

# DEVELOPMENT AGREEMENT

## (Planned Unit Development of “Hangar Row” on 21<sup>st</sup> Avenue South)

**THIS AGREEMENT** is made this \_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Princeton, whose address is 705 Second Street North, Princeton, Minnesota, 55371, a municipal corporation organized under the laws of the State of Minnesota, hereinafter referred to as the "CITY", and Friday Bay Incorporated, whose registered address is 7240 337<sup>th</sup> Avenue NW, Princeton, Minnesota 55371, a Minnesota Corporation hereinafter referred to as the "DEVELOPER".

DEVELOPER will comply with City of Princeton Subdivision Ordinance 10-94 Planned Unit Development Requirements and Procedures (“PUD Ordinance”), together with all other local, State and Federal regulations, in order to redevelop the former “hanger row” on the east side of 21<sup>st</sup> Avenue South within the CITY (“Charlie Bravo Planned Unit Development”). DEVELOPER shall have no obligation to undertake the construction described in this Agreement unless and until the CITY sells and DEVELOPER purchases the property described in Exhibit A and DEVELOPER receives the necessary approvals from the CITY contemplated by the PUD Ordinance for DEVELOPER’s Planned Unit Development (“PUD”) Application. Said approvals will not be unreasonably withheld.

A. **Request for PUD Approval.** The DEVELOPER will ask the CITY to approve a Planned Unit Development of the former “hangar row” on the east side of 21<sup>st</sup> Avenue South within the CITY (“Charlie Bravo Planned Unit Development”). The DEVELOPER proposes to construct a Planned Unit Development of multiple structures in at least two Phases as set out in the Preliminary Site Plan of Houwman Architects dated June 17, 2022, attached as Exhibit B. The construction of said Charlie Bravo Planned Unit Development are governed by this Agreement.

B. **Conditions of PUD Approval.** The CITY’s approval of said PUD is subject to the following conditions:

1. That the DEVELOPER shall enter into this Agreement;
2. That the DEVELOPER shall comply with the City of Princeton Subdivision Ordinance 10-94 Planned Unit Development Requirements and Procedures, together with all other local, State and Federal regulations;
3. That the DEVELOPER shall provide the necessary survey, engineering and design of Phase One of said PUD;
4. That the DEVELOPER’s Phase One Plan of said PUD shall include construction of one mixed use building of 3,500 to 7,000 square feet as approximately set out

in the Preliminary Site Plan of Houwman Architects dated June 17, 2022, attached as Exhibit B;

5. That the DEVELOPER's Phase One Plan shall provide for construction on Phase One to commence on or before June 5, 2023;
6. That the DEVELOPER shall use its best efforts to develop a Phase Two Plan for further development of said site;
7. That the DEVELOPER agrees that Phase Two of said PUD shall include additional building(s) based on the market for such structures;
8. That the DEVELOPER shall use its best efforts to acquire the adjacent "Hanson" and "Roxbury" parcels at DEVELOPER'S own expense;
9. That the DEVELOPER shall use its best efforts in implementation of leasing and marketing of Phase Two of said PUD to support a construction pace of one building per year;
10. That the DEVELOPER agrees to meet with the CITY annually to review its leasing and marketing of Phase Two of said PUD. The DEVELOPER may request additional meetings as it deems necessary to discuss market or other influences on the project.

C. **Development Plans.** The CITY and the DEVELOPER understand and agree that the DEVELOPER is in process in preparing Development Plans (hereinafter "Plans") for Phase One of the projected project. Said Plans will be submitted for approval pursuant the Subdivision Ordinance together with all other local, State and Federal regulations, for review by the City Engineer. Any development of the Land by the DEVELOPER shall be in accordance with the approved Plans, but DEVELOPER may make and implement minor revisions to the plans as necessary with the consultation and consent of the City Engineer. If the Plans vary from the written terms of this Agreement, the written terms of this agreement shall control.

