## **ENCROACHMENT AGREEMENT**

THIS AGREEMENT is made this day of, 2013, by and
between the CITY OF LAKE ELMO, a Minnesota municipality (hereinafter "City"), and
Staci Femancie? (hereinafter "Owner") and their successors in title.

WHEREAS, the City has an easement for <u>drainage and utility</u> purposes over that part of the property legally described on the attached Exhibit A, located in Washington County, Minnesota;

WHEREAS, Owner is desirous of constructing <u>a fence</u> ("The Improvements") within the Easement; and,

WHEREAS, the permission granted herein is limited to The Improvement proposed within the easement.

NOW, THEREFORE, in consideration of the premises and for good and valuable consideration, the receipt of which is acknowledged, the City will permit the encroachment on its easement area as set forth herein and subject to the conditions set forth below:

- 1. Owner and successors in title may install and maintain The Improvements in the configuration directed by the City and in accordance herewith.
- 2. Owner must notify the City at least forty-eight (48) hours before construction, repair and/or maintenance work commences within the easement. No such work shall take place without the City staff being given the opportunity to be present at the site. Further, if the City determines in its reasonable estimation that any proposed work may potentially cause an unsafe condition or damage or impair the City's easement area, the City shall have the authority to prevent such work from being done by giving notice to Owner; notwithstanding the foregoing, in

the event of an emergency situation and/or the existence of an unsafe condition of Owner's land, the prescribed forty-eight (48) hour notice requirement shall be waived by the City. However, in the event of such situation, said waiver shall not relieve Owner from their obligation to notify the City in a timely and practical manner. The City shall have no obligation to notify Owner of their intent to do work.

- 3. To the fullest extent permitted by law, Owner, their successors and assigns agree to release, defend, protect, indemnify, save and hold harmless the City, its agents, directors, employees and contractors against any and all claims, costs and liabilities, including the costs of defense for damages, injury or death arising from or in any way connected to the installation, maintenance, repair, removal and/or presence of The Improvements permitted hereunder, regardless of whether such harm is to Owner, the City, the employees or officers of either or any other person or entity, except shall not be liable under this paragraph for loss or damage to the extent resulting from the negligence or intentional acts of the indemnified parties.
- 4. The permission granted herein is limited exclusively to the proposed improvement within the City's easement. Owner shall not alter the grade, perform any other site disturbing activities, or permit such alteration anywhere upon the land upon which the City has reserved its easement without proper express written consent of the City. Owner shall construct and maintain The Improvements in compliance with all applicable laws and in good repair.

Owner shall, at all times, use best efforts to conduct all of activities on said easement area in such a manner as to not interfere with or impede the operation of the City's easement and related activities in any manner whatsoever and shall remove The Improvements at no cost to the City when directed by the City The work shall be done and The Improvements maintained in conformance with the direction of the City.

[SIGNATURES ON FOLLOWING PAGES]

By Jemandes
[Owner]

STATE OF MINNESOTA
) ss.

COUNTY OF WASHINGTON )

On this Haday of Mour, 2013, before me, a Notary Public, personally appeared Hada Dall-Fernandez property owner, who signed the foregoing instrument and acknowledged said instrument to be his free act and deed.

KATRINA REED

NOTARY PUBLIC - MINNESOTA

My Commission Expires Jan. 31, 2018

Notary Public

THIS INSTRUMENT DRAFTED BY: David K. Snyder Eckberg, Lammers, Briggs, Wolff & Vierling, P.L.L.P. 1809 Northwestern Avenue Stillwater, MN 55082

## CITY OF LAKE ELMO

By	Bv
Mike Pearson, Mayor	Dean A. Zuleger, City Administrator
STATE OF MINNESOTA ) ) ss.	
COUNTY OF WASHINGTON )	
personally appeared Mike Pearson, May within the State of Minnesota, and that s	, 2013, before me, a Notary Public vor of the City of Lake Elmo, a Minnesota municipality said instrument was signed on behalf of the City of Lake neil of the City of Lake Elmo, and acknowledged said aid City of Lake Elmo.
	Notary Public
STATE OF MINNESOTA )	
) ss. COUNTY OF WASHINGTON )	
municipality within the State of Minneso City of Lake Elmo by the authority	, 2013, before me, a Notary Public, ity Administrator of the City of Lake Elmo, a Minnesota ota, and that said instrument was signed on behalf of the of the City Council of the City of Lake Elmo, and ee act and deed of said City of Lake Elmo.
	Notary Public

## Exhibit A

Lot 7, Block 5, Carriage Station (5090 Marquess Trail Court North, Lake Elmo, MN 55042)