



AFTER RECORDING RETURN TO:

Michael D. Matejka  
WOODS & AITKEN LLP  
10250 Regency Circle, Suite 525  
Omaha, NE 68114

**DEVELOPMENT AND USE AGREEMENT**

THIS DEVELOPMENT AND USE AGREEMENT (“Agreement”) dated July 26<sup>th</sup> 2019 (the “Effective Date”), is made and entered into by and between 192 Maple, LLC, a Nebraska limited liability company (“Developer”), and FTF Investments, LLC, a Nebraska limited liability company (“Owner”). Developer and Owner may be referred to herein individually as a “Party” and collectively as the “Parties.”

**PRELIMINARY STATEMENT**

Contemporaneously with the execution of this Agreement, Owner acquired from Developer ownership of that certain real estate legally described as Lots 15 and 16 Antler View, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (collectively, the “Property”). As a condition precedent to such acquisition, Owner and Developer agreed to execute and exchange this Agreement evidencing their agreement and understanding with respect to the development and use of the Property.

**TERMS AND CONDITIONS**

In consideration of the foregoing Preliminary Statement, which is repeated in its entirety in this portion of this Agreement, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner agree as follows:

1. Development Agreement with City of Omaha. The Property and any development and use of the Property is subject to the terms and provisions of the Antler View Mixed Use Development Agreement dated July 25, 2017, as amended, by and among Developer and the City of Omaha, (as amended, the “Development Agreement”), a copy of which Development Agreement and its amendments Owner acknowledges receiving. From and after the date of Owner’s acquisition of the Property, Owner and its successors and assigns agree to assume and perform all of the obligations under the Development Agreement, if any, imposed on the owner of the Property or which are applicable to the Property.

2. Plans. Prior to the commencement of any building or any other improvements on the Property, Owner shall deliver to Developer or its designee (i) a site plan of the Property depicting any

building and all other improvements to be constructed on the Property (such building and other improvements are referred to collectively as the "Project"); and (ii) architecturally certified plans and specifications of the Project, including elevations of the building, landscaping plans, grading plans, and exterior signage drawings (collectively, the "Plans"). Developer shall have a period of ten (10) business days after receipt within which to review and either (a) approve, (b) partially approve and require revisions with respect to the balance, or (c) reject such Plans, which approval by the Developer will not be unreasonably withheld or conditioned provided such Plans are consistent with and reflective of the other provisions of this Agreement. Developer agrees that the materials and architecture used on previous office condo developments by Owner, as provided by Owner to Developer prior to the date hereof, are acceptable.

3. Restrictions. The Property shall be subject to the following restrictions which may be removed or modified only with the prior written consent of Developer and Owner, which written consent shall not be unreasonably withheld, condition, or delayed:

A. Use of Property. The building(s) constructed within the Property shall be used for the construction and operation of five (5) first class office buildings, not exceeding twenty five feet (25') in elevation as measured from ground level and not including roofline and/or architectural features, and containing an aggregate of not more than seventy thousand (70,000) square feet of gross building area.

B. Prohibited Uses.

- (i) Any use which emits an obnoxious odor, noise, or other excessive or unreasonable sound which can be heard or smelled outside of any building within the Property;
- (ii) Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation;
- (iii) Any pawnshop, army surplus store, salvage store, or "second hand" store whose principal business is selling used merchandise, thrift shops, Salvation Army type stores and "goodwill" type stores;
- (iv) Any mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance);
- (v) Any dumping, disposing, incineration, or reduction of garbage (exclusive of approved enclosed garbage containers located at the rear or side of any building within the Property);
- (vi) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- (vii) Any central laundry, dry cleaning plant, laundromat, or laundry pick-up facility;

(viii) Any automobile, truck, trailer, boat, mobile home or recreational vehicle sales, leasing, display, storage or body shop repair operation or gas station;

(ix) Any bowling alley or skating rink;

(x) Any movie theater or live performance theater, banquet hall, auditorium or other place of general public assembly;

(xi) Any church, school or religious reading room;

