Item #4:

Ordinance Amending Code Rezoning From R-2To HR

The Arbor Grove

VILLAGE OF LONG GROVE

ORDINANCE NO. 2010-O-__

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR A PLANNED UNIT DEVELOPMENT AND APPROVING A PRELIMINARY PLANNED UNIT DEVELOPMENT PLAT FOR THE PROPERTY LOCATED AT 2727 ROUTE 53

Adopted by the
President and Board of Trustees
of
the Village of Long Grove
this __ day of ____, 2010

Published in pamphlet form by direction
and authority of the Village of Long Grove,
Lake County, Illinois
this __ day of ____, 2010

VILLAGE OF LONG GROVE

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WHEREAS, pursuant to Ordinance No. 98-O-17, the Village of Long Grove (the "***Village***") approved the annexation of approximately 14.2 acres located generally at 2727 Route 53 and legally described in Exhibit A (the "***Property***"); and

WHEREAS, pursuant to Ordinance No. 98-O-18, the Village approved a Planned Unit Development for the Property to authorize the construction and operation of a retail garden center and related improvements; and

WHEREAS, this Ordinance is intended to replace Ordinance No. 98-O-18, including Section 11 of such Ordinance, in its entirety; and

WHEREAS, the owner of the Property (the "***Owner***") has applied for a Special Use Permit ("***SUP***") for a Planned Unit Development ("***PUD***") and a Preliminary PUD Plan approval (the "***Requested Relief***"); and

WHEREAS, the Owners seek to have the entire Property rezoned into HR Highway Retail district and developed as a PUD with one multi-story commercial office building, one commercial office building, and five additional commercial buildings (the "***Proposed Development***"); and

WHEREAS, pursuant to notice duly published in accordance with state law, the Long Grove Plan Commission commenced a public hearing on May 4, 2010, and continued from time-to-time, for the purposes of hearing and considering testimony on the Owner's request for approval of the Requested Relief; and

WHEREAS, during the public hearings, representatives of the Owners presented oral and written testimony, including without limitation the following plans for the Proposed Development:

1. Plat of Survey prepared by Edward J. Molloy & Associates, Ltd., consisting of two sheets, and last revised on January 11, 2010;

2. Traffic Impact Study prepared by Gewalt Hamilton Associates, Inc., consisting of 32 pages, and dated March 12, 2010;

3. Preliminary Site Plan prepared by Allen L. Kracower & Associates, Inc., consisting of one sheet, and dated March 8, 2010;

4. Building Elevation Concepts prepared by Allen L. Kracower & Associates, Inc., consisting of two sheets, and dated March 8, 2010;

5. Preliminary Engineering Plans prepared by Cross Engineering & Associates, Inc., consisting of seven sheets and dated March 11, 2010;

6. Preliminary Plat Arbor Grove Subdivision prepared by Edward J. Molloy & Associates, Ltd., consisting of two sheets, and dated March 8, 2010;

7. Preliminary Landscaping Plan prepared by Allen L. Kracower & Associates, Inc., consisting of one sheet, and dated March 8, 2010;

8. Preliminary Signage Plan prepared by Allen L. Kracower & Associates, Inc., consisting of one sheet, and dated March 8, 2010;

9. Preliminary Lighting Plan prepared by Allen L. Kracower & Associates, Inc., consisting of one sheet, and dated March 8, 2010; and

10. Proposed modifications, prepared by Allen L. Kracower & Associates, Inc., dated June 15, 2010, and consisting of the following:

    a. Development and Tenant Monument Sign

    b. Lot 5 Detail

    c. Lot 6 Detail

    d. Lot 4 Detail

    e. Outlot A Pathway

all attached to this Ordinance as Exhibit B (collectively, "***Preliminary PUD Plans***"); and

WHEREAS, during the June 15, 2010, continuation of the public hearing the Plan Commission made the following findings:

1. According to the testimony and other evidence presented by the Owners, including the Preliminary PUD Plans, the Proposed Development consists of one multi-story commercial office building, one commercial office building, and five additional commercial buildings on the Property.

