

(reserved for recording information)

## DEVELOPMENT CONTRACT

(Public sewer and water)

### ***Hammes Estates 1<sup>st</sup> Addition***

**AGREEMENT** dated \_\_\_\_\_, 2\_\_\_\_\_, by and between the **CITY OF LAKE ELMO** a Minnesota municipal corporation (“City”), and Rachel Development Inc. (the “Developer”).

**1. REQUEST FOR PLAT APPROVAL.** The Developer has asked the City to approve a plat for \_\_\_\_\_ (referred to in this Contract as the “plat”) , and that final plat was approved by the City Council on October 7, 2014 via Resolution 2014-81 and later extended to October 31, 2016. The land is situated in the County of Washington, State of Minnesota, and is legally described on **Exhibit A**

**2. CONDITIONS OF PLAT APPROVAL.** The City hereby approves the plat on condition that the Developer enter into this Contract, furnish the security required by it, and record the plat with the County Recorder or Registrar of Titles within (180) days after the City extended approval date referenced herein.

**3. RIGHT TO PROCEED.** Unless separate written approval has been given by the City, within the plat or land to be platted, the Developer may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings

until all the following conditions have been satisfied: 1) this agreement has been fully executed by both parties and filed with the City Clerk, 2) the necessary security has been received by the City, 3) the plat has been recorded with the Washington County Recorder's Office, and 4) the City's Planning Director has issued a letter that all conditions have been satisfied, a preconstruction conference has been held, and that the Developer may proceed.

**4. PHASED DEVELOPMENT.** If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached this Contract and the breach has not been remedied. Development of subsequent phases may not proceed until Development Contracts for such phases are approved by the City. Park charges and availability charges for sewer and water referred to in this Contract are not being imposed on outlots, if any, in the plat that are designated in an approved preliminary plat for future subdivision into lots and blocks. Such charges will be calculated and imposed when the outlots are final platted into lots and blocks.

**5. PRELIMINARY PLAT STATUS.** If the plat is a phase of a multi-phased preliminary plat, the preliminary plat approval for all phases not final platted shall lapse and be void unless final platted into lots and blocks, not outlots, on or before December 31, 2019.

**6. CHANGES IN OFFICIAL CONTROLS.** For two (2) years from the date of this Contract, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the use, development density, lot size, lot layout or dedications of the approved final plat unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Contract to the contrary, to the full extent permitted by state law, the City may require compliance with any amendments to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Contract.

**7. DEVELOPMENT PLANS.** The plat shall be developed in accordance with the following plans and at the Developer's sole expense. The plans shall not be attached to this Contract. If the plans vary from the written terms of this Contract, the written terms shall control. The plans are:

Plan A - Plat

Plan B - Final Grading, Drainage, and Erosion Control Plan

Plan C - Tree Preservation and Reforestation Plan  
Plan D - Plans and Specifications for Public Improvements  
Plan E - Street Lighting Plan  
Plan F - Landscape Plan

**8. IMPROVEMENTS.** The Developer shall install and pay for the following:

- A. Streets
- B. Sanitary Sewer
- C. Watermain
- D. Surface Water Facilities (pipe, ponds, rain gardens, etc.)
- E. Grading and Erosion Control
- F. Sidewalks/Trails
- G. Street Lighting
- H. Underground Utilities
- I. Street Signs and Traffic Control Signs
- J. Landscaping
- K. Tree Preservation and Reforestation
- L. Wetland Mitigation and Buffers
- M. Monuments Required by Minnesota Statutes
- N. Miscellaneous Facilities

The improvements shall be installed in accordance with the City subdivision ordinance and the City's Engineering Design and Construction Standards Manual and pursuant to the direction of the City Engineer. The Developer shall submit plans and specifications which have been prepared by a competent registered professional engineer to the City for approval by the City Engineer. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the approved City standards as a condition of City acceptance. In addition, the City may, at the City's discretion and at the Developer's expense, have one or more City inspectors and a soil engineer inspect the work on a full or part-time basis. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer

and the Developer's contractor. The Developer or his engineer shall schedule a pre-construction meeting at a mutually agreeable time at the City Hall with all parties concerned, including the City staff, to review the program for the construction work.

All labor and work shall be done and performed in the best and most workmanlike manner and in strict conformance with the approved plans and specifications. No deviations from the approved plans and specifications will be permitted unless approved in writing by the City Engineer. The Developer agrees to furnish to the City a list of contractors being considered for retention by the Developer for the performance of the work required by the Contract. The Developer shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this Contract, for which reimbursement is expected from the City, unless such work is first ordered in writing by the City Engineer as provided in the specifications.

