

This Instrument Drafted By:

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

**DEVELOPER'S AGREEMENT
LOT 1, BLOCK 1, ARBOR LAKES BUSINESS PARK 5th ADDITION**

THIS DEVELOPER'S AGREEMENT LOT 1, BLOCK 1, ARBOR LAKES BUSINESS PARK 5th ADDITION (hereinafter referred to as "**Agreement**") entered into this _____ day of _____, 2023 (hereinafter referred to as the "**Effective Date**") by and between ARBOR LAKES MNMP, LLC, a Nevada 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 July 17, 2023, the City Council passed Resolution No. 23-107 (hereinafter referred to as the "**City Resolution**"), conditionally approving the PUD – Development Stage Plan, preliminary plat, and final plat for the Property, which conditional approval includes the: (i) Arbor Lakes Business Park – Building 8 plans for the Property, presented by Alliant Engineering, last dated with City submittal on April 24, 2023 (hereinafter referred to as the "**Plans**"), which Plans Cover Sheet (Sheet No. C-0.0) is attached as Exhibit B to the City Resolution; (ii) the Plans include the Conceptual Architectural Rendering (View 1 and View 3), drafted by Harris Architects, Inc., updated June 7, 2023; (iii) Architectural Overall Site Plan and Elevations, drafted by Patrick C. Harris, attached as Exhibit C to the City Resolution (replacing Plans Sheet No. A1); (iv) Overall Site Plan, dated June 6, 2023, drafted by Alliant Engineering (replacing Plans Sheet No. C-3.0)(hereinafter referred to as the "**Concept Plan Amendment**"); (v) preliminary plat of the Property, drafted by Alliant Engineering, dated June 5, 2023, (replacing Plans Sheet No. C-2.0)(hereinafter referred to as the "**Preliminary Plat**"); and (vi) the final plat of the Property entitled *Arbor Lake Business Park 5th Addition*, drafted by Alliant Engineering (hereinafter referred to as the "**Final Plat**"); and

WHEREAS, the City received a letter from Steven D. Sauer of Martin Marietta, the successor to Tiller Corporation, dated August 3, 2023, which letter indicates that the park dedication credits of Tiller Corporation park dedication bank were applied in error to another plat and the park dedication credits are to be applied to the Final Plat. This Agreement reflects the corrected and modified park dedication requirements for the Final Plat; 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; PLANS. The above Recitals, the City Resolution, the Plans, the Final Plat, and all exhibits attached to this Agreement are a material part of this Agreement and are incorporated herein. The Plans may be amended after the Effective Date by request of the Developer and as approved in writing by the City Engineer and/or the City Director of Community and Economic Development. Any such approved amendments to the Plans shall be incorporated into and be part of this Agreement.
2. REAPPORTIONMENT OF EXISTING DEFERRED ASSESSMENTS. The Property is encumbered by the special assessment (“**Existing Special Assessment**”) set forth in that Developer’s Agreement Arbor Lakes Business Park 4th Addition Outlots A, B, and C, dated March 21, 2023, recorded March 23, 2023, as Document No. A11189027 (hereinafter referred to as the “**Previous Agreement**”). The Existing Special Assessment have been levied against, in addition to other land, the Property (the underlying legal description of the Final Plat is Outlot C, Arbor Lakes Business Park 4th Addition, Hennepin County, Minnesota). The Existing Special Assessment have or will be reapportioned by that Agreement to Reapportion Certain Special Assessments of even date herewith (hereinafter referred to as the “**Reapportionment Agreement**”). The Developer acknowledges that the amount of the reapportioned Existing Special Assessments against the Property, as set forth in the Reapportionment Agreement, totals \$1,568,190.30 (hereinafter referred to as the “**Reapportioned Amount**”), which reapportionment between the lots of the Final Plat is shown on attached Exhibit 2. **THIS AGREEMENT SHALL NOT BE EFFECTIVE OR RECORDED WITH HENNEPIN COUNTY UNTIL AFTER THE REAPPORTIONMENT AGREEMENT IS RECORDED WITH HENNEPIN COUNTY.** No permits for the development of the Property shall be issued until the City is provided with recording information for the Reapportionment Agreement and this Agreement.
3. ACTIVATION OF REAPPORTIONED AMOUNT. The Reapportioned Amount will be activated and levied with Hennepin County to be payable in equal installments over a twenty (20)-year period accruing interest of 5.25% per annum to be certified and the first installment due 2024 (hereinafter referred to as the “**Special Assessment**”). Developer acknowledges and understands that it has certain rights contained in, but not limited to, Minn. Stat. §§429.031, 429.061, 429.071 and 429.081, and Developer acknowledges and agrees that it is voluntarily waving those rights in connection with the Reapportionment Amount and the Special Assessment, including, but not limited to, all rights to hearings before the City afforded under Minn. Stat., Chapter 429, specifically including hearings under Minn. Stat. §§429.031 and 429.061. In addition, the Developer waives all rights to appeal in the Courts, any objection to any irregularity or noncompliance with statutory procedure, and any claim that the Special Assessment being levied against the Property is excessive.