(xii) Any animal raising facility;

(xiii) Any mortuary or funeral home;

(xiv) Any establishment selling or exhibiting (a) pornographic, or (b) any merchandise or material commonly used with or in consumption of any narcotic, dangerous drug or other controlled substance, including without limitation, any hashish pipe, waterpipe, bong, cilium, pipe screens, rolling papers, rolling devices, coke spoons, or roach clips;

(xv) Any bar, tavern, liquor store, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty percent (30%) of the gross revenues of such business;

(xvi) Any flea market, laser tag or virtual reality facility, game room, amusement or video arcade, pool or billiard hall, car wash, gun range, dance hall, discotheque, or massage parlor;

(xvii) Any training or educational facility, including, but not limited to, barber colleges, or other operations catering primarily to students or trainees rather than to customers; provide, however, this prohibition shall not be applicable to on-site employee or customer training by the Owner of the Property incidental to the conduct of its business;

(xviii) Any gambling activity, facility or operation, including but not limited to, off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall; and

(xix) Any stand-alone nail salon, provided, however, this restriction shall not apply to a spa/beauty salon/hair salon which has no more than two (2) pedicure chairs and/or two (2) nail stations within such spa/beauty salon/hair salon.

C. Hazardous Uses. The Property shall not be used nor shall the Owner of the Property permit the use of Hazardous Materials (as hereinafter defined) on, about, under or in the Property, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws.

For the purpose of this paragraph (C), the term (i) “Hazardous Materials” shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law, and (ii) “Environmental Laws” shall mean all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, or both, all as may be amended from time to time.

D. Restricted Temporary Uses. No portion of the Property shall be used for traveling carnivals, fairs, auctions, shows, kiosks, booths for the sale of fireworks, sales by transient merchants using vehicles, booths, or tents, or any other outdoor promotions of any nature.

E. Restricted Uses. The Property shall not be occupied or used for any of the following uses (i) for any purpose or use which violates the provisions of that certain Declaration of Antler View Business Association dated January 29, 2018, and recorded January 30, 2018, as Instrument No. 2018007870 in the office of the Douglas County, Nebraska Register of Deeds; or (ii) as a discount store; or (iii) as a supermarket or grocery store; or (iv) for the operation of a drug store; or (v) or a so-called pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any purpose requiring the presence of a qualified pharmacist or other person authorized by law to dispense medical drugs, directly or indirectly, for a fee or remuneration of any kind, except as may be incidentally sold or dispensed in conjunction with medical, dental, veterinarian or other services; or (vi) as a facility dispensing gasoline or petroleum products or as a convenience food mart, or combination of both; or (vii) any clinic or facility providing abortion services; or (viii) as a general merchandise store or department store; or (ix) for the retail sale of pets (including but not limited to fish, birds, reptiles, dogs, cats and other small mammals), pet grooming, veterinary and other pet services, pet food, pet accessories and other pet products; or (x) automobile or truck repair or services (including lubrication) facility; or (xi) any, fitness center or workout facility; or (xii) as a beauty school or barber school or technical school other place of instruction; or (xiii) sale of beauty supply items or the sale of so-called health and/or drug sundries as defined in the Retail Drug Control Act, except to the extent that the shelving devoted to such use measured horizontally on the floor does not exceed one hundred (100) lineal feet; or (xiv) child day care center of pre-school facility; or (xv) a facility for emergency residential care or hospital services; (xvi) any other use not permitted within a general office district by the zoning code of the City of Omaha.

F. Permitted Uses List

The below uses are permitted within the Antler View Development and subject to all City of Omaha permitting approval. They include the following:

- a) Offices Uses
  - a. Financial services
  - b. General offices
  - c. Medical offices (Chiropractor, dentist, general medical practitioner)
- b) Civic Uses
  - a. Administrative services
  - b. Guidance services
- c) Commercial Uses
  - a. Business support services

- b. Business or Trade School
- c. Personal services, including Salon Suites & Executive Office Suites
- d. Research services

G. Buildings and Site Improvements. The Property shall be developed under the following standards unless otherwise approved by the Developer in its sole discretion:

(1) The design and construction of any building or any remodeling, reconstruction or permitted expansion thereof shall be of high quality. Any building constructed within the Property shall have a glass, brick, stone, or EIFS exterior (or combination thereof) or be constructed with other similar materials acceptable to Developer in its sole discretion.