## **9. CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION**

**OBSERVATION.** At the time of Final Plat, the Developer shall submit an escrow for City Engineering Administration and Construction Observation in an amount provided under paragraph 38. Summary of Cash Requirements. Thereafter, the Developer shall reimburse the City each month, within 30 days of receiving an invoice, for all engineering administration and construction observation performed during the construction of the plat. After 30 days of the invoice, the City may draw upon the escrow and stop the work on site until said escrow has been replenished in its full amount. City engineering administration will include monitoring of construction progress and construction observation, consultation with the Developer and his engineer on status or problems regarding the project, coordination for testing, final inspection and acceptance, project monitoring during the warranty period, and processing of requests for reduction in security. Construction observation may be performed by the City's in-house staff or consulting engineer. Construction observation shall include, at the discretion of the city, part or full time inspection of proposed public utilities and street construction. Services will be billed on an hourly basis.

The direction and review provided through the inspection of the improvements should not be considered a substitute for the Developer required management of the development. The Developer will cause the contractor(s) to furnish the City with a schedule of proposed operations at least five (5) days prior to the commencement of construction of each type of Improvement. City shall inspect all Developer Installed Improvements during and after construction for compliance with approved plans and specifications. The Developer will notify the City Engineer at such times during construction as the City Engineer requires for inspection purposes. Such inspection is pursuant to the City's governmental authority, and no agency or joint venture relationship between the City and the Developer is thereby created.

**10. CONTRACTORS/SUBCONTRACTORS.** City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a 25% ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the public improvements identified in Paragraph 8 above.

**11. PERMITS.** The Developer shall obtain or require its contractors and subcontractors to obtain all necessary permits, including but not limited to:

- A. Right-of-Way Excavations and Obstructions:
  - City of Lake Elmo, Right-of-Way Utility Installation(s)
  - City of Lake Elmo, Right-of-Way Obstruction(s)
  - Washington County, Utility Installations(s)
  - Washington County, Street or Driveway Access(s)
  - Minnesota Department of Transportation, Utility Installation
  - Minnesota Department of Transportation, Right-of-Way Permit
- B. Watermain Extensions:
  - Minnesota Department of Health
- C. Sanitary Sewer Extensions:
  - Minnesota Pollution Control Agency
  - Metropolitan Council Environmental Services
- D. Stormwater Management:
  - Valley Branch, Brown's Creek or South Washington Watershed District Permit
- E. Erosion, Sedimentation Control:
  - Minnesota Pollution Control Agency, General NPDES Stormwater Permit
  - SWPPP (Stormwater Pollution Prevention Plan)

- F. Wetland Mitigation:
  - Board of Water and Soil Resources, WCA
- G. Construction Dewatering:
  - Minnesota Department of Natural Resources

**12. TIME OF PERFORMANCE.** The Developer shall install all required public improvements by October 31, 2017, with the exception of the final wear course of asphalt on streets. The Developer shall install the bituminous wearing course of streets after the first course has weathered a winter season, consistent with warranty requirements, however final acceptance of the improvements will not be granted until all work is completed including the final wear course. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and amending this agreement to reflect the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.

**13. LICENSE.** The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the plat to perform all work and inspections deemed appropriate by the City in conjunction with plat development.

**14. CONSTRUCTION ACCESS.** Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the subdivision via Keats Avenue North. No construction traffic is permitted on other adjacent local streets.

**15. CONSTRUCTION SEQUENCE AND COMPLIANCE.** The City will require the Developer to construct the improvements in a sequence which will allow progress and compliance points to be measured and evaluated. The Developer and/or its representatives are required to supervise and coordinate all construction activities for all improvements and must notify the City in writing stating when the work is ready for the inspection at each of the measurable points defined in the following paragraphs 16, 17 and 18. In addition, once work begins onsite, the drainage and erosion control work identified by the City around Wetland A and Keats Avenue shall commence immediately and work shall be diligent until completed to the City's satisfaction. The City reserves the right to stop all other work on

the site if the erosion control correction work is not completed within 15 working days or if, in the City's sole discretion, the erosion control correction work is not progressing in a timely and diligent manner.

**16. EROSION CONTROL.** Prior to initiating site grading, the erosion control plan, Plan B, shall be implemented by the Developer and inspected and approved by the City. Erosion control practices must comply with the approved plans and specifications for the plat, with all watershed district permits and with Minnesota Pollution Control Agency's Best Management Practices. The City may impose additional erosion control requirements as deemed necessary. The parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the City for any cost the City incurred for such work within ten (10) days, the City may draw down the security to pay any costs. No development, utility or street construction will be allowed and no building permits will be issued unless the plat is in full compliance with the approved erosion control plan.