Developer herein agrees that Developer shall pay all installments of the Special Assessment when due. In the event Developer fails to timely pay any installment of the Special Assessment, the City may draw upon the Surety (defined below) in an amount equal to the installment due and any fee and reasonable cost incurred by the City in conjunction with the said delinquent Special Assessment. Any such draw may be used by the City to pay for any fee and reasonable cost incurred by the City in conjunction with the said delinquent Special Assessment and with the remainder to be held by the City to pay any yearly debt services payments related to the Special Assessment. Any Surety funds referred to herein that are withdrawn that will be used by City for payment of its herein-referred uses will constitute a credit against the obligations for the Developer to pay such Special Assessment. Upon payment of the delinquent Special Assessment, City will repay to the Surety, to the extent that the delinquent Special Assessment have been paid, the Surety monies withdrawn, less any reasonable costs incurred by City in conjunction with the said delinquent Special Assessment.

4. ON AND OFF-SITE IMPROVEMENTS/ESCROW ITEMS. The City requires that the on and off-site improvements set forth on Exhibit 3 attached hereto be installed by Developer within and adjacent to the Property (hereinafter referred to as “**Escrow Items**”). The Surety (defined below) shall, among other things, 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 July 17, 2025, as may be extended in the reasonable discretion of the City. The boulevard improvements 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, 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.

5. SURETY.

A. *Establishment.* Developer shall provide City, as a condition of release of the Final Plat, with cash or letter of credit, with the form and provider of the letter of credit that is satisfactory to City, in the amount of \$626,300.00 (herein referred to as the “**Surety**”), calculated as follows:

Amount of Special Assessment		\$1,568,190.30	
	X	<table style="margin-left: auto; margin-right: auto; border-bottom: 1px solid black;"> <tr> <td style="text-align: right;">40%</td> </tr> </table>	40%
40%			
Surety Requirement:		\$626,276.12	
USE:		\$626,300.00	

The Surety may be utilized by the City in the manner stated herein.

- B. *Release.* The Surety shall be maintained continuously by Developer, except as provided below. Developer may make application to City to reduce or release all or a portion of the Surety as follows:
- (1) When another surety reasonably acceptable to the City is furnished to the City by Developer to replace a prior surety; or
 - (2) The Surety may be reduced to an amount equal to forty percent (40%) of the outstanding Special Assessment principal balance if the application clearly establishes that forty percent (40%) or more of the principal on the certified Special Assessment, as levied on the Property, has been paid; or
 - (3) When the Property receives a Certificate of Occupancy.

If, however, the Special Assessment is paid in full, then the Surety shall be maintained continuously by Developer in an amount of \$20,000.00 until the Escrow Items are completed to the City's reasonable satisfaction. The Surety shall be released upon (i) no remaining Special Assessment principal and interest and (ii) certification of the City Engineer that the Escrow Items are satisfactorily completed pursuant to this Agreement.

- C. *Surety Deficiency.* In the event that, pursuant to the terms of this Agreement, the City has the right to draw against the 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 within thirty (30) days of said billing to Developer (i) pay said deficient amount to the City or (ii) provide a replacement surety. 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 set forth in this Agreement for which the Surety was given.
- D. *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.