(2) No more than five (5) buildings shall be constructed on the Property; such buildings shall not exceed twenty-two feet (25') in elevation as measured from ground level, not including the roofline and/or any architectural element which may extend above the general roofline of the front elevation by up to five feet (5') with a total aggregate width of such element of no more than twenty percent (20%) of the length of such front elevation. No detached facilities, buildings or structures (except approved signage and an approved dumpster enclosure) of any kind shall be constructed on the Property.

(3) The building(s) constructed on the Property shall not exceed in the aggregate seventy thousand (70,000) square feet of gross building area, excluding any drive-thru areas, canopies, and underground parking.

(4) Any rooftop equipment or building components shall be screened from public view from all directions.

(5) No rooftop sign shall be erected on any building constructed on the Property.

(6) Subject to governmental approval and the Development Agreement, only [one (1)] freestanding monument style (as defined by applicable City of Omaha Municipal Code) identification sign may be erected on the Property in a design and location approved by Developer not to be unreasonably withheld and may advertise only the name of the building and any of its tenants and their logos; such identification sign shall not exceed twelve feet (12') in height and eleven feet (11') in width. Notwithstanding the foregoing, there may be erected by Owner directional signs to facilitate the free flow of traffic, which signage shall be of a monument style, not to exceed four feet (4') in height and three feet (3') in width. Further notwithstanding the foregoing, with the prior written approval of Developer regarding size, color, materials and design which approval will not be unreasonably withheld or delayed, Owner shall be entitled to display exterior signage on the building(s) within the Property in accordance with the Property's allocated sign area which the Parties acknowledge and agree to be nine hundred fifty (950) square feet, measured in accordance with the City of Omaha sign ordinances. The

parties agree that in the event such allocation is more than needed upon completion of the Property, such reasonable excess amount may be allocated to the other commercial lots.

(7) No additional buildings or other improvements shall be constructed, erected, expanded or altered within the Property until the Plans have been approved by Developer in accordance with Section 2 above. Notwithstanding the provisions of this Agreement, Owner shall have the right to make such alterations, additions or improvements to the interior of any building on the Property without the prior written approval by Developer.

(8) Until such time as the Property is developed and improved by its Owner, such Owner shall keep the same mowed and in a clean and slightly condition.

(9) The Owner of the Property shall continuously provide and maintain a parking ratio which satisfies applicable City of Omaha Municipal Code subject to any applicable variance or waiver.

(10) No outdoor satellite shall be installed on the roof of any building or within or on any portion of the Property without the prior approval of Developer which will not be unreasonably withheld or delayed, provided the view of any proposed outdoor satellite is fully screened from public view.

(11) Any area within the Property which houses refuse dumpsters or garbage containers shall be completely surrounded on three (3) sides with a wall the exterior of which shall be constructed of the same materials as the building(s) constructed on the Property or similar style and quality; the entrance to such area shall be gated with wrought iron or metal resembling wrought iron.

(12) No barricades or fences of any kind shall be constructed on the Property except as approved by Developer in its sole discretion.

(13) The property may be subdivided into smaller lots in accordance with the building phasing plan of the office development for the purposes of financing and assimilating buildings into a Condominium Association. The property shall not be subdivided into smaller lots for purpose of sale to another party for a use other than office condos.

(14) All utilities and sewers serving and located within the Property shall be installed underground.

(15) The roof or portion thereof of any building which is visible to the public and constructed within the Property shall not be metal.