2. The Owners testified that additional changes may be required from the Preliminary PUD Plans, but the Proposed Development recommended for approval will be constructed in substantial conformity with the Preliminary PUD Plans.

3. The evidence presented demonstrates that, subject to the conditions hereinafter set forth, the construction and maintenance of the Proposed Development on the Property:

   (a) is consistent with the stated purpose of the PUD regulations;

   (b) meets the requirements and standards of the PUD regulations;

   (c) makes adequate provision for public services, provides adequate control over vehicular traffic, provides and protects designated open space, and furthers the amenities of light and air, recreation, and visual enjoyment;

   (d) is compatible with the adjacent properties and neighborhood;

   (e) is not detrimental to the tax base and economic well-being of the entire community; and

   (f) conforms with the intent and spirit of the comprehensive plan of the Village.

4. The evidence presented demonstrates that the Proposed Development satisfies the requirements for granting a SUP for a preliminary PUD and approving the Preliminary PUD Plans to permit the Proposed Development on the Property, subject to the terms and conditions hereinafter set forth;

WHEREAS, based on these findings, the Plan Commission recommended that a SUP be granted for a PUD and the Preliminary PUD Plans be approved to permit the Proposed Development on the Property; and

WHEREAS, the President and Board of Trustees, having considered the recommendations of the Plan Commission and being fully advised in the premises, have determined that it is in the best interests of the Village and its residents to grant a SUP for a PUD and approve the Preliminary PUD Plans to permit the Proposed Development on the Property, subject to the terms and conditions of this Ordinance as hereinafter set forth; and

WHEREAS, the President and Board of Trustees have adopted Ordinance No. 2010-O-__ zoning the Property into the HR Highway Retail District;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, COUNTY OF LAKE, STATE OF ILLINOIS, as follows:

SECTION ONE: Recitals. The foregoing recitals are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section.

SECTION TWO: Grant of a SUP for a PUD and Approval of the Preliminary PUD Plans. Pursuant to Sections 5-9-3-3 and 5-11-6 of the Long Grove Zoning Code, and subject to the limitations therein and the conditions set forth in Section Three of this Ordinance, a SUP for a PUD shall be, and is hereby, granted and the Preliminary PUD Plans shall be, and are hereby, approved to permit the Proposed Development on the Property. In connection with the approval of the SUP and the Preliminary PUD Plans, the Village Board hereby grants relief from the bufferyard, conservancy district, impervious surface area, parking, and scenic corridor easement requirements of the Long Grove Village Code as necessary to permit the Proposed Development on the Property as depicted on the Preliminary PUD Plans. Upon approval of the final PUD for the Proposed Development on the Property Ordinance No. 98-O-18 will be superseded.

SECTION THREE: Conditions on Approval. The approvals granted pursuant to Section Two of this Ordinance shall be, and they are hereby, conditioned upon and limited by the following conditions, the violation of any of which shall, in the reasonable discretion of the President and Board of Trustees, be grounds for the repeal and revocation of the approvals granted herein:

A. No Authorization of Work. This Ordinance does not authorize commencement of any work on the Property. Except as otherwise specifically provided in writing in advance by the Village, no work of any kind shall be commenced on the Property pursuant to the approvals granted in this Ordinance except only after all conditions of

this Ordinance precedent to such work have been fulfilled, including without limitation approval and recordation of a final plat of subdivision and final PUD plat and Village approval of final engineering plans for the Proposed Development, and after all permits, approvals, and other authorizations for such work have been properly applied for, paid for, and granted in accordance with applicable law.

B. Compliance with Laws. The Zoning Code, the Subdivision Code, the Building Code, and all other applicable ordinances and regulations of the Village shall continue to apply to the Property, and the development and use of the Property shall be in compliance with all laws and regulations of all other federal, state, and local governments and agencies having jurisdiction over the Property.

