

*(reserved for recording information)*

**MASTER AND FINAL  
PLANNED UNIT DEVELOPMENT AGREEMENT  
AND CONDITIONAL USE PERMIT**

**RED FOX BUSINESS CENTER  
(PC# 14-036)**

**THIS MASTER AND FINAL PLANNED UNIT DEVELOPMENT AGREEMENT**

(“Agreement”) and **CONDITIONAL USE PERMIT** (“Permit”) is dated effective March 30, 2015, and is entered into by and between the **CITY OF ARDEN HILLS**, a Minnesota statutory city (“City”); **NORTH AMERICAN LAND COMPANY**, a Minnesota limited liability company (“North American”) and **ROBERTS MANAGEMENT GROUP, LLC**, a Minnesota limited liability company (“Roberts”) (North American Land Company and Roberts Management Group, LLC collectively “Developer”).

**1. RECITALS.**

A. On the 16th day of January, 2015, the Developer submitted a complete application requesting the approval of a Planned Unit Development Master Plan (“PUD-Master Plan”) and approval

of a Conditional Use Permit (CUP) for its development plan, to be known as RED FOX BUSINESS CENTER; for the property at 1235 Red Fox Road, Arden Hills, legally described as:

PARCELS 1 and 2:

Lot 3, Block 1, Northwoods;  
Outlot A, Northwoods,  
Ramsey County, Minnesota.

Subject to the restrictions and snow fence easement in favor of the State of Minnesota as set forth in the instrument recorded in Book 2064 of Ramsey County Records, page 157. Covers part of highway adjoining Outlot A.

Torrens property. Certificate of Title No. 594565

PARCEL 3:

Part of Lot 4, Block 1, Northwoods, lying North of the South 271 feet thereof, Ramsey County, Minnesota.

Subject to the restrictions and snow fence easement in favor of the State of Minnesota as set forth in the instrument recorded in Book 2064 of Ramsey County Records, page 157. Covers part of highway adjoining Outlot A.

Torrens property. Certificate of Title No. 594570

B. The RED FOX BUSINESS CENTER development plan is illustrated and described on the following documents (“Development Plan Documents,” “Plan Documents” or “Plans”). The Plans shall not be attached to this Agreement. The Plans will be prepared and submitted to the City for approval.

1. Master and Final PUD Plan Set, consisting of:
  - a. A0.1 – Title Sheet – 1/26/15
  - b. C0 – Topographic Survey – 7/22/14
  - c. C1 – Demolition Plan – 1/29/15
  - d. C2 – Paving & Dimension Plan – 1/29/15
  - e. C3 – Grading Plan – 1/29-15
  - f. C4 – Erosion Control Plan – 1/29/15
  - g. C5 – Utility Plan – 1/29/15
  - h. C6 – Details – 1/29/15
  - i. C7 – Utility Details – 1/29/15
  - j. PM1 – Partial Site Plan Photometrics – 11/26/14
  - k. PM2 – Partial Site Plan Photometrics – 11/26/14
  - l. PM3 – Site Plan Photometrics – 11/26/14
  - m. L1 – Tree Preservation Plan – 1/29/15

- n. L2 – Tree Mitigation Plan – 1/29/15
- o. L3 – Landscaping Plan – 1/29/15
- p. L4 – Landscape Detail – 1/29/15
- q. Landscaping & Parking Areas – 1/9/15
- r. A1.1 – Architectural Site Plan – 1/26/15
- s. A2.1 – Floor Plan Building 1 – 1/26/15
- t. A2.2 – Floor Plan Building 2 – 1/26/15
- u. A3.1 – Exterior Elevations Building 1 – 12/12/14
- v. A3.2 – Exterior Elevations Building 2 – 12/12/14

2. Conditional Use Permit

3. Façade materials and color pallet:

The front and side elevations of building 1 & 2 will consist of two (2) complimentary tan/brown earthtone colors shown on the submittal plan as Precast Panels A & C. Precast Panel B will be a greyish/black panel made up of either revealed panels, or thin brick panels which will add architectural detail at the window locations. The rear elevation will consist of two (2) different colored precast panels to match Precast Panels A & C., plus an optional 3<sup>rd</sup> door color, which will all be similar to the colors used on the front of the building.

4. Written Statement consisting of pages 1-2 dated 1/26/2015.

C. Subject to the conditions and modifications contained herein, the Development Plan Documents represent the nature, scope and configuration of the development Project which the Developer is requesting the City to approve.

D. The PUD-Master Plan and the Conditional Use Permit Documents indicate that the Property will be developed in a single phase comprised of two buildings, one of 43,300 square feet and the other of 50,000 square feet.

**2. CITY PLANNING COMMISSION REVIEW AND RECOMMENDATION.** On the 4th day of February, 2015, the City Planning Commission reviewed the application at a public hearing and after considering the application, the reports and comments of the City's staff and consultants, reports and comments of the Developer, and other public comments; and, subject to conditions, recommended approval of the PUD Master Plan and Final Plan; and the Conditional Use Permit.