If building permits are issued prior to the acceptance of public improvements, the Developer assumes all responsibility for erosion control compliance throughout the plat and the City may take such action as allowed by this agreement against the Developer for any noncompliant issue as stated above. Erosion control plans for individual lots will be required in accordance with the City's building permit requirements, or as required by the City or City Engineer.

**17. GRADING PLAN.** The plat shall be graded in accordance with the approved grading drainage and erosion control plan, Plan "B". The plan shall conform to the Engineering Design and Construction Standards Manual. All grading shall be completed within the Subdivision prior to the preparation and submittal of the as-constructed grading plan.

A. Within thirty (30) days after completion of the grading, the Developer shall provide the City with a "record" grading plan certified by a registered land surveyor or engineer that all ponds, swales,

and ditches have been constructed on public easements or land owned by the City. The "record" plan shall contain site grades and field verified elevations of the following: a) cross sections of ponds; b) location and elevations along all swales, emergency overflows, wetlands, wetland mitigation areas if any, ditches, locations and dimensions of borrow areas/stockpiles; c) lot corner elevations and house pads; and d) top and bottom of retaining walls.

B. The City will not issue any building permits until the approved certified record grading plan is on file with the City.

**18. STREET AND UTILITY IMPROVEMENTS.** All storm sewers, sanitary sewers, watermain, and streets shall be installed in accordance with the approved Plans and Specifications for Public Improvements, Plan "D". The plan shall conform to the City's Engineering Design and Construction Standards Manual. Curb and gutter and the first lift of the bituminous streets, sidewalks, boulevards graded, street signs installed, and all restoration work on the site shall be completed in accordance with the approved plans. Once the work is completed, the developer or its representative shall submit a written request to the City asking for an inspection of the initial improvements. The City will then schedule a walk-through to create a punch list of outstanding items to be completed. Upon receipt of the written punch list provided by the City, the punch list items must be completed by the Developer and the City notified to re-inspect the improvements. The final bituminous wear course shall be installed in accordance with paragraph 12 above.

**19. STREET MAINTENANCE DURING CONSTRUCTION.** The Developer shall be responsible for all street maintenance until the streets are accepted by the City. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and to direct attention to detours. If and when streets become impassable, such streets shall be barricaded and closed. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage to insure that the streets are passable to traffic and emergency vehicles. The Developer shall be responsible for keeping streets within and without the subdivision clean of dirt and debris that may spill, track, or wash onto the street from the Developer's operation. If the City, for any reason plows snow



prior to final acceptance of the streets by the City, the City shall not be responsible for repairing the streets because of damage caused by the snow plowing operations. The Developer shall contract for street cleaning within and immediately adjacent to the development. At a minimum, scraping and sweeping shall take place on a weekly basis. A copy of this contract shall be approved by the City before grading is started. The contract shall provide that the City may direct the contractor to clean the streets and the contractor will bill the Developer.

## **20. LANDSCAPING AND TREE REPLACEMENT IMPROVEMENTS.**

A. The Developer agrees to install landscaping in accordance with the approved Landscape Plans and as required by City Ordinances. All landscaping materials such as trees, shrubs, grasses, or other vegetation installed by the Developer according to the approved Plans shall be warranted and maintained for a period of 2 years. The 2 year warranty period shall be deemed to start once all required landscaping identified as responsibility of Developer in the approved Plans has received acceptance by the City. The Developer agrees to have the installer of said landscaping complete an inspection thirty (30) days prior to the end of the 2 year warranty period and provide the City with a written report identifying the condition of all landscaping. In the event any landscaping installed by the Developer is deemed to be in poor condition or dead, the developer is to replace said landscaping with like kind materials or as otherwise approved by the City.

B. The Developer shall be responsible for maintaining regular watering, fertilizing, and over-seeding necessary to establish final lawns and yards as identified in the approved Plans for Outlots, public rights-of-way, and any disturbed areas outside the plat boundaries according to an approved landscape maintenance plan. The Developer agrees to achieve “substantial performance” on all seeded or sodded lawns and yards disturbed during the construction of Subdivision Improvements. For the purpose of this agreement “substantial performance” shall be defined for areas seeded or sodded with a turf or lawn mix as “square foot turf areas with an average blade height of three inches free of eroded, bare, or dead spots and free from perennial weeds or unwanted grasses with no visible surface soil.” For areas seeded with a native grass or flower mix “substantial performance” shall be defined as “square foot native grass or flower areas with an average height of 8 inches free of eroded, bare, or dead spots and no visible surface

soil.”

