

CITY OF ORONO
HENNEPIN COUNTY, MINNESOTA

AMENDMENT NUMBER 3 TO
PLANNED UNIT DEVELOPMENT NO. 1 AGREEMENT FOR

EAST WILLOW WOODS

Developer: Clifford L. Otten

Applicant: Harvest Moon Natural Food Co-op

THIS AGREEMENT made and entered in this _____ day of _____, 20____, by and between the City of Orono, a municipal corporation organized under the laws of the State of Minnesota (hereinafter called "City"); and Clifford L. Otten and Louise W. Otten, husband and wife, their heirs, successors and assigns (hereinafter collectively called the "Developer"); and Harvest Moon Natural Food Co-op, its successors and assigns (hereinafter called "Applicant").

WITNESSETH:

WHEREAS, the Developer entered into an Agreement dated April 23, 1990 (hereinafter called "Agreement") to develop East Willow Woods as a Planned Unit Development on all the terms and conditions set forth in that certain Agreement. The Agreement was recorded with the Hennepin County Recorder's Office on October 26, 1990 as Document No. 2132695; and

WHEREAS, in 1998 the Developer requested and the City approved an amendment to the Agreement (hereinafter "Amendment 1") to allow for the construction of entrance monuments, a loading dock, and a greenhouse addition adjacent to the existing principal structure. Amendment 1 is dated October 12, 1998; and was recorded with the Hennepin County Recorder's Office on _____ as Document No. _____; and

WHEREAS, in 2003 the Developer requested and the City approved a further amendment to the Agreement (hereinafter "Amendment 2") to allow for the construction of an additional greenhouse roof section adjacent to the principal building and the greenhouse. Amendment 2 is dated _____, 2003, and will be simultaneously recorded with this Amendment; and

WHEREAS, the Applicant is requesting a third Amendment to the Agreement (hereinafter "Amendment 3") to occupy the western 9,800 square feet of the existing commercial building on the Property with a retail grocery store and other ancillary commercial uses, and to allow a minor expansion of the exterior envelope of the building to allow grocery cart storage within the western vestibule area; and

WHEREAS, the Applicant is further requesting a variance to allow 132 parking spaces, where 183 spaces are required to serve the defined uses on the Property; and

WHEREAS, the City Council has granted approval for such Amendment 3, after a public hearing and consideration and recommendation by City staff and the Planning Commission,

NOW, THEREFORE, in consideration of the premises, and of the mutual promises and conditions hereinafter contained, it is hereby agreed as follows:

1. **Property Description**: Property description for Amendment 3 is the same as that for the Agreement.
2. **Zoning**: Property continues to be zoned as a Planned Unit Development under the Orono planned unit development ordinance with underlying B-6 zoning.
3. **Permitted Uses**: Amendment 3 allows retail food sales not exceeding 9,800 square feet as a permitted use on the Property. Ancillary retail sales shall also be permitted, but shall not occupy or utilize more than ten percent (10%) of the retail food operations square footage.
4. **Variance**: Applicant is allowed to proceed with the proposed site plan whereby 132 onsite parking spaces will be available.
5. **Site Access**: The site access to Lot 1 via Willow Drive will be studied at the time Willow Drive is reconstructed by the City. However, site access to Lot 1 may be studied before the reconstruction of Willow Drive if traffic or site access problems are encountered earlier. Such study shall be performed by a consultant mutually acceptable to the City and the Developer, and the City and Developer shall be guided by the recommendations of the consultant.
6. **Building Design and Construction**: Building design and construction of the retail grocery store in Amendment 3 shall be constructed according to the plans on file with the City of Orono. Specifically, the Developer and Applicant shall submit a detailed plan illustrating all exterior lighting and signage, as well as illustrating the minor expansion of the enclosed vestibule for grocery cart storage. Grocery carts shall not be stored in the exterior portion of the building but shall be stored inside the building or within the enclosed vestibule. No amplified or electronically enhanced sounds shall be allowed on the exterior portion of the building. No exterior storage or sales associated with the retail grocery operation shall be allowed on the Property.
7. **Hours of Operation**: The retail grocery store and ancillary commercial operations shall be limited to 6:00 a.m. to 11:00 p.m. seven days a week.
8. **Signs**: The signs and signage shall not be changed from the requirements of the Agreement.
9. **Compliance**: The obligations of compliance in the Agreement are extended to include this Amendment 3.
10. **Binding Effect**: The binding effect of the Agreement is extended to include this Amendment 3.

11. **Notices:** The notice provisions of the Agreement are extended to include this Amendment 3.

12. **Incorporation by Reference:** The plans, specifications and contracts for the improvements in the Agreement and for this Amendment 3 are made part of this Amendment 3.

13. **Disclaimer by City:** The Disclaimer in the Agreement is extended to this Amendment 3.

14. **Hold Harmless and Indemnification:** The Hold Harmless and Indemnification of the Agreement is extended to this Amendment 3.

15. **Remedy for Default:** The Remedy for default in the Agreement is extended to this Amendment 3.

16. **Controlling Agreement:** The terms of this Amendment 3 will first control its reading, and it shall be read together with the terms of the Agreement. These two documents shall control to the extent that there is any difference or ambiguity between them and other agreements between the City and the Developer.

IN WITNESS WHEREOF, the City and Developer have caused this Amendment 3 to be duly executed and to become effective on the day and year first above written.

In Presence of:

CITY OF ORONO

BY: _____

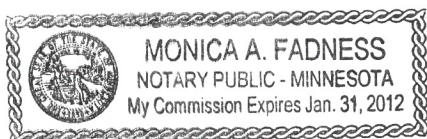
James White
Its Mayor

BY: _____

Linda S. Vee
Its City Clerk

STATE OF MINNESOTA)
 (ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 9th day of November, 2009, by James White and by Linda S. Vee, respectively the Mayor and City Clerk of the City of Orono, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.



Monica Fadness
Notary Public

In Presence of:

DEVELOPER:

Clifford L. Otten

Clifford L. Otten

Louise W. Otten

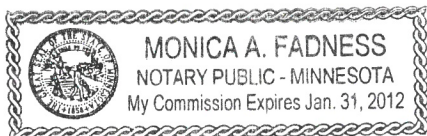
Louise W. Otten

Reviewed for Administration:

Dated: _____

STATE OF MINNESOTA)
 (ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 16th day of November,
20 09, by Clifford L. Otten and Louise W. Otten, husband and wife, the Developer.



Monica A. Fadness
Notary Public

In Presence of:

APPLICANT:
HARVEST MOON NATURAL
FOOD CO-OP

John O'Reilly

BY: J.P. O'Reilly

Its

Reviewed for Administration:

Dated: _____

STATE OF MINNESOTA)
(ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 13th day of November,
2009, by John O'Reilly the Applicant of Harvest Moon
Natural Food Co-op, on its behalf, the Applicant.

Rachel Dodge

Notary Public



DRAFTED BY:
CAMPBELL KNUTSON
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SMM