**3. CITY COUNCIL REVIEW.** On the 23<sup>rd</sup> day of February, 2015, the City Council reviewed the application, the reports and recommendations of the City's staff and consultants, the reports and requests of the Developer, and the recommendations of the City Planning Commission, and has approved the PUD Master Plan, Final Plan and the Conditional Use Permit, all subject to the terms and conditions contained herein.

**4. TERMS AND CONDITIONS.** In consideration of the City's development approvals, in compliance with the City's development regulations, and in consideration of the undertakings expressed herein, the parties agree:

**A. PUD – Master Plan/Final Plan.**

1. That the project shall be completed in accordance with the submitted plans as amended by the conditions of approval. Any significant changes to these plans, as determined by the City Planner, shall require review and approval by the Planning Commission and City Council.
2. That the applicant shall obtain a building permit within one year of the PUD approval or the approval shall expire unless extended by the City Council prior to the approval's expiration date. Extension requests must be submitted in writing to the City at least 45 days prior to the expiration date.
3. That the development agreement and conditional use permit (CUP) shall be prepared by the City Attorney and subject to City Council approval. The development agreement and CUP shall be executed prior to the issuance of a grading and erosion control permit.
4. That the Developer shall submit a financial surety in the amount of 125 percent of the estimated costs of site improvements including grading, utilities, and paving, prior to the issuance of a building permit. The financial surety shall be in the form of a letter of credit issued by a FDIC-insured Minnesota bank, and be in a form acceptable to the City. The purpose of the letter of credit is to ensure that site improvements are completed in the event that the developer defaults on the PUD Development Agreement.
5. That the Developer shall submit a cash escrow in the amount of 25 percent of the estimated costs of site improvements including grading, utilities, and paving, prior to the issuance of a building permit. The escrow will be used for City costs related to review, approval, and inspection of site improvements or any costs incurred by the City in the event of a developer default.
6. That the Developer shall submit a financial surety in the amount of 125 percent of the estimated costs of landscaping prior to the issuance of a building

permit. The financial surety shall be in the form of a letter of credit issued by a FDIC-insured Minnesota bank. The purpose of the letter of credit is to ensure that landscaping is completed in the event that the developer defaults on the Development Agreement. The City will hold the letter of credit for two years after the installation of landscaping. The letter of credit should not expire during the two-year period.

7. That the Developer shall submit a cash escrow in the amount of 25 percent of the estimated costs of landscaping prior to the issuance of a building permit. The escrow will be held by the City for two years after installation of landscaping and used for City costs related to review, approval, and inspection of landscaping, or developer default.
8. That the proposed project may require permits, including, but not limited to, MPCA-NPDES, Rice Creek Watershed District, Minnesota Department of Health, MPCA- Sanitary Sewer Extension, Ramsey County and City Right of Way, and City Grading and Erosion Control permits. Copies of all issued permits shall be provided to the City prior to the issuance of any development permits.
9. That the final plans shall be subject to approval by the Building Official and Fire Marshal prior to the issuance of a building permit.
10. Final grading, drainage, utility, and site plans shall be subject to approval by the Public Works Director, City Engineer, and City Planner prior to the issuance of a grading and erosion control permit or other development permits.
11. That upon completion of grading and utility work on the site, a grading as-built and utility as-built shall be provided to the City for review.
12. That the final plans shall be revised to meet the standards as outlined by the Assistant City Engineer in the memo dated 2-19-15.
13. That the final Lighting and Photometric Plan shall be reviewed and approved by the City prior to the issuance of a building permit.
14. That the applicant shall conform to all other City regulations.
15. That City Staff shall be allowed access to the development on an annual basis to determine the amount of wholesaling and warehousing uses in each building.
16. The Developer shall notify the owner of the neighboring medical building of their construction schedule and any changes.
17. The Developer shall work with the owner of the neighboring medical building regarding additional screening of the loading dock area along Building 2 and offer four (4) tree plantings to be installed on their property at Developer's cost.
18. The Developer shall provide additional façade treatments on the south façade (loading dock area) of Building 2 similar to the north façade but not requiring use of the anodized aluminum materials.

**B. Conditional Use Permit.**

1. Wholesaling and warehousing uses are allowed in either building up to 50% of the gross floor area of the building in which it is located.
2. That City Staff shall be allowed access to the development on an annual basis to determine the amount of wholesaling and warehousing uses in each building.

**5. RELATIONSHIP OF PARTIES.** No partnership or joint ventures established between the parties hereto by or under this Agreement or any agreement referenced herein.

