PLANNED UNIT DEVELOPMENT AGREEMENT
(96th and Lincoln Multi-Family Development)

This Planned Unit Development Agreement (this “Agreement”) is made on this 6th
day of February, 2019 (the “Effective Date”), by and between the City of
Papillion, Nebraska, a municipal corporation (hereinafter referred to as “City”), and SB
Communities, LLC, a Nebraska limited liability company (hereinafter referred to as
“Developer”).

RE bâtals:

A. Developer is the lawful owner of the following legally described real property
located in Sarpy County, Nebraska, to-wit:

Lot 123, Lincoln Way, Sarpy County, Nebraska (“96th and Lincoln Multi-
Family Development”). (Exhibit A)

B. The property is zoned R-4 Multiple-Family Residential with PUD-2 Overlay
and has all of the rights and privileges associated with that current zoning district per the
Chapter 205, Zoning Ordinance of the City of Papillion of City’s Municipal Code (the
“Zoning Ordinance”).

NOW THEREFORE, in consideration of the premises and other good and
valuable consideration, the receipt and sufficiency of which is hereby
acknowledged, the parties hereto agree as follows:

Section 1. Permitted Uses. Except as provided for in this Agreement, Lot 123,
Lincoln Way, Sarpy County, Nebraska (“Lot”), may be used and developed pursuant to
Table 205-38 of the Zoning Ordinance. There are no outlots on this project.
Section 2. Site Plan. Developer hereby acknowledges and agrees that the Lot shall be developed generally in accordance with the site plan attached hereto as Exhibit B and incorporated herein by this reference (the "Site Plan").

Section 3. Site Development Regulations. Except as specifically set forth on the Site Plan and in this Agreement, the Lot shall be developed in accordance with the site development regulations for the R-4 Multiple-Family Residential District promulgated under Section 205-66 of the Zoning Ordinance (the "Site Development Regulations"); provided, however, that the following adjustments to the Site Development Regulations shall apply:

A. Building Height. The maximum height for the four story- 88 plex building located at the center of the project shall be 50 feet. The maximum height for all other structures shall be 40 feet.

Section 4. Multi-Family Design Guidelines. Except as specifically set forth on the Site Plan and in this Agreement, the Lot shall be developed in accordance with the multi-family design guidelines promulgated under Article XXX of the Zoning Ordinance (the "Multi-Family Design Guidelines"); provided, however, that the following adjustments to the Multi-Family Design Guidelines shall apply:

A. Community Street. Construction of the private internal drive depicted and identified as the community street within the Site Plan shall substitute for the construction of the community street that meets the requirements promulgated by Section 205-182(D)(2) and Section 182(D)(3).

B. Detached Garage Size. Detached garages shall be limited to eight bays.

C. Parking Garage Location. The Planning Director, or his or her designee, may authorize Developer to locate detached garages adjacent to public streets. Further, the Planning Director, or his or her designee, may authorize developer to utilize any detached parking garage as a retaining wall.

Section 5. Architectural Theme. The building elevations, building materials, and color palette for the development (collectively, the "Architectural Theme") shall be generally consistent with the building elevations set forth on Exhibit C and the building materials and color palette set forth on Exhibit D. The conceptual building elevations shall be compatible with the height, massing, and general design character shown on Exhibit C. It is understood and agreed that the design details for the elevations, facades, columns, window bays, building materials and other architectural features may be modified from time to time by the owner or developer of such building; provided that the Planning Director, or his or her designee, determines that such modifications are consistent with the Architectural Theme.

Section 6. Internal Vehicular Connections. The Parties acknowledge that 96th and Lincoln Multi-Family Development shall be served by the Public Streets to be constructed by Sanitary and Improvement District No. 336 for the overall development of Lincoln Way. Developer shall be responsible for all maintenance for the internal vehicular connections within the Lot (the "Internal Vehicular Connections") to such adjacent public streets. The Parties agree that maintenance of the Internal Vehicular Connections shall be the sole
responsibility of Developer.