C. Final Planned Unit Development Plat. Unless a phasing plan is otherwise approved by the Village Board, within 30 months after the effective date of this Ordinance, the Owner shall submit for review and approval, in accordance with Chapter 9 of the Zoning Code, a final planned unit development plat ("***Final PUD Plat***") the development of the Property, which Final PUD Plat shall substantially conform to the Preliminary PUD Plans and address all elements of the entire property. The failure to submit an application for approval of a Final PUD Plat for the Property within the time periods set forth in this Subsection shall render null and void the approvals granted in this Ordinance for the property. The Final PUD Plat shall depict the location and layout of individual buildings and lots within the Property, as well as all parking spaces for the Property. The Final PUD Plat shall also depict all conservancy and scenic corridor easement areas as depicted on the Preliminary PUD Plans, and shall contain language reasonably approved by the Village Attorney restricting development within such areas. In processing the Final PUD Plat, Owner may combine or otherwise alter lots from those depicted on the Preliminary PUD Plans without having to repeat the preliminary PUD process; provided however, that to the extent the Village board determines that the proposed Final PUD Plat is markedly variant from the objectives of the Preliminary PUD Plans, the Owner may be required to repeat the preliminary PUD process. Should Owner fail to continue to pursue a Final PUD Plat, then only permitted HR uses shall be authorized on the Property absent an approval of a new PUD.

D. Tenants Required. Prior to receiving building permits for any building on the Property, the Owner must demonstrate to the Village's satisfaction that tenants have committed to occupy such building.

E. Scenic Corridor. The Owner shall provide a native seed mix for review and approval of the Conservancy & Scenic Corridor Committee (the "***CSCC***") and effect all plantings in accordance with the planting list submitted to the CSCC. The Owner shall provide a maintenance plan for the plantings in the scenic corridor and naturalized wetland areas. Pathways are acceptable as depicted on the Preliminary PUD Plans

through Outlot A of the scenic corridor and no other areas of the scenic corridor or naturalized wetland areas.

F. Final Engineering. The Owner shall submit to the Village for its review and approval final engineering plans for the Proposed Development, which plans shall substantially conform to the preliminary engineering plans that are part of the Preliminary PUD Plans attached to this Ordinance as Exhibit B. The final engineering plans shall be approved as part of the Final PUD Plat.

G. Landscape Plans. Final landscaping plans for the Property shall be submitted to the Architectural Commission for its review and approval prior to approval of the Final PUD Plat. In addition to the preliminary landscape plans submitted and reviewed, the Architectural Commission has requested that the Owner: (i) consider adding bike racks to the development as a landscape feature, (ii) submit the landscape plan to the Village arborist for review, and (iii) consider uplighting of buildings as proposed for Downtown Long Grove. All landscaping shall be installed in accordance with the Landscaping Plan approved by the Architectural Commission and included as part of the Final PUD Plat. The Owner shall be required to maintain the landscaping on the Property in accordance with good arboricultural and landscaping practices. If, for whatever reason, any of the plantings depicted on any approved landscaping plan are removed, destroyed, or fail to survive two years following (i) the issuance of a certificate of occupancy for the improvements on a particular lot or (ii) initial installation of such plantings, whichever is later, the Owner shall, not later than the next planting season occurring at least 30 days after the Owner receives notice from the Village, replace such plantings with substitute plantings that substantially conform to the size and type of the original plantings, as depicted on the final landscape plans. For purposes of this Subsection, a "planting season" shall be either the period between 15 April and 15 June or the period between 1 September and 1 November in any calendar year.

H. Lighting Plans. Final lighting plans for the Property shall be submitted to the Architectural Commission for its review and approval prior to approval of the Final PUD Plat. In addition to the preliminary lighting plans, the Architectural Commission has requested that the Owner: (i) consider shortening the poles of the "Development Light" fixtures to a suggested 18 feet, (ii) review lighting at entry points to the site for adequacy, and (iii) create a more balanced lighting plan so that if a fixture fails, no dark spots are created. All exterior lighting shall be installed in accordance with the lighting plan approved by the Architectural Commission and included as part of the Final PUD Plat. With the intention of preserving the Village's "dark sky" character to the maximum feasible extent, lighting on the Property shall be reduced to security levels with 90 minutes after the close of each business on each day; for the purposes of this Ordinance, "security levels" shall be no greater than 40 percent of the maximum intensity of the light fixtures.

