@maplegrovern.gov](mailto:Adietl@maplegrovern.gov)  
(763) 494-6000

With copy to:

Hoff Barry, P.A.  
Attn: Scott B. Landsman  
100 Prairie Center Drive, Ste. 200  
Eden Prairie, MN 55344  
[slandsman@hoffbarry.com](mailto:slandsman@hoffbarry.com)  
(952) 746-2700

If to Developer:

Arbor Lakes Industrial Owner, LLC  
Attn: Josh Budish  
200 Southdale Center, Suite 190  
Edina, MN 55435  
Email: [josh@endeavorshield.com](mailto:josh@endeavorshield.com)

With copy to:

Taft, Stettinius, Hollister.  
Attn: Pat Lindmark  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402-2157  
Email: [plindmark@taftlaw.com](mailto:plindmark@taftlaw.com)

15. MISCELLANEOUS.

- A. ACCESS. City shall have access to the Property for the purpose to conduct any reasonable inspections.
- B. ENTIRE AGREEMENT. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
- C. AGREEMENT EFFECT. The terms and conditions of this Agreement shall be binding on the Parties hereto, their respective successors and assigns and the benefits and burdens shall run with the Property. The Developer shall record this Agreement along with the Final Plat and before any mortgages being recorded. The Developer shall provide the City with recording information prior to any permits for the development of the Property being issued.



- D. 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.
- E. 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.
- F. HEADINGS. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- G. TIME IS OF THE ESSENCE. Time is of the essence in the performance of the terms and obligations of this Agreement.
- H. 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.
- I. WARRANT OF AUTHORITY. Developer warrants and guarantees that it has the authority to enter into this Agreement and to make it a covenant on and runs with the Property as a first and prior lien and that it is binding all current and future owners.
- J. DATA PRACTICES COMPLIANCE. Developer may have access to data collected or maintained by the City or Developer may create data to the extent necessary to perform Developer's obligations under this Agreement. Developer agrees to maintain all data obtained from the City or created by the Developer 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 complying 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.

- 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 on the day and year first above written.

**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

**ARBOR LAKES INDUSTRIAL OWNER, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

This instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2022, by  
\_\_\_\_\_, the \_\_\_\_\_ of Arbor Lakes Industrial  
Owner, LLC, a Delaware limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public

**EXHIBIT 1**

Legal Description for  
The Property

Lot 1, Block 1, Arbor Lakes Business Park 3<sup>rd</sup> Addition, according the recorded plat thereof,  
Hennepin County, Minnesota.

## EXHIBIT 2

### ESCROW ITEMS

The following and those items that are required improvements as part of State Statute, City Code and the resolutions approving the development of the Property:

A. Boulevard Improvements

1. Installation of boulevard sod.
2. Planting of boulevard trees in compliance with the Plans, this Agreement and City Code. Said boulevard tree shall be of a variety as identified in the Maple Grove Arbor Committee Suggested Tree Variety listing, and shall not be planted within the street right-of-way or within a drainage and utility easement.

B. Grading/Erosion Control

All site grading shall be graded in accordance with the approved grading and development plan. All erosion control shall be installed per the erosion control plan approved by the City Engineer.

C. Monumentation

Lot Corner Pins

Install lot corner pins and/or monuments at locations shown on the final plat which will not have said pins and/or monuments installed at the time the final plat will be recorded at Hennepin County.

D. Boulevard Erosion Control

All erosion controls shall be maintained in the boulevard area.

E. Street Cleaning

All streets in the vicinity of this development shall be kept free of any dirt and debris during all phases of construction.

Escrow Items Surety Requirements: \$5,000.00