

# Attachment A

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## ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

*(Above space reserved for recording information)*

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT (“**Agreement**”) is made as of \_\_\_\_\_, 2021, by and between ARDEN PLAZA LLC, a Minnesota limited liability company (“**Seller**”) whose address for notice is 1625 Energy Park Drive, Suite 100, St. Paul, MN 55108, and JAB Real Estate, LLC, a Minnesota limited liability company (“**Buyer**”) whose address for notice is 4732 Perry Avenue North Crystal, MN, 55429.

### RECITALS

- A. Pursuant to that certain Agreement of Sale dated January 5, 2021 by and between Seller, as seller, and Lifelong Wealth Advisors, Inc., a Minnesota corporation (“Original Buyer”). Original Purchaser assigned its interests in the Purchase Agreement to JAB Real Estate, LLC, a Minnesota limited liability company (“**Buyer**”) pursuant to that certain Assignment and Assumption of Purchase Agreement dated March 3, 2021 (the “**Purchase Agreement**”), Buyer is acquiring certain real property legally described as follows:

Parcel 1:

Lot 2, Block 1, Arden Plaza, Ramsey County, Minnesota.

Torrens Property

Parcel 2:

Ingress and egress, parking, drainage and storm water runoff and utility easement contained in Reciprocal Easement Agreement with Covenants, Conditions and Restrictions dated November 16, 2011, filed November 17, 2011, as Document No. 2156888 and amended by Declaration dated September 15, 2015, filed September 28, 2015, as Document No. T02541137.

(the “**Property**”) located at 1150 County Road E, in the City of Arden Hills, Ramsey County, Minnesota.

- B. The Property is subject to that certain Amended and Restated Master Planned Unit Development Agreement and Phase I Development Contract by and among Seller, the City of Arden Hills, Minnesota (the “City”) and PAMELA A. COUCH, as Trustee of the Pamela A. Couch 2011 Trust dated November 15, 2011, an undivided 25% interest; and JAMES G. COUCH, as Trustee of the JGC Trust of 2007 dated August 14, 2007, an undivided 75% interest (“Couch/JGC Trusts”) recorded with the Ramsey County Registrar of Titles on February 9, 2016 as Document No. T02551172, as Amended by that certain First Amendment to Amended and Restated Master Planned Unit Development Agreement and Phase I Development Contract for Arden Plaza recorded with the Ramsey County Registrar of Titles on February 9, 2016 as Document No. T02551176 and assigned and assumed pursuant to the Assignment and Assumption of Development Agreement recorded with the Ramsey County Registrar of Titles on February 9, 2016 as Document No. T20551177 (collectively, the “Development Agreement”). Pursuant to the Development Agreement, Seller has undertaken certain obligations with respect to the Property and additional property located adjacent to the Property (the “Retained Property”).
- C. Pursuant to the Purchase Agreement, Buyer agreed to assume certain obligations undertaken by Seller in accordance with the Development Agreement relating to the development of Phase II as described in the Development Agreement on the Property but not with respect to other property covered by the Development Agreement and certain rights of Seller under the Development Agreement, which are set forth on Exhibit A attached hereto (the “Assumed Obligations”). As such, Buyer and Seller desire that the Assumed Obligations be assigned to and assumed by Buyer, as further set forth herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Assignment and Assumption of Development Agreement. Seller hereby assigns, conveys, sets over and delivers to Buyer all of Seller’s right, title, obligation and interest in and to the Assumed Obligations. Buyer hereby accepts and assumes from Seller the Assumed Obligations from and after the date of this Agreement. Buyer acknowledges that the intent of this Agreement is to make Buyer fully responsible for the Assumed Obligations and to release Seller therefrom from and after the date of this Agreement. Buyer shall comply with all specific obligations applicable to the Assumed Obligations as set forth in the Development Agreement from and after the date of this Agreement. Buyer agrees to indemnify, defend, and hold Seller harmless from and against any and all losses, debts, claims, liabilities, responsibilities, costs and expenses (including reasonable attorneys’ fees) accruing on and after the date of this Agreement in connection with any obligation or liability related to the Assumed Obligations or arising from or related to Buyer’s failure to perform any of the Assumed Obligations in accordance with the Development Agreement on or after the date of this Agreement. Seller agrees to indemnify, defend, and hold Buyer harmless from and against any and all losses, debts, claims, liabilities, responsibilities, costs and expenses (including reasonable attorneys’

fees) accruing prior to the date of this Agreement in connection with any obligation or liability related to the obligations of Seller under the Development Agreement, including, without limitation, the Assumed Obligations, or arising from or related to Seller's failure to perform such obligations in accordance with the Development Agreement prior to the date of this Agreement.