Section 7. Landscaping – Plant Materials
A. Plant materials shall meet City of Papillion’s size standards.
B. Landscaping shall be installed consistent with the Landscape Plan (Exhibit “E”).
C. A variety of tree and shrub species shall be utilized to provide visual, four-season interest. Not more than one-third (1/3) of the required number of trees and shrubs may be comprised of any one (1) species and at least one-third (1/3) of the required plants should be a coniferous or evergreen species.
D. Low Native Grasses
   1. Low Native Grasses shall be defined as the establishment of prairie, naturalistic, and meadow plant communities (the “Low Native Grasses”). Low Native Grasses is an acceptable substitute for turf as depicted on the Landscape Plan (Exhibit “E”). These treatments may exceed 12” in height.
   2. Developer shall provide maintenance by skilled landscape employees with training for native plant communities. Maintenance shall begin immediately after plants are installed and continue until plantings are acceptably healthy and well established but for not less than a one-year maintenance period.
   3. At the end of the maintenance period, a healthy, well rooted, even colored, viable Low Native Grasses will be considered established if it is free of weeds, with desired plant species coverage exceeding ninety percent (90%) over any ten square foot (10 sq. ft.) area with bare spots not exceeding twenty-five square inches (25 sq. in.).
   4. After the one year maintenance period to establish the Low Native Grasses, Developer shall continue to maintain a healthy, well rooted, even colored, viable Low Native Grasses that are free of weeds, with desired plant species coverage exceeding ninety percent (90%) over any ten square foot (10 sq. ft.) area with bare spots not exceeding twenty-five square inches (25 sq. in.).

Section 8. Miscellaneous.

A. Agreement Binding. The provisions of this Agreement shall run with the land and shall be binding upon, and shall inure to the benefit of, the Parties to this Agreement and all their respective representatives, successors, assigns, heirs, and estates, including all successor owners of the real estate described in the attached Exhibit A, or any future replatting of the same. Every time the phrase “successors and assigns” is used throughout this Agreement, it is to be attributed the same meaning as this “Agreement Binding” provision. No special meaning shall be given to any instance in this contract in which the name of a Party is used without the phrase “successors and assigns” following immediately thereafter, unless expressly stated otherwise.
B. **Notices.** All notices, demands and requests required or permitted to be given under this Agreement (collectively the "Notices") must be in writing and must be delivered personally, by nationally recognized overnight courier, or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth below. Notices shall be effective upon receipt if delivered personally, on the next business day if sent by overnight courier, or three (3) business days after postmark if mailed. The initial addresses of the parties shall be:

**To City:**
City of Papillion  
Attn: City Clerk  
122 E 3rd Street  
Papillion, Nebraska 68046

**To Developer:**
SB Communities, LLC  
Attn: Jerry Slusky  
8712 W. Dodge Rd, Ste 400  
Omaha, Nebraska 68114

Such address may be changed from time to time by notice to all other Parties.

C. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

D. **Entire Agreement.** This Agreement, and the exhibits and documents referenced in this Agreement (which are intended to be and hereby are specifically made a part of this Agreement whether or not so stated), express the entire understanding and all agreements of the Parties. Specifically, this Agreement supersedes any prior written or oral agreement or understanding between any of the Parties, whether individually or collectively, concerning the subject matter hereof.

E. **Amendments.** This Agreement may be amended, modified or supplemented in writing by City and Developer as follows:

i. **Minor Amendments.** The Planning Director, or his or her designee, may approve minor amendments to the approved Site Plan, provided that:

   a. Changes in the alignment and location of structures do not exceed ten feet in any direction and in no case encroach upon any setbacks.

   b. The floor area of any single building is not changed by more than 5%.

   c. All changes are within the allowable floor area ratios established by the project, are consistent with the adopted Site, and have been approved in writing by any applicable property owners association established within the boundaries of the project Plan.
i. **Major Amendments.** Any amendment that is determined by the Planning Director, or his or her designee, to be a substantial or material change to the Site Plan or Architectural Theme shall be submitted to the Planning Commission for its review and recommendation and then to the City Council for its review and disposition of any such amendment, modification or supplement to this Agreement. Any amendment not conforming to the provisions of Section 7(A)(i) shall be considered tantamount to a new application and shall be submitted to the Planning Commission and City Council according to the procedures for new applications established in Section 205-134 of the Zoning Ordinance.