6. 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.
7. PARK DEDICATION. Pursuant to State Statute and City Code, the development of this Property requires a land dedication or a cash equivalent based on the rate approved by the City Council when the Final Plat is released for recording. The Developer is purchasing the Property from the Tiller Corporation and have requested the use of Park Dedication credits from the Tiller Corporation credit bank to satisfy the park dedication for the Final Plat. The Final Plat is 25.07 acres consisting of Lot 1, Block 1 (9.75 acres) and two outlots. The Developer proposes 195,013 square foot building with regional offices and warehouse space on Lot 1, Block 1. Park dedication will be required for the two remaining outlots when they are platted in the future as buildable lots. The Tiller Corporation credit balance is currently 28.56 acres. Due to the industrial/office space use, 90% (8.77 acres) is calculated using the industrial park dedication rate and 10% (0.98 acres) is calculated using the commercial rate. The park dedication obligation for Arbor Lakes Business Park 5th Addition calculates as follows: Tiller credit balance – 28.56 acres; Lot 1, block 1 - 9.75 acres; Updated Tiller credit balance - 18.81 acres.
8. CONVEYANCE. That portion of Interstate Service Drive within the Final Plat and depicted on attached Exhibit 3, which legal description shall be confirmed by the Parties prior to release of the Final Plat, shall be conveyed from the City to Developer by Quit Claim Deed at the time of Final Plat release.
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**”). The Grading Security 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 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 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 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 .

10. 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 Assessment 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.
11. 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 a Notice may be sent by e-mail or telephone where expressly permitted by this Agreement. 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
c/o City Clerk
12800 Arbor Lakes Parkway
Maple Grove, Minnesota 55369
Email: Adietl@maplegrovern.gov
Telephone: (763) 494-6000

If to Developer:
Arbor Lakes MNMP, LLC
Attn: Raj Shah
2095 N Batavia Street
Orange, CA 92865
Email: raj@msisurfaces.com
Telephone: (714) 685-7504

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
Telephone: (952) 746-2700

With Copy to:
Tracy Damudar
Bocarsly Emden Cowan Esmail & Arndt LLP
633 West Fifth Street, Suite 5880
Los Angeles, CA 90071
Email: tdamudar@bocarsly.com
Telephone: (213) 239-8057

12. MISCELLANEOUS.

- A. *Access.* City shall have access to the Property to conduct any reasonable inspections and as otherwise allowed under this Agreement.
- 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 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 and runs with the Property as a first and prior lien and that it is binding all current and future owners.
- I. *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.
- J. *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.

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 _____, 2023, 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 MNMP, LLC,
a Nevada limited liability company

By: _____
Raj Shah, Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on this ___ day of _____, 2023, by Raj Shah, the Manager of Arbor Lakes MNMP, LLC, a Nevada 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 5th Addition, according to the recorded plat thereof,
Hennepin County, Minnesota.

EXHIBIT 2

Assessment Reallocation

Description	Square Footage	Deferred	Remaining Trunk Benefit			Lateral Benefit (Estimated) ⁽¹⁾	Storm Pond Credits	Totals
			Trans/Water	Sanitary	Storm			
Overall Site ⁽²⁾	1,092,167	\$1,453,919.09	\$508,496.67	\$249,939.04	\$723,961.34	\$1,336,723.90	(\$239,196.28)	\$4,033,843.76
Lot 1 Block 1 (Building 8)	424,589	\$565,223.13	\$197,682.31	\$97,165.88	\$281,445.99	\$519,662.53	(\$92,989.54)	\$1,568,190.30
Outlot A ⁽³⁾	544,685	\$888,695.96	\$310,814.36	\$152,773.16	\$442,515.35	\$817,061.37	(\$146,206.74)	\$2,465,653.46
Outlot B	122,893	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Notes: (1) Lateral Benefit is estimated, final assessments will be adjusted to reflect actual construction costs of 73rd Place. Total number has been adjusted from 4th Addition estimate due to received bids.
(2) Square footages based on Preliminary Plat. Allocated assessments based on Arbor Lakes Business Park 4th Addition, Outlot C
(3) Outlot A assumes full remaining allocation, as Outlot B is designated as pond and is not anticipated to become Lot and Block