**21. OWNERSHIP OF IMPROVEMENTS.** Upon completion of the work and construction required by this Contract, the improvements lying within public easements shall become City property. Prior to acceptance of the improvements by the City, the Developer must furnish the City with a complete set of reproducible "record" plans, an electronic file of the "record" plans in accordance with the City's Engineering Design and Construction Standards Manual together with the following affidavits:

- Developer/Developer Engineer's Certificate
- Land Surveyor's Certificate

certifying that all construction has been completed in accordance with the terms of this Contract. All necessary forms will be furnished by the City. Upon receipt of "record plans" and affidavits, and upon review and verification by the City Engineer, the City Engineer will accept the completed public improvements.

**22. PARK DEDICATION.** The Developer shall pay a cash contribution of \$107,554 in satisfaction of the City's park dedication requirements. The charge was based on the park dedication requirement for all the areas to be platted within the Hammes Estates Preliminary Plat. No additional fees in lieu of land dedication will be charged for future developments within the preliminary plat area. The charge was calculated as follows: 2.1 acres (5.7 acres of park land provided subtracted from 7.8 acres of park land required) \$51,216 per acre per the submitted appraisal for the property. The Developer shall receive a credit from the cash amount due for the actual costs of the North East Park Plan Improvements depicted in the Final Landscape Plans dated September 22, 2014. These improvements shall include: 16-feet by 24-feet shelter, picnic table, bike rack, grill station, retaining wall, fishing pier, canoe rack, concrete hardsurface, woodland seed mix restoration, landscaping and parking lot improvements. The City shall approve all improvements. The Developer shall deposit \$107,554 with the City at the time of the final plat to be held by the City in escrow until such time as the park improvements have been installed. Upon installation of the park improvements, the remaining balance in the escrow, if any, may be used by the Developer towards additional improvements for the park, upon receiving approval by the City. Otherwise, the remaining balance in the escrow account shall be transferred to the City parkland dedication fund to be used by the City towards other parks and recreational

facilities in accordance with the park dedication statute. In the event that the costs of the park improvements exceeds \$107,554, the Developer shall be responsible for those costs. The City shall assume responsibility for maintenance of the park improvements, except for woodland restoration and landscaping.

**23. SANITARY SEWER AND WATER UTILITY AVAILABILITY CHARGES (SAC AND WAC).** The Developer shall be responsible for the payment of all sewer availability charges (SAC) and all water availability charges (WAC) with respect to the Improvements required by the City and any state or metropolitan government agency.

The sewer availability charge (SAC) in the amount of \$3,000.00 per REU shall be paid by the Developer prior to the City recording the final plat. The total amount to be paid by the Developer is \$171,000.00.

The water availability charge (WAC) in the amount of \$3,000.00 per REU shall be paid by the Developer prior to the City recording the final plat. The total amount to be paid by the Developer is \$171,000.00.00.

In addition, a sewer connection charge in the amount of \$1,000.00 per REU, a Met Council sewer availability charge in the amount of \$2,485.00 per REU, and a water connection charge in the amount of \$1,000.00 per REU will be collected by the City at the time the building permit is issued for each lot.

**24. TRAFFIC CONTROL SIGNS.** The Traffic control signs shall be included as part of the street improvements, and installation costs shall be included in the street construction calculations.

**25. STREET LIGHTS.** The Developer is responsible for the cost of street light installation consistent with a street lighting plan approved by the City. Before the City signs the final plat, the Developer shall post a security for street light installation consistent with the approved plan. The required security is \$54,000 and consists of nine (9) decorative lights at \$6000 each. The Developer shall also pay \$1,161.00 in payment of the first year operating costs for street lights.

**26. WETLAND MITIGATION.** The Developer shall complete wetland mitigation/restoration in accordance with the approved Plans and Specifications and in accordance with any applicable Watershed or agency Permits. If the mitigation work is found to be incomplete or restoration is unsuccessful the City

may draw down the security at any time during the warranty period if the Developer fails to take corrective measures to be used by the City to perform the work.

## **27. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.**

A. No building permit shall be issued for any lot within the Plat, or within a completed phase of the Plat in a City preapproved phasing plan, until such time that sanitary sewer, water, storm sewer, curbing and one lift of asphalt has been installed for all public streets; and record grading plans have been submitted and approved by the City Engineer. A preapproved phasing plan is defined as a phased construction plan that has been submitted by the developer and approved by the City in advance of the preconstruction meeting for the Plat. Once the construction has started the City will not consider revisions to the phasing plan for the purpose of issuing building permits.