D. **Construction of Improvements.** Any improvements by the DEVELOPER shall be installed and paid for as detailed in the approved Development Plans. The improvements shall be installed in accordance with the Development Plans and in accordance with any applicable CITY standards, policies and ordinances, and state and federal law. The DEVELOPER shall obtain all necessary permits before proceeding with construction. The CITY may, at their discretion and at the DEVELOPER's expense, have one or more inspectors and a soil engineer inspect the installation of the connectors to certain public improvements, as the CITY's engineer may reasonably require to assure an acceptable level of quality control to insure the CITY's engineer will be able to certify that the construction work meets the approved standards as a condition of CITY acceptance. The DEVELOPER shall schedule a preconstruction meeting at a mutually agreeable time at the Princeton City Hall with all parties concerned to review the program for the construction work. Within thirty (30) days after the completion of the improvements, the DEVELOPER shall supply the CITY with a complete set of reproducible "As Built" plans depicting the "As Built" locations of all grading and sanitary sewer, municipal water, stormwater and other utilities and similar facilities installed by the DEVELOPER.

E. **Time of Performance.** The DEVELOPER shall use commercially reasonable efforts to begin Phase One construction on or before June 5, 2023. The DEVELOPER may, however, request an extension of time from the CITY.

F. **CITY Installed Improvements.** Improvements are described at paragraph K.

G. **Warranty of Work.** The DEVELOPER warrants all underground utility work (specifically, municipal water, sanitary sewer and stormwater installations) required to be performed by it against defective design and materials and against faulty workmanship for a period of one (1) year after its completion and approval by the CITY.

H. **Grading Plan.** The Development Plans shall include a grading plan. The Land shall be graded and drainage provided by the DEVELOPER in accordance with said grading plan. No debris, waste or construction material of any kind shall be disposed of by burial on the site or surrounding area and all such material shall be disposed of by deposit in legally established landfills or by other legally acceptable means. Prior to the issuance of a Certificate of Occupancy, the DEVELOPER shall provide the CITY with an "As Built" grading plan with certification by a registered land surveyor or engineer that all stormwater drainage facilities, whether above or underground have been constructed according to approved plans to pond on site or drain to CITY storm sewer.

I. **Erosion Control.** The Development Plans shall include an erosion control plan. Said plan shall be implemented by the DEVELOPER and inspected and approved by the CITY. The City may require other reasonable erosion control measures if needed to protect the public interests. All areas disturbed by the excavation and backfilling operations shall be reseeded after the completion of the work in that area, as and when required by the MPCA/NPDES permit. The parties recognize that time is of the essence in controlling erosion. In addition to the conditions stated above, the DEVELOPER shall be solely responsible for determining and meeting the conditions of the MPCA/NPDES permit. If the DEVELOPER does not comply with the erosion control plan and schedule, or supplementary instructions received from the CITY, the CITY may take such action as it reasonably deems appropriate to control erosion. The CITY shall endeavor to notify the DEVELOPER in advance of any proposed action, but failure of the CITY to do so will not affect the DEVELOPER's and CITY's rights or obligations hereunder.

J. Installation and Warranty of **Landscaping.** The Development Plans shall include a landscaping plan. The DEVELOPER shall landscape the Land in accordance with said landscaping plan. The DEVELOPER, its successors and assigns, shall guarantee that all landscaping shall survive for no less than two (2) years from the date that the landscaping has been installed, inspected and approved by the CITY and that any landscaping not surviving shall be replaced at the expense of the DEVELOPER, its successors and assigns.

K. **Small Utilities.** The Princeton Public Utility ("PUC") shall, and appropriate Private Utility Companies may, at their own expense, install the following small utilities within public right-of-way or within designated easements dedicated for such purposes on the approved Development Plan or plat.

1. Electric power supplied by Princeton Public Utilities;
2. Natural gas supplied by Center Point Energy or other applicable carrier;
3. Telephone service provided by North Star Access, Qwest or other applicable carrier.

The design and location plans of small utilities shall be submitted to the City Engineer for review and approval prior to any construction in the public right-of-ways.