I. Signage. All signage for the Proposed Development shall be installed in accordance with the signage plan approved by the Architectural Commission and included as part of the Preliminary PUD Plans attached to this Ordinance. Such signs should incorporate a decorative cap similar to the entryway treatment identified in "Commercial Concept Elevation F" for both tenant and development monument signs. Any additional signage shall be reviewed and approved by the Architectural Commission prior to installation of such signage on the Property.

J. Design Standards. Elevations and detailed plans and renderings for any building on the Property shall be submitted to the Architectural Commission for its review and approval prior to approval of the Final PUD Plat. Prior to such approval, the Architectural Commission has requested that the following additional elements be addressed: (i) identification of screening for trash enclosures, (ii) identification materials that will be used and are of a similar quality to those used in the Menards and Sunset Grove developments, (iii) establishment that colors used will be consistent with the Menards and Sunset Grove developments, (iv) incorporation of the elevations identified in the "preliminary architecture" Sheet 2; "Commercial Concept Elevations E & F" in terms, and (v) consideration of the Bannockburn Green development as a model.

K. Environmental Development. Owner shall as part of the Final PUD Plat submittal make best efforts to utilize ecologically friendly initiatives and materials to promote environmentally appropriate and sensitive development of the Property.

L. Permitted Uses. In addition to those permitted uses listed in Section 5-5-5-2 of the Long Grove Zoning Code, the following uses shall be allowed on the Property as permitted uses:

1. All uses permitted in the B-1 Business District pursuant to the Long Grove Zoning Code;

2. All uses permitted in the B-2 Business District pursuant to the Long Grove Zoning Code;

3. All uses permitted in the O and OR Office District pursuant to the Long Grove Zoning Code;

4. Medical office buildings (NAICS 621112);

5. Outdoor dining, ancillary to a primary restaurant use, provided however, that any such outdoor dining shall require a SUP (NAICS 722);

6. Restaurants, with a bar within their premises, provided however, that any such restaurant shall require a SUP (NAICS 722);

7. Fast food restaurants, provided however, that any such fast food restaurant shall require a SUP (NAICS 72221);

8. Garden specialty stores, provided however, that any such garden specialty store shall require a SUP (NAICS 440220);

9. Hotels, provided however, that any such hotel shall require a SUP (NAICS 721110);

10. Auto dealers not exceeding 5 acres, provided however, that any such auto dealer shall require a SUP (NAICS 441110);

11. Theaters, provided however, that any such theater shall require a SUP (NAICS 512131);

12. Banks, provided however, that any drive-through accessory to a bank shall require a SUP (NAICS 522120);

13. Senior housing, including assisted living facilities and continuing care retirement communities; provided however, that any such senior housing facilities shall require a SUP (NAICS 6233);

14. Bed and breakfast accommodations, provided however, that any such accommodations shall require a SUP (NAICS 721191);

15. Daycare centers, provided however, that any such day care center shall require a SUP (NAICS 624410);

16. Tanning salons, provided however, that any such tanning salon shall require a SUP (NAICS 812199);

17. Animal hospital and veterinary clinic, provided however, that any such animal hospital or veterinary clinic shall require a SUP (NAICS 541940);

18. Convenience retail store and drive through accessory use, provided however, that any such store and accessory use shall require a SUP (445120);

19. Printing shops, provided however, that any such printing shops shall require a SUP (NAICS 323114);

20. Game room within a restaurant, provided however, that any such game room within a restaurant shall require a SUP (NAICS 722);

21. Grocery retail stores (NAICS 445110); and

22. Amusement establishments, provided however, that any such establishment shall require a SUP (NAICS 713120).

M. Miscellaneous Use Restrictions.

1. No gasoline station nor automotive service facility shall be permitted on the Property.

2. In addition to the uses authorized in Subsections H and I of this Subsection Three, the following restaurant uses shall be authorized:

a. Establishments conforming to the definition of "Restaurant, Standard" in the Zoning Code (NAICS 722110) are permitted.