B. Issuance of building permits for up to four “model homes” may be authorized by the Planning Director prior to the completion of the improvements described in Section A above, if there is safe public access to the subject lot that is sufficient to allow construction to proceed and there is a record grading plan approved by the City Engineer for the subject lot and all downstream storm water drainage facilities. The City will not issue a certificate of occupancy for any “model home” until all conditions identified in Section A above have been completed.

C. Prior to issuance of building permits, wetland buffer monuments shall be placed in accordance with the City’s zoning ordinance. The monument design shall be approved by the Community Development Department.

D. Prior to issuance of building permits, permanent or temporary street signs shall be installed by the developer.

E. Breach of the terms of this Contract by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and/or withholding of other permits, inspection or actions, including lots sold to third parties, and the halting of all work in the plat.

F. If building permits are issued prior to the acceptance of public improvements, the

Developer assumes all liability and costs resulting in delays in completion of public improvements and damage to public improvements caused by the City, Developer, its contractors, subcontractors, materialmen, employees, agents, or third parties.

G. No sewer and water connection permits may be issued until the streets needed for access have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.

## **28. RESPONSIBILITY FOR COSTS.**

A. In the event that the City receives claims from labor, materialmen, or others that work required by this Contract has been performed, the sums due them have not been paid, and the laborers, materialmen, or others are seeking payment from the City, the Developer hereby authorizes the City to commence an Interpleader action pursuant to Rule 22, Minnesota Rules of Civil Procedure for the District Courts, to draw upon the letters of credit in an amount up to 125 percent of the claim(s) and deposit the funds in compliance with the Rule, and upon such deposit, the Developer shall release, discharge, and dismiss the City from any further proceedings as it pertains to the letters of credit deposited with the District Court, except that the Court shall retain jurisdiction to determine attorneys' fees pursuant to this Contract.

B. Except as otherwise specified herein, the Developer shall pay all costs incurred by it or the City in conjunction with the development of the plat, including but not limited to legal, planning, engineering and inspection expenses incurred in connection with approval and acceptance of the plat, the preparation of this Contract, review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting development of the plat. All amounts incurred and due at the time, must be fully paid prior to execution and release of the final plat for recording.

C. The Developer shall hold the City and its officers, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from plat approval and development. The Developer shall indemnify the City and its officers, employees, and agents for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees.

D. The Developer shall reimburse the City for costs incurred in the enforcement of this Contract, including reasonable engineering and attorneys' fees.

E. The Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, all outstanding special assessments prior to recording the final plat.

F. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Contract within thirty (30) days after receipt. Bills not paid within thirty (30) days shall be assessed a late fee per the City of Lake Elmo adopted Fee Schedule. Upon request, the City will provide copies of detailed invoices of the work performed.

**29. CITY PAYMENTS.** Within thirty (30) days of the City's final acceptance of the Improvements, pursuant to Section 19 of the Contract, the City shall reimburse the Developer for the actual costs incurred by the Developer to oversize the water main, in an amount not to exceed \$25,573.00. The actual amount of the City's reimbursement shall be based on actual construction costs which must be verified by the Developer to the City in the Plans submitted to the City as required in Section 18. This payment by the City shall be the City's only responsibility with regard to construction of the Improvements and in no case shall act as a waiver of any other right of the City under this Contract or under applicable laws, ordinances or rules. In order to receive reimbursement, the Developer must not be in default of any of the terms of this Contract.

**30. SPECIAL PROVISIONS.** The following special provisions shall apply to plat development:

A. Implementation of the recommendations listed in the September 18, 2014, Engineering memorandum.

B. Upon the recording of the final plat, the Developer shall convey Outlots A and C to the City by warranty deed, free and clear of any and all encumbrances. The Developer shall be responsible for paying the cost of a title policy that insures the City's interest in these properties.

C. The Developer shall install a temporary turnaround on the end of June Avenue North and Juniper Avenue North until the streets are extended to in the second phase of the

Hammes development.

D. The Developer must obtain a sign permit from the City Building Official prior to installation of any subdivision identification signs.

E. There shall be a green belt/buffer established between the property being platted by the Developer and the adjacent Stonegate Subdivision that is at least 100 feet in width. The Developer shall include a provision in its homeowners' association covenants that restricts the construction of any improvements within the green belt/buffer area. The homeowners' association covenants shall provide that any changes to this provision in the covenants must be approved by the City. The homeowners' association covenants must be reviewed and approved by the City prior to them being recorded.