Any such amendment, modification, or supplement of this Agreement shall be executed by Developer and City and recorded in the Office of the Register of Deeds of Sarpy County, Nebraska (the “Register of Deeds”). Pursuant to the Master Fee Schedule of the City of Papillion, Developer shall reimburse City for any costs incurred recording this Agreement or any amendment, modification or supplement of this Agreement with the Register of Deeds.

F. **Successors and Assigns.** This Agreement shall run with the Lot and any future replatting(s) of said Lot and shall be binding upon the parties hereto and their successors and assigns.

G. **Recordable Agreement.** This Agreement shall be indexed and recorded against the Lot, and any future replatting of the same, in the Register of Deeds.

H. **Nondiscrimination.** Neither City nor Developer, nor their respective agents, contractors, and consultants shall, in the performance of this Agreement, discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political or religious opinions or affiliations, national origin, or disability.

I. **Governing Law.** The Parties to this Agreement shall conform to all existing and applicable CITY ordinances, resolutions, state and federal laws, and all existing and applicable rules and regulations. Any dispute arising from this contractual relationship shall be governed solely and exclusively by Nebraska law.

J. **Forum Selection and Personal Jurisdiction.** Any dispute arising from this contractual relationship shall be solely and exclusively filed in, conducted in, and decided by the courts located in Sarpy County, Nebraska. As such, the Parties also agree to exclusive personal jurisdiction in the courts located in Sarpy County, Nebraska.

K. **Contract Voidable.** No elected official or any officer or employee of City shall have a financial interest, direct or indirect, in any City contract. Any violation of this subsection with the knowledge of the person or corporation contracting with City shall render the contract voidable by the Mayor or City Council.

L. **No Waiver.** None of the foregoing provisions shall be construed to imply any
waiver of any provision of the zoning or planning requirements or any other section of the Papillion Zoning Code or Ordinances unless expressly stated.

M. **Assignment.** Neither this Agreement nor any obligations hereunder shall be assigned without the express written consent of City, which may be withheld in City's sole discretion.

N. **Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience, and in no way define or limit the scope of any section.

O. **Severability.** In the event that any provision of this Agreement which shall prove to be invalid, void or illegal by a court of competent jurisdiction, such decision shall in no way affect, impair, or invalidate any other provisions hereof, and such other provisions shall remain in full force and effect as if the invalid, void, or illegal provision was never part of this Agreement.

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written.

[Signatures on following pages]
CITY OF PAPILLION, a Municipal Corporation

By: ____________________________
               Mayor David P. Black

Attest: __________________________
               City Clerk Nicole L. Brown

[Seal]
SB COMMUNITIES, LLC, a Nebraska limited liability company,

By: JERRY SLUSKY, Manager Member

STATE OF NEBRASKA )
COUNTY OF SARPY ) ss.

On this 16th day of February, 2019, before me, a Notary Public in and for said County, personally came JERRY SLUSKY, Manager Member of SB COMMUNITIES, LLC, a Nebraska limited liability company, known to me to be the identical person whose executed the above instrument, and acknowledged the execution thereof to be such person’s voluntary act and deed on behalf of said limited liability company.

Notary Seal:

[Notary Seal Image]

GENERAL NOTARY-State of Nebraska
EMILY HARTMANN
My Comm. Exp. July 18, 2022
EXHIBIT A
LEGAL DESCRIPTION

LOT 123, LINCOLN WAY, A SUBDIVISION AS SURVEYED, PLATTED, AND RECORDED IN SARPY COUNTY, NEBRASKA.
18-055  NEW MULTI-FAMILY
STERLING APARTMENTS - 88-PLEX

PAPILLION, NEBRASKA

Preliminary
not for
construction

ISSUE > DD SET 2018.07.03
18-055 NEW MULTI-FAMILY
STERLING APARTMENTS - 44-PLEX

PAPILLION, NEBRASKA

Preliminary
not for construction

ISSUE > DD SET 2018.06.28