b. Restaurants whose fare is predominantly ice cream, yogurt, bagels, juices, coffee, or donuts (NAICS 722213) and not involving drive-in or drive-through facilities shall be permitted without a SUP, provided that no such establishment shall exceed 5,000 square feet in area.

c. Limited Service Restaurants (NAICS 722211) shall be permitted subject to a SUP, except that fast food restaurants shall not be permitted.

d. No drive-in or drive-through restaurant facilities shall be permitted on the Property; provided, however, that as an incidental service to a "Restaurant, Standard," delivery of pre-ordered food by restaurant personnel to a person in a parking space established on the Property pursuant to the Final PUD Plat shall not be deemed a drive-in or drive-through facility.

N. Hours of Operation. Except for the following, the permitted hours of operation for any business on the Property are from 8:00 a.m. to 9:00 p.m.:

1. A restaurant may remain open between 7:00 a.m. and midnight; provided, however, that such restaurant may request approval from the Village Board to extend such hours of operation.

2. A convenience store may remain open between 6:00 a.m. and 12:00 a.m.

3. A bank may have a single 24-hour drive-through automated teller machine.

4. A coffee shop may remain open between 5:00 a.m. and 12:00 a.m.

Any changes to the hours of operation for any business on the Property may be processed as a minor change to the approved final PUD in accordance with Section 5-9-3-6(B) of the Zoning Code.

O. Outdoor Displays. No outdoor display shall be permitted on the Property unless approved in advance by the Village Board.

P. Maximum Impervious Surface. The impervious surface shall not exceed 55% of the area of the property as set forth in Preliminary PUD Plans

Q. Parking. Parking to serve the Proposed Development shall be installed on the Property in accordance with the Preliminary PUD Plans.

R. Improvements. All improvements for the Proposed Development on the Property shall be installed in accordance with approved final engineering plans. Owner shall provide sufficient security for all required improvements for the Proposed Development.

S. Sanitary Sewer. Subject to the Owner's securing all necessary approvals, sanitary sewer service shall be provided to the Proposed Development by sanitary sewers connected to the Lake County sanitary sewer system. The sanitary sewer system shall be built at Owner's sole cost and expense and in accordance with the Final Engineering Plans, which plans shall be subject to the reasonable review and approval of by the Village Engineer.

T. Water. Water service shall be provided to the Proposed Development by a private well system. The well water system shall be built at Owner's sole cost and expense and in accordance with the Final Engineering Plans, which plans shall be subject to the reasonable review and approval of the Village Engineer.

U. Roadway. All roads within the Proposed Development shall be privately owned and maintained and installed in accordance with the Preliminary PUD Plans and the Final PUD Plat, as reasonably reviewed and approved by the Village Engineer, and shall be as depicted on the Final PUD Plat.

V. Declaration of Covenants and Restrictions. Prior to the recordation of the Final PUD Plat, the Owner shall record a declaration of covenants and restrictions, which declaration shall be subject to the reasonable review and approval of the Village Attorney in accordance with the terms of the Annexation Agreement. Such declaration of covenants shall provide that the Owners may not petition to disconnect the Property from the Village and shall be in substantially the form as attached hereto as Exhibit C.

W. Fees and Costs. For any future approval authorized by this Ordinance, Owner shall be responsible for paying all applicable fees relating to the granting of the approvals set forth herein in accordance with the Long Grove Zoning Code. In addition, Owner shall reimburse the Village for all of its reasonable costs (including without limitation engineering, planning, and legal expenses) incurred in connection with the review, consideration, approval, implementation, or successful enforcement of this Ordinance. Any amount not paid within 30 days after delivery of a demand in writing for such payment shall, along with interest and the costs of collection, become a lien upon the Property (or that portion of the Property to which the unpaid amount relates), and the Village shall have the right to foreclose such lien in the name of the Village as in the case of foreclosure of liens against real estate.