**6. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties and their respected successors and assigns, including without limitation, any and all future and present owners, tenants, occupants, licensee, mortgagee and any other parties with any interest in the Property. Should the Developer convey any lot or lots in the project to a third party, the City and the owner of that lot or those lots may amend the Master Plan or other city approvals for development or use of those lots without the approval or consent of the Developer or other lot owners in the Project. Private agreements between the owners of lots within the Project for shared service or access and related matters necessary for the efficient use of the project shall be the responsibility of the lot owners and shall not bind or restrict City authority to approve applications from any lot owner in the Project.

**7. LIMITATION OF LIABILITY.** Upon sale or conveyance of any portion of the Property, the transferee shall be liable for all obligations of the Developer which relates to the portions of the Property so transferred and the transferor shall be automatically released from any further obligation, liability, right or responsibility in respect to such transfer. Moreover, nothing herein shall be construed to create a cause of action on behalf of the City against the Developer with respect to its business operations beyond the obligations set forth herein relating to the development and maintenance of the Property.

**8. RECORDING OF DOCUMENT.** This Agreement shall run with the Property and shall be recorded in the office of the Ramsey County Recorder or Registrar of Titles with proof thereof shown to the City prior to the issuance of any permits there under.

**9. GOVERNING LAW.** The City and the Developer agree that the laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the undersigned parties and performance under it without regard to principals of conflicts of law. The language of this Agreement is and shall be deemed a result of negotiations among the parties and the respective legal counsel and shall not be strictly extrude for or against any party. Each party agrees that any action arising out of or in connection with this Agreement shall be brought solely in the courts of the State of Minnesota, Second Judicial District, or the United States District Court for the District of Minnesota.

**10. EVENT OF DEFAULT.** The occurrence of any of the following shall be considered an “event of default” and the terms and conditions contained in this Agreement:

1. Failure of the Developer to comply with any of the terms and conditions contained in this Agreement; and
2. Failure of the Developer to comply with any applicable ordinance or statute with respect to the development of the Property.

**11. REMEDIES.** Upon the occurrence of an event of default, the City, in addition to any other remedy which may be available to it, shall be permitted to do any of the following:

1. City may make advances or take other steps to cure the default, and, where necessary, enter the Property for that purpose. The Developer shall pay all sums so advanced, or expenses incurred by the City, upon demand, with interest from the dates of such advances or expenses at the rate of 10% per annum or the maximum amount permitted by law if less than 10%. If no action taken by the City pursuant to this section shall be deemed to relieve the Developer from curing any such defaults to the extent that it is not cured by the City or from any other default hereunder. The City shall not be obligated, by virtue of the existence or exercise of this right, to perform any such act or cure any such default. The Developer shall save, indemnify, and hold harmless, including reasonable attorney’s fees, the City from liability or other damages which may be incurred as a result of the exercise of the City’s rights pursuant to this section.

2. Obtain an order from a Court of Competent Jurisdiction requiring the Developer to specifically perform its obligations pursuant to the terms and provisions of this Agreement.
3. Exercise any other remedies which may be available to it, including an action for damages.
4. Withhold the issuance of any building permits and/or prohibit the occupancy of all building which permits have been issued.
5. In addition to the remedies and amounts payable as set forth herein, upon the occurrence of an event of default, the Developer shall pay the City all fees and expenses, including reasonable attorneys' fees, engineering and consultant fees incurred by the City as a result of an event of default, whether or not a lawsuit or action is formally undertaken.

**IN WITNESS WHEREOF**, the City and the Developer have caused this Agreement to be executed as of the date and year first above written.



**CITY OF ARDEN HILLS**

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

David Grant, Mayor

(SEAL)

And \_\_\_\_\_

Amy Dietl, Deputy Clerk

STATE OF MINNESOTA )

( ss.

COUNTY OF RAMSEY )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **David Grant** and by **Amy Dietl**, respectively the Mayor and Deputy Clerk of the City of Arden Hills, a Minnesota statutory city, on behalf of the City and pursuant to the authority granted by its City Council.

\_\_\_\_\_

Notary Public

**NORTH AMERICAN LAND COMPANY.**  
A Minnesota Limited Liability Company

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

Nicholas S. Roberts, Chief Manager

STATE OF MINNESOTA     )

( ss.

COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **Nicholas S. Roberts**, the Chief Manager of **North American Land Company**, a Minnesota limited liability company, on behalf of the limited liability company.

\_\_\_\_\_

Notary Public

**ROBERTS MANAGEMENT GROUP, LLC**

A Minnesota Limited Liability Company

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

Nicholas S. Roberts, Chief Manager

STATE OF MINNESOTA     )

( ss.

COUNTY OF RAMSEY     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by **Nicholas S. Roberts**, the Chief Manager of **Roberts Management Group, LLC**, a Minnesota limited liability company, on behalf of the limited liability company.

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

**DRAFTED BY:**

DRAFTED BY:

**Campbell Knutson**

*Professional Association*

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(JJJ/jmo)