

This Instrument Drafted By:  
Hoff Barry, P.A. (SBL)  
100 Prairie Center Drive, Suite 200  
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## PLANNED UNIT DEVELOPMENT AGREEMENT 7855 ELM CREEK BOULEVARD

**THIS PLANNED UNIT DEVELOPMENT AGREEMENT 7855 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 June 6, 2022, the City Council passed Resolution No. 22-099 (hereinafter referred to as the “**City Resolution**”) conditionally approving the Planned Unit Development (hereinafter referred to as “**PUD**”) – Development Stage Plan for the Property to develop the Property with a 10,919 square foot multi-tenant commercial building for up to four (4) tenant spaces, including a drive-up window, which approval consists of the following plan sheets:

1. SD004 Conceptual Site Plan – Version 7
2. SD005 Enlarged Floor Plan
3. SD006 Roof Plan
4. SD007 Exterior Elevations
5. SD008 Rendering (7 sheets)
6. SD008 Rendering
7. C-1 Topographic Survey and Site Demolition Plan
8. C-2 Site Plan and Sediment Erosion Control Plan
9. C-3 Grading, Drainage, and Utility Plan
10. L100 Landscape Plan
11. L200 Landscape Details

(hereinafter referred to as the “**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 the City Resolution, the Plans, and City Code, and putting subsequent owners of the Property on notice of 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, the City Resolution, 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 B-PUD, Business Planned Unit Development. The zoning governing the Property shall be the City Code provisions of the B, Business zoning district, except as expressly provided for and limited by the City Resolution, the Plans, and this Agreement.
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 Resolution, this Agreement and all applicable sections of the City Code and other governmental rules and regulations.
4. **PLANNED UNIT DEVELOPMENT REQUIREMENTS.** Unless otherwise expressly provided for in this Agreement, the Developer shall comply with, to the satisfaction of the City, all of the requirements set forth in the City Resolution, to the satisfaction of the City, prior to the issuance of any permits for the development of the Property.

The Plans provide for a drive-up window for online ordering pick-up only. Any conversion (excluding ceasing operations) related to this drive-up window, including, but not limited to, a drive-thru shall not be allowed, except by application, subject to the review and approval of the City Council.

5. **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.

6. **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.
7. **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 Resolution.
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 Resolution 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.
9. **PROOF OF TITLE/CITY ATTORNEY REQUIREMENTS.** The Developer shall provide evidence of title, as required to by the City Attorney, to determine the entities that must execute this Agreement and other documents to be recorded against the Property. Further, Developer shall provide the City with evidence, which sufficiency shall be determined by the City, that all documents required to be recorded pursuant to this Agreement and by the City Attorney are recorded and all requirements for the issuance of permits for the development of the Property authorized by the City Resolution have been met prior to the City processing or approving any permits for the development of the Property.
10. **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 of the Developer, its agents, employees and contractors which takes place during the development of the Property. 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 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, among other remedies, 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.

**11. STREET CLEANING.**

- a. During the development of the Property, Developer shall contract with a street cleaning firm to provide street cleaning services within and immediately adjacent to the Property or include such services in the contract between Developer and its general contractor. 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 as a direct result of the development of 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. When City undertakes such street cleaning, Developer shall reimburse City for all of its expenses within thirty (30) days of its billing to Developer.

13. **NOTIFICATION INFORMATION.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (herein 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 a Notice may be sent by e-mail where expressly permitted by this Agreement or by telephone where expressly permitted by this Agreement (any such telephone Notice shall be followed by an email confirmation within a reasonable time period). 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@maplegrovmn.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:

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14. **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. Entire Agreement. This Agreement and any other documents incorporated

herein by reference constitutes the sole and entire agreement of the Parties to this Agreement 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. 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. Any legal suit, action, or proceeding arising out of this Agreement shall be instituted in state court located in Hennepin County, Minnesota, and each Party irrevocably submits to the exclusive jurisdiction of such court in any such suit, action, or proceeding. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such court and irrevocably waive and agree not to plead or claim in any such court that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.
- 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 Resolution, this Agreement and City Code) a building permit and construction activities on the Property shall commence, pursuant to the Plans, this Agreement, the City Resolution and City Code, on or before June 6, 2024. In such event of failure of the Applicant to meet the above time frame, the Plans, the City Resolution, 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 or otherwise obtained in relation to the matters set forth in this Agreement 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.

1. 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

\_\_\_\_\_,  
a \_\_\_\_\_

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

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

          This instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2022,  
by \_\_\_\_\_,           the \_\_\_\_\_ of  
\_\_\_\_\_, a \_\_\_\_\_, on behalf of said  
\_\_\_\_\_.

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

**EXHIBIT 1**

[insert legal description]