X. Transferees. The rights and obligations set forth in this Ordinance shall be binding on Owner and upon any and all of such Owner's heirs, successors, and assigns, and upon any and all successor legal or beneficial owners of all or any portion of the Property. To the extent that a successor becomes bound to the obligation created herein pursuant to a transferee assumption agreement reasonably acceptable to the Village, and such successor demonstrates to the Village that it has the financial viability to meet the obligations herein, Owner shall be released from its obligations under this Ordinance to the extent of the transferee's assumption of such liability. The failure of Owner to provide the Village with an enforceable transferee assumption agreement as herein provided shall result in the respective Owner remaining fully liable for all of its obligations under this Ordinance but shall not relieve the transferee of its liability for all such obligations as a successor to such respective Owner.

In addition, any violation of this Ordinance shall be deemed a violation of the Long Grove Zoning Code and shall subject the respective Owner to enforcement proceedings accordingly.

SECTION FOUR: **Amendments**. Unless otherwise precluded by state law, applications to amend or make administrative or minor changes to this Ordinance, or for other land use approvals for the Property (including but not limited to SUPs), need only be executed by the owner or owners of that portion of the Property that is the subject matter of any such application, and shall not require the authorization or execution by the owner or owners of any other portion of the Property.

SECTION FIVE: **Effective Date**. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form in the manner provided by law; provided, however, that this Ordinance shall be of no force or effect unless and until (i) the

Owner has caused a duly authorized person to execute and file with the Village its unconditional agreement and consent, in the form attached hereto as Exhibit D and by this reference incorporated herein and made a part hereof. If the Owner does not file its unconditional agreement and consent with the Village within 30 days following the passage of this Ordinance, or within such greater time as the Village Board may approve by motion, the Village Board may, in its discretion and without public notice or hearing, repeal this Ordinance and thereby revoke the SUP granted in this Ordinance. Upon this Ordinance having full force and effect, the Village Clerk shall cause it to be recorded in the Office of the Lake County, Illinois Recorder of Deeds.

PASSED this __ day of ____, 2010.

AYES: (0)

NAYS: (0)

ABSENT: (0)

APPROVED this ___ day of _____, 2010.

_____
Village President

ATTEST:

_____
Village Clerk, Caroline Liebl

9596310_v1

EXHIBIT A

Legal Description of Property

EXHIBIT B

Preliminary PUD Plans

EXHIBIT C

Declaration of Covenants

EXHIBIT D

Unconditional Agreement and Consent

Pursuant to Section Five of Long Grove Ordinance No. 2010-O-__, and to induce the Village of Long Grove to grant the approvals provided for in such Ordinance, the undersigneds acknowledge for themselves and their successors and assigns in title to the Property that they

1. have read and understand all of the terms and provisions of said Ordinance No. 2010-O-__;

2. hereby unconditionally agree to accept, consent to, and abide by all of the terms, conditions, restrictions, and provisions of this Ordinance, the Long Grove Zoning Code, and all other applicable codes, ordinances, rules, and regulations, subject to the terms of the Annexation Agreement;

3. acknowledge and agree that the Village is not and shall not be, in any way, liable for any damages or injuries that may be sustained as a result of the Village's issuance of any permits for the use of the Property, and that the Village's issuance of any permit does not, and shall not, in any way, be deemed to insure either of the undersigned against damage or injury of any kind and at any time;

4. acknowledge that the public notices and hearings have been properly given and held with respect to the adoption of the Ordinance;

5. agree to and do hereby hold harmless, defend, and indemnify the Village, the Village's corporate authorities, and all Village elected and appointed officials, officers, employees, agents, representatives, and attorneys, from any and all claims that may, at any time, be asserted against any of these parties with respect to the Property and the Village's adoption of the Ordinance or granting the approvals to the undersigned pursuant to the Ordinance, except as may arise as a result of the Village's gross negligence or willful misconduct; and

6. represent and acknowledge that the persons signing this Unconditional Agreement and Consent are duly authorized to do so on their behalf.

By: _____

Its: _____