L. **Phased Development.** Phase One Plan of said PUD shall include construction of one mixed use building of 3,500 to 7,000 square feet as approximately set out in the Preliminary Site Plan of Houwman Architects dated June 17, 2022, attached as Exhibit B. The Phase One Plan shall provide for construction on Phase One to commence on or before June 5, 2023. The DEVELOPER agrees to use its best efforts to develop a Phase Two Plan for further development of said site. The DEVELOPER agrees that Phase Two Plans of said PUD shall include additional building(s) based on the market for such structures. DEVELOPER agrees to use its best efforts to acquire the adjacent “Hanson” and “Roxbury” parcels at DEVELOPER’S own expense. The DEVELOPER agrees to use its best efforts in implementation of leasing and marketing of Phase Two of said PUD to support a construction pace of one building per year and further agrees to meet with the CITY as required is Provision B 10 of this Agreement. DEVELOPER shall, in its sole discretion, determine whether market conditions allow for the development of Phase Two of said PUD.

M. **Effect of Subdivision Approval.** Minn. Stat. § 462.358, Subd. 3c does not apply.

N. **Storm Sewer.** Storm sewer connection charges do not apply.

O. **Sewer/Water Availability Charges.** Sewer and Water availability charges will be paid at the time of building permit issuance and at the rate in the City’s adopted fee schedule.

P. **Park Dedication.** Park Dedication fees will be paid at the time of final plat approval for each phase and at the rate in the City’s adopted fee schedule.

Q. **Licenses.** The DEVELOPER hereby grants the CITY and the PUC, its agents, employees, officers, and contractors, a license to enter the Land to perform all necessary work and inspections deemed appropriate by the CITY and the PUC during the installation of public improvements. The license shall expire after the public improvements contemplated by this development contract have been installed and accepted by the CITY and the PUC.

R. **Clean Up and Maintenance of Streets.** The DEVELOPER shall promptly clear nearby streets of any soil, earth, or debris resulting from construction work by the DEVELOPER or its agents or assigns, and shall perform specified clean up within 24 hours of specific notice by the CITY. Except as stated above, public right-of-way adjoining the Land shall be maintained (e. g., grading, snowplowing,) obstruction-free by the CITY.

S. **Municipal Services Fees.** City Service Charges per code.

T. **Security.** This paragraph is not applicable to this project.

U. **Responsibility for Professional Service Costs.** The DEVELOPER shall be responsible for paying pass-through costs of the City Engineer for services rendered related to the review of platting, utility and storm water design and other related design items.

V. **Developer's Default.** In the event of default by the DEVELOPER as to any condition or performance required by this Development Agreement, the CITY may, at its option, cure the

default, and the DEVELOPER shall promptly reimburse the CITY for any expense incurred by the CITY in curing the default, provided the DEVELOPER is first given written notice of the performance in default, and given an opportunity to cure, not less than 15 business days in advance of the CITY'S commencing the cure. This Agreement is a license for the CITY to act in curing the default, and it shall not be necessary for the CITY to seek a Court order for permission to enter the land. When the CITY cures any default, the CITY may, in addition to its other remedies, assess the cost in whole or in part against the land described in this Agreement.

W. **Repurchase Options.** The CITY shall maintain the option to repurchase undeveloped portions of the property described in Exhibit A as follows.

Option one: Commencing on the first day of the first month 36 months subsequent to date of this Development Agreement, the CITY shall have the option to repurchase undeveloped portions of the property described in Exhibit A and conveyed to DEVELOPER in that certain real estate Purchase Agreement. Said option shall remain open for 60 days. For such option to take effect the CITY shall provide written notice of such intent to DEVELOPER. If notice of exercise of said option is not given, said option shall expire.

Option two: Commencing on the first day of the first month 72 months subsequent to date of this Development Agreement, the CITY shall have the option to repurchase undeveloped portions of the property described in Exhibit A and conveyed to DEVELOPER in that certain real estate Purchase Agreement. Said option shall remain open for 60 days. For such option to take effect the CITY shall provide written notice of such intent to DEVELOPER. If notice of exercise of said option is not given, said option shall expire. The purchase price under either option shall be a pro rata share for undeveloped land of the original purchase price. The purchase price shall not include any of the DEVELOPER'S costs pertaining to land that was developed and shall not include any payments DEVELOPER has made to the CITY for assessments and real estate taxes. For purpose of these options, "undeveloped portions of the property" shall mean portions of the property not substantially completed.