F. The Developer shall be responsible for the construction of all improvements within the Keats Avenue (CSAH 19) right-of-way as required by Washington County and further described in the review letter received from the County dated May 6, 2014. The required improvements shall include, but not be limited to: modifications to the median crossing in this area, continuation of a bituminous trail through the median, turn lanes, and other improvements as required by the County.

G. The Developer shall observe all other County requirements as specified in the Washington County review letter dated May 6, 2014.

H. The Developer shall enter into a landscape license and maintenance agreement with and satisfactory to the City that clarifies the individuals or entities responsible for any landscaping installed in areas outside of land dedicated as public park and open space on the final plat.

I. All trails shall be either located within easements that are either granted to the City by a separate instrument or dedicated to the City in the plat or, alternatively, located within an outlot that is conveyed to the City.

J. The Developer must provide a title policy in favor of the City in an amount of not less than \$200,000, insuring the City's interests as they appear on the plat.

K. Any land under which public trails are located will be accepted as park land provided the Developer constructs said trails within the dedicated areas as part of the public improvements for the

subdivision and Outlots are provided where required by the City.

L. No more than one hundred units depicted on the preliminary plat (100) may be approved as part of a final plat until a second access is provided to the subdivision via a connection through the property to the south of the Hammes Estates.

M. The Developer shall be responsible to monitor the restored southern shoreline of Goose Lake for invasive species for a period of 5 years as specified in the MN DNR Public Waters Work Permit.

N. The parties acknowledge that all documentation of remediation activities related to a recorded soil contamination on the site to the Minnesota Pollution Control Agency have previously been submitted and approved.

### **31. MISCELLANEOUS.**

A. The Developer may not assign this Contract without the written permission of the City Council. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of it.

B. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved plans and specifications. All retaining walls identified on the development plans or by special conditions referred to in this Contract shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.

C. Appropriate legal documents regarding Homeowner Association documents, covenants and restrictions, as approved by the City Attorney, shall be filed with the final plat. No third-party beneficiary is hereby conferred.

D. Developer shall take out and maintain or cause to be taken out and maintained until six (6) months after the City has accepted the public improvements, public liability and property damage



insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$500,000 for one person and \$1,000,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a combination single limit policy of \$1,000,000 or more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate evidencing coverage prior to the City signing the plat. The certificate shall provide that the City must be given thirty (30) days advance written notice of the cancellation of the insurance.

E. Third parties shall have no recourse against the City under this Contract.

F. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Contract is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Contract.

G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Contract. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Contract shall not be a waiver or release.

H. This Contract shall run with the land and may be recorded against the title to the property. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the property being final platted and/or has obtained consents to this Contract, in the form attached hereto, from all parties who have an interest in the property; that there are no unrecorded interests in the property being final platted; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.

I. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any

other right, power or remedy.

J. The Developer represents to the City that the plat complies with all city, county, metropolitan, state, and federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances, and environmental regulations. If the City determines that the plat does not comply, the City may, at its option, refuse to allow construction or development work in the plat until the Developer does comply. Upon the City's demand, the Developer shall cease work until there is compliance.

**32. EVENTS OF DEFAULT.** The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

A. Subject to unavoidable delays, failure by the Developer to commence and complete construction of the Public Improvements pursuant to the terms, conditions and limitations of this Agreement.

B. Failure by the Developer to substantially observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

**33. REMEDIES ON DEFAULT.** Whenever any Event of Default occurs, the City, subject to any rights of third parties agreed to by the City pursuant to this Agreement, or otherwise by written, executed instrument of the City, may take any one or more of the following:

A. The City may suspend its performance under the Agreement until it receives assurances from the Developer, deemed adequate by the City, that Developer will cure its default and continue its performance under the Agreement. Suspension of performance includes the right of the City to withhold permits including, but not limited to, building permits.

B. The City may initiate such action, including legal or administrative action, as is necessary for the City to secure performance of any provision of this agreement or recover any amounts due under this Agreement from the Developer, or immediately draw on the Letter of Credit, as set forth in this Agreement.

**34. ENFORCEMENT BY CITY; DAMAGES.** The Developer acknowledges the right of the

City to enforce the terms of this Agreement against the Developer, by action for specific performance or damages, or both, or by any other legally authorized means. The Developer also acknowledges that its failure to perform any or all of its obligations under this Agreement may result in substantial damages to the City; that in the event of default by the Developer, the City may commence legal action to recover all damages, losses and expenses sustained by the City; and that such expenses may include, but are not limited to, the reasonable fees of legal counsel employed with respect to the enforcement of this Agreement.

**35. WARRANTY.** The Developer warrants all improvements required to be constructed by it pursuant to this Contract against poor material and faulty workmanship. Twenty-five percent (25%) of the original security amount of the improvements shall be retained through the warranty period.