2. Release of Seller. The City does hereby release Seller from all loss, liability, cost, expense and responsibility arising out of or associated with the Assumed Obligations accruing from and after the date of this Agreement or otherwise attributable to the period commencing on the date of this Agreement and continuing thereafter. The City agrees to look solely to Buyer for payment and performance of such Assumed Obligations. No default by Buyer with respect to the Assumed Obligations will result in a default under the remaining portions of the property covered by the Development Agreement. No default by Seller of its obligations under the Development Agreement with respect to the Retained Property will result in a default by Buyer with respect to the Assumed Obligations.
3. Recitals. The foregoing recitals are true and correct and are hereby incorporated by reference.
4. Inurement; Counterparts. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. This Agreement shall run with the land. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.
5. Assignment; Governing Law; Conflicts; Amendment. This Agreement shall not be assigned without the prior written consent of Seller and the City. This Agreement shall be governed by and construed under the laws of the State of Minnesota. In the event of any conflict between this Agreement and the Purchase Agreement, this Agreement shall control. No change, amendment, qualification or cancellation hereof shall be effective unless in writing and executed by each of the parties hereto.

SIGNATURE PAGES TO FOLLOW



**SIGNATURE PAGE TO  
ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

**SELLER:**

ARDEN PLAZA LLC

By: \_\_\_\_\_  
Name: Stephen B. Wellington, Jr.  
Its: Chief Manager

STATE OF MINNESOTA                    }  
  } ss.  
COUNTY OF RAMSEY

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Stephen B. Wellington, Jr., the Chief Manager of ARDEN PLAZA LLC, a Minnesota limited liability company, on behalf of the company.

(Seal)

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

**SIGNATURE PAGE TO  
ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT**

Approved as to form and consent for Seller and Buyer to enter into this Agreement in accordance with the Development Agreement. The undersigned hereby consents to the foregoing Agreement and agrees to be bound by the provisions thereof:

**CITY OF ARDEN HILLS, MINNESOTA**

By: \_\_\_\_\_  
Its: Mayor

Date: \_\_\_\_\_, 2021

By: \_\_\_\_\_  
Its: City Administrator

Date: \_\_\_\_\_, 2021

STATE OF MINNESOTA            }  
  }  
COUNTY OF RAMSEY

This instrument was acknowledged before me on \_\_\_\_\_, 2021 by \_\_\_\_\_ and \_\_\_\_\_, the Mayor and City Administrator, respectively, of the City of Arden Hills, Minnesota, a municipal corporation under the laws of Minnesota, on behalf of such municipal corporation.

(Seal)

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

**EXHIBIT A  
TO  
ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT**

**ASSUMED OBLIGATIONS**

Excepted as otherwise stated below the following obligations are assigned and assumed by Buyer under the Development Agreement with respect to Lot 2, Block 1, Arden Plaza Addition, Ramsey County, Minnesota (the “Property”). All section references refer to the applicable sections of the Development Agreement:

Obligations to be assigned to and assumed by Buyer under the Development Agreement with respect to the Property. All section references refer to the applicable sections of the Amended and Restated Master Planned Unit Development Agreement and Phase I Development Contract by and among Seller, the City of Arden Hills, Minnesota (the “City”) and PAMELA A. COUCH, as Trustee of the Pamela A. Couch 2011 Trust dated November 15, 2011, an undivided 25% interest; and JAMES G. COUCH, as Trustee of the JGC Trust of 2007 dated August 14, 2007, an undivided 75% interest (“Couch/JGC Trusts”) recorded with the Ramsey County Registrar of Titles on February 9, 2016 as Document No. T02551172, unless otherwise noted.

- Any and all obligations in the Redevelopment Plans governing the Property or to which the Property is subject (Section 1).
- Sign and Code Standards (Section 2(E)).
- The land is subject to the following: adherence to the Redevelopment Documents (Section 2(C)); Traffic Mitigation provisions set forth in Section 2(H).
- Construction Easements (Section 2(L))(if applicable).
- Buyer assumes the obligation to pay its allocable share of Traffic Signals and Future Assessment including the TS Improvements and B-2 District Streetscape as set forth in Sections 2(I), 2(K) and 4(C) which share shall be at least the amount calculated by multiplying the cost of the project attributable to the Lot 2, Block 1, Arden Plaza or such other amount determined by the assessor using assessor standard calculations based on Lot 2 being 7.14% of the total area of the Shopping Center as set forth in that certain Declaration dated September 15, 2015 as filed with the Ramsey County Registrar of Title on September 28, 2015 as Document No. T02541137.
- Tree Replacement (Section 4(E)).
- Recording of Documents (Section 8).

In addition, Buyer shall be assigned the following rights under the Development Agreement limited solely to the extent necessary to enforce the obligations of the City and/or the Authority under the Development Agreement with respect to the Property. All section references refer to the applicable sections of the Development Agreement.

- Limitation of Liability (Section 7)
- Remedies (Section 11)