X. **Miscellaneous.**

1. This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, successors, or assigns, as the case may be. The parties agree that should any provision of this Agreement conflict with any provision of the Purchase Agreement between the parties, the provisions of this Development Agreement shall control.
2. Default or breach of the terms of this Agreement by the DEVELOPER shall be grounds for revocation or denial of building permits.
3. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
4. If building permits are issued prior to the completion of CITY and PUC constructed public improvements, the DEVELOPER assumes all liability and costs resulting in delays in completion of private improvements, and damage to public improvements caused by the DEVELOPER, or their contractors, subcontractors, materialmen, employees or agents. No one may occupy a building for which a building permit is

issued on either a temporary or permanent basis until a certificate of occupancy has been issued.

5. The action or inaction of the CITY shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, 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.
6. DEVELOPER agrees to hold harmless, defend and indemnify the CITY against any claims brought or actions filed against the CITY, or any officer, employee or agent of the CITY acting within the scope of their employment or duties, for any injury to, death of, or damage to the property of any third person or persons, arising from the exercise of its rights or the performance its duties with respect to the improvements required by this Agreement. DEVELOPER shall maintain until expiration of the final warranty period, liability and property damage insurance to cover the above described risk in an amount not less than the limits of the City's municipal tort liability as defined by Minnesota Statutes, Chapter 466. Developer may meet this obligation through a self-insurance program.
7. Any encroachment of improvements installed by the DEVELOPER into CITY easements (e.g., curb and gutter, trees, shrubs, etc.) may be removed by the CITY at DEVELOPER's expense in the event the CITY's easement rights, repairs, alterations and maintenance operations are, in the sole discretion of the CITY, affected by such improvements.

Y. **Notices.** Required notices to the DEVELOPER shall be in writing and shall be either hand delivered to the DEVELOPER, its employees, or agents or mailed to the DEVELOPER by United States surface mail at the following address:

Friday Bay Incorporated  
7240 337<sup>th</sup> Avenue NW  
Princeton, Minnesota 55371  
Attention: Steve Hage, President

Copies to:

Spott Law Office  
2228 East Superior Street  
Duluth, Minnesota 55812  
Attention: Patrick Spott

Required notices to the CITY shall be in writing and shall be either hand delivered to the City Administrator or mailed to the City by United States surface mail in care of the City Administrator at the following address:

Michele McPherson, City Administrator  
City of Princeton  
705 2nd Street North  
Princeton, Minnesota 55371

Copies to:

Damien F. Toven  
City Attorney  
413 S. Rum River Drive, Suite 6  
Princeton, Minnesota 55371

Z. **Prior Agreements.** This Agreement supersedes and cancels an prior agreements regarding the subject property.

**(The remainder of this page is intentionally left blank)**

In acceptance of this Development Agreement, the appropriate representatives the DEVELOPER and the CITY have executed this Agreement to be effective on \_\_\_\_\_.

**DEVELOPER: FRIDAY BAY INCORPORATED**

By: \_\_\_\_\_  
Steve Hage  
President

Date: \_\_\_\_\_

**CITY OF PRINCETON**

By: \_\_\_\_\_  
Thom Walker, Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michele McPherson, City Administrator

Date: \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) SS:  
COUNTY OF MILLE LACS    )

The foregoing Development Agreement dated \_\_\_\_\_ was subscribed before me in person this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Steve Hage, President of FRIDAY BAY INCORPORATED, a Minnesota Corporation, on its behalf.

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

STATE OF MINNESOTA    )  
  ) SS:  
COUNTY OF MILLE LACS    )

The foregoing Development Agreement dated \_\_\_\_\_ was subscribed before me in person this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Thom Walker, Mayor, and by Michele McPherson, City Administrator of the CITY OF PRINCETON (a Minnesota Municipal Corporation), who are personally known to me, on behalf of the Corporation and pursuant to the authority of the City Council.

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