4. **Indemnity.** Owner, its successors and assigns shall indemnify, defend and hold harmless Developer, its affiliates, and their respective members, managers, shareholders, officers, directors, employees, agents, contractors and representatives (collectively, the “Seller Indemnified Parties”) from and

against all loss, damages, liability, costs or expenses, including, but not limited to, reasonable attorney's fees and all other sums incurred by or threatened against the Seller Indemnified Parties because of any claim or assertion of liability arising or alleged to have arisen out of any act or omission of Owner, its agents, employees and contractors, for any work to be performed by or at the direction of the Owner pursuant to this Agreement.

5. Miscellaneous.

A. All notices, requests, demands or other communications ("Notices") hereunder shall be in writing and given by certified mail, return receipt requested or by national overnight courier (e.g., Federal Express, UPS, Airborne) and in the case of courier service, shall be effective as of the date of delivery to the intended recipient as shown on the courier's records, and in the case of mail, shall be effective three (3) days (excluding weekends and holidays) after mailing. Notices shall be addressed as shown below or to such other address as may be specified from time to time in writing by either Party:

If to Developer:	192 Maple, LLC ATTN: R. Thomas Vann 14814 Giles Road Omaha, NE 68138 Tel: (402) 734-4800 <a href="mailto:tomvann@cox.net">tomvann@cox.net</a>
With Copy to:	Michael D. Matejka WOODS & AITKEN, LLP 10250 Regency Circle, Suite 525 Omaha, NE 68114 Tel: (402) 898-7400 Fax: (402) 898-7401 Email: <a href="mailto:mmatejka@woodsaitken.com">mmatejka@woodsaitken.com</a>
If to Owner:	FTF Investments, LLC ATTN: Jason Thiellen 19071 George Miller Parkway Elkhorn, Nebraska 68022 Tel: (402) 540-7161 Email: <a href="mailto:jthiellen@gmail.com">jthiellen@gmail.com</a>
With Copy to:	Fullenkamp, Jobeun, Johnson, & Beller LLP ATTN: Mark Johnson 11440 West Center Road, Suite C Omaha, NE 68144 Tel: (402) 334-0700 Email: <a href="mailto:mjohnson@fjblaw.com">mjohnson@fjblaw.com</a>

B. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, a partnership, or any other similar relationship between the Parties.

C. The captions heading the various sections of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

D. This Agreement, and all of its exhibits and incorporated documents, constitutes the entire integrated agreement between Owner and Developer relating to the items described herein, and supersedes all prior negotiations, representations, understandings and agreements, either written or oral.

E. This Agreement shall be interpreted according to Nebraska law. The invalidity of any provision of this Agreement shall not affect the remaining provisions. One or more waivers of a default shall not be deemed a waiver of a later default.

F. In the event Developer does not respond to Owner's written requests for approvals or consents of Developer as required by this Agreement, within thirty (30) calendar days of the effective date of delivery to Developer of such Owner's written request, such request shall be deemed approved.

G. This Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns. The obligations of Owner under this Agreement shall be deemed covenants running with the land and shall bind the Property, and every owner acquiring an interest in the Property, in perpetuity. The Owner acknowledges that the execution and delivery of this Agreement was a material inducement to and consideration for Developer's conveyance of the Property to Owner.

H. Developer shall have the right to delegate or assign any approval or consent rights under this Agreement upon written notice to Owner.

I. This Agreement may be amended only by written agreement of the Parties and their respective successors and assigns which amendment shall be deemed effective upon recordation against the Property with the Register of Deeds of Douglas County, Nebraska.

**[Remainder of Page Left Intentionally Blank; Execution Page Follows.]**



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of Effective Date.

**DEVELOPER:**

192 MAPLE, LLC, a Nebraska limited liability company

By: [Signature]  
R. Thomas Vann, Manager

**OWNER:**

FTF Investments, LLC, a Nebraska limited liability company

By: [Signature]  
Chris Falcone, Member

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 25 day of July, 2019, by R. Thomas Vann, Manager of 192 Maple, LLC, a Nebraska limited liability company, on behalf of the company.



[Signature]  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 26 day of July, 2019, by Chris Falcone, Member of FTF Investments, LLC, a Nebraska limited liability company, on behalf of the company.



[Signature]  
Notary Public