EXHIBIT 3

Escrow Items

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

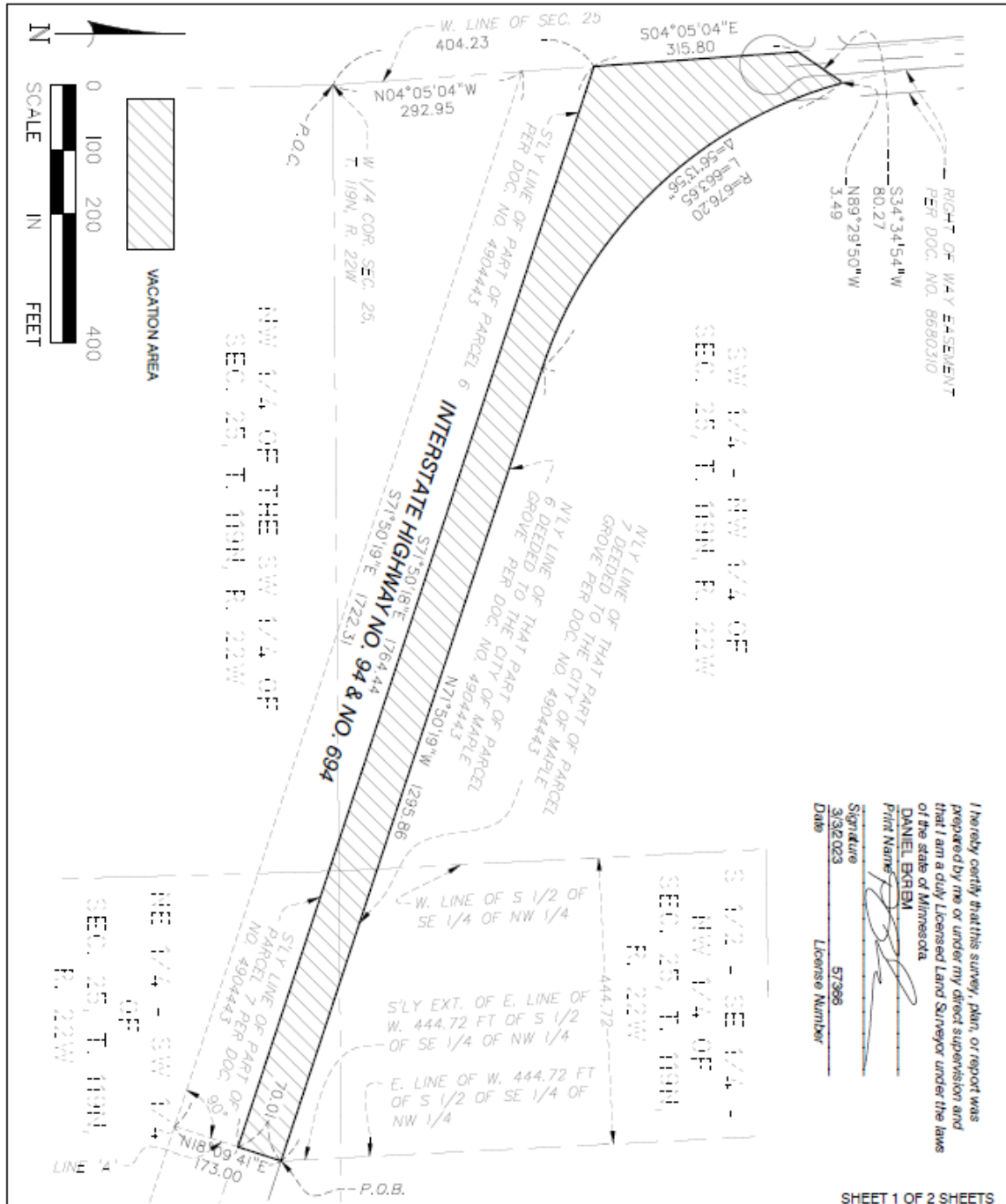
All erosion controls shall be maintained in the boulevard area.

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.

EXHIBIT 3


Interstate Service Drive



I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the state of Minnesota.

DANIEL BRYEN
 Print Name
 Signature
 3/32/03
 Date
 License Number
 57398

SHEET 1 OF 2 SHEETS

Design File: 210166	Checked By: DPI	ARBOR LAKES HIGHWAY VACATION EXHIBIT MAPLE GROVE, MINNESOTA	 Alliant Engineering, Inc. 733 Marquette Ave, Ste 700 Minneapolis, MN 55402 612.758.3080 MAIN 612.758.3099 FAX www.alliant-inc.com
Drawn Name: HWY VAC EXH	Drawn By: DPI		
Date: 3/3/03	Scale: 1" = 200'		