A. The required warranty period for all work relating to the public sewer and water shall be two (2) years from the date of final written City acceptance of the work.

B. The required warranty period for all work relating to street construction, including concrete curb and gutter, sidewalks and trails, materials and equipment shall be subject to one (1) year from the date of final written acceptance of the work.

C. The required warranty period for sod, trees, and landscaping is 2 growing seasons following final written City acceptance of the installation.

**36. SUMMARY OF SECURITY REQUIREMENTS.** To guarantee compliance with the terms of this agreement, payment of special assessments, payment of the costs of all public improvements, and construction of all public improvements, the Developer shall furnish the City with an irrevocable letter of credit, in the form attached hereto, from a bank, cash escrow or a combination cash escrow and Letter of Credit ("security") for **\$3,169,766**. The amount of the security was calculated as follows:

CONSTRUCTION CATEGORY:	COST	125%
1. Grading	\$156,000	\$195,000
2. Sanitary Sewer	\$413,076	\$516,345
3. Watermain	\$298,624	\$373,280
4. Storm Sewer (includes pond structures and outfall pipes)	\$492,748	\$615,935

5. Streets	\$430,598	\$538,247
6. Trails and Sidewalks	\$111,360	\$139,200
7. Surface Water Facilities (infiltration basins, bio retention basins, rain gardens, etc.)	N/A	
8. Street Lighting	\$54,000	\$67,500
9. Street Signs and Traffic Control Signs	\$6,300	\$7,875
10. Private Utilities (electricity, natural gas, telephone, and cable)	N/A	
11. Landscaping	\$244,922	\$306,152
12. Tree Preservation and Restoration	(Included in Landscaping)	
13. Wetland Mitigation and Buffers	\$50,000	\$62,500
14. Monuments	\$5,700	\$7,125
15. Erosion and Sedimentation Control	\$195,986	\$244,982
16. Boardwalk	\$ 66,500	\$83,125
17. Developer's Record Drawings	\$10,000	\$12,500
<b>CONSTRUCTION SUBTOTAL</b>	<b>\$2,535,813</b>	<b>N/A</b>
<b>TOTAL PROJECT SECURITIES (at 125% Construction Costs)</b>	<b>N/A</b>	<b>\$3,169,766</b>

This breakdown is for historical reference; it is not a restriction on the use of the security. The bank shall be subject to the approval of the City Administrator. The City may draw down the security, without notice, for any violation of the terms of this Contract or if the security is allowed to lapse prior to the end of the required term. If the required public improvements are not completed at least thirty (30) days prior to the expiration of the security, the City may also draw it down. If the security is drawn down, the proceeds shall be used to cure the default.

**37. REDUCTION OF SECURITY.** Upon written request by the Developer to the City Engineer and upon receipt of proof satisfactory to the City Engineer that work has been completed in accordance with the approved plans and specifications, and terms of this Agreement, and that all financial obligations to the City have been satisfied, the City Engineer may approve reductions in the security as follows:

A. Upon completion of grading operations, including temporary site restoration, Developer shall submit an as-built grading survey to the City that at a minimum establishes the as-built

grades at all lot corners and downstream drainage conveyance systems and storm water ponds. Upon inspection of the site and approval of the as-built survey, 100%, or \$195,000, of the grading security may be released. This security reduction does not include amounts related to erosion and sedimentation control.

B. Up to 75% of the security provided in accordance with paragraph 36 may be released upon completion of the following key milestones of the project as determined by the City Engineer.

C. Construction Categories 2 and 3: The amount of \$667,218 may be released when all sanitary sewer and watermain utilities have been installed, all testing and televising has been successfully completed, sanitary sewer as-built inverts have been verified, and the utilities are considered ready for use by the City Engineer.

D. Construction Categories 4 and 5: The amount of \$865,637 may be released when all streets, and storm sewer have been installed and tested, and have been found to be complete to the satisfaction of the City Engineer including all corrective work for any identified punch list items and including verification of storm sewer as-built inverts, but not including the final wear course.

E. Construction Categories 6-10 and 14-17: The amount of \$359,386 may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) bituminous wear course, (2) street lighting and private utilities, (3) sidewalks and trails, (4) bio retention facilities, (5) iron monuments for lot corners have been installed, (3) all financial obligations to the City satisfied, (4) the required "record" plans in the form of the City standards have been received and approved by the City, and (5) the public improvements are accepted by the City Engineer and City Council.

F. Construction Categories 11, 12 and 13: The amount of \$229,614 may be released when Landscaping Improvements have been installed to the satisfaction of the City Landscape Architect including all corrective work for any identified punch list items.

G. Twenty-five percent (25%) of the original security amounts, excluding grading and landscaping improvements shall be retained until: (1) all improvements have been fully completed and excepted by the City, including all corrective work and warranty punch list items, (2) all financial obligations to the City have been satisfied, and (3) the warranty period has expired.

H. Twenty-five percent (25%) of the original landscaping security amounts shall be

retained until: (1) all landscape improvements have been fully completed and excepted by the City, including all corrective work and warranty punch list items, (2) all financial obligations to the City have been satisfied, and (3) the warranty period has expired.

I. In addition to the above project milestone based security reductions, the Developer may submit written request to the City Engineer and upon receipt of proof satisfactory to the City Engineer that work is progressing in accordance with the approved plans and specifications, and terms of this Agreement, and that all financial obligations to the City have been satisfied, the City Engineer may approve a one-time reduction in the security for Construction Categories 2-5 in an amount not to exceed fifty percent (50%) of the initial security amounts.

J. It is the intention of the parties that the City at all times have available to it a Letter of Credit in an amount adequate to ensure completion of all elements of the Subdivision Improvements and other obligations of the Developer under this Agreement, including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of the Letter of Credit shall be evaluated by the City in light of that principle.

**38. SUMMARY OF CASH REQUIREMENTS.** The following is a summary of the cash requirements under this Contract which must be furnished to the City at the time of final plat approval:

Sewer Availability Charge (SAC)	\$171,000
Water Availability Charge (WAC)	\$171,000
Park Dedication	\$107,554
Street Light Operating Fee	\$1,161
City Base Map Upgrading	\$1425
City Engineering Administration Escrow	\$50,000
<b>TOTAL CASH REQUIREMENTS</b>	<b>\$502,140</b>

**39. NOTICES.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: 4125 Napier Ct NE, St. Michael, Minnesota 55376; Attn: David Stradtman. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator, or mailed to the City by certified mail in care of the City Administrator at the following address: Lake Elmo City Hall, 3800 Laverne

Avenue N. Lake Elmo, Minnesota 55042.

**40. EVIDENCE OF TITLE.** Developer shall furnish the City with evidence of fee ownership of the property being platted by way of an attorney's title opinion or title insurance policy dated not earlier than thirty (30) days prior to the execution of the plat.

**CITY OF LAKE ELMO**

BY: \_\_\_\_\_  
Mike Pearson, Mayor

(SEAL)

AND \_\_\_\_\_  
Julie Johnson, City Clerk

**RACHEL DEVELOPMENT INC.:**

BY: \_\_\_\_\_  
Its

STATE OF MINNESOTA            )  
  ( ss.  
COUNTY OF WASHINGTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Mike Pearson and by Julie Johnson, the Mayor and City Clerk of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF MINNESOTA        )  
                                     ( ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day \_\_\_\_\_ of \_\_\_\_\_, 2 \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_ the \_\_\_\_\_ of \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042  
(651) 747-3901



**FEE OWNER CONSENT  
TO  
DEVELOPMENT CONTRACT**

\_\_\_\_\_, fee owners of all or part of the subject property, the development of which is governed by the foregoing Development Contract, affirm and consent to the provisions thereof and agree to be bound by the provisions as the same may apply to that portion of the subject property owned by them.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

STATE OF MINNESOTA     )  
  ( ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_,  
by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042  
(651) 747-3901

**MORTGAGE CONSENT  
TO  
DEVELOPMENT CONTRACT**

\_\_\_\_\_, which holds a mortgage on the subject property, the development of which is governed by the foregoing Development Contract, agrees that the Development Contract shall remain in full force and effect even if it forecloses on its mortgage.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

STATE OF MINNESOTA     )  
  ( ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2\_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042  
(651) 747-3901

**CONTRACT PURCHASER CONSENT  
TO  
DEVELOPMENT CONTRACT**

\_\_\_\_\_, which/who has a contract purchaser's interest in all or part of the subject property, the development of which is governed by the foregoing Development Contract, hereby affirms and consents to the provisions thereof and agrees to be bound by the provisions as the same may apply to that portion of the subject property in which there is a contract purchaser's interest.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

STATE OF MINNESOTA     )  
  ( ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2016, by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042  
(651) 747-3901

**EXHIBIT "A"**  
**TO**  
**DEVELOPMENT CONTRACT**

**Legal Description of Property Being Final Platted as**

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**Hammes Estates 1st Addition**

That part of the South Half of the Northeast Quarter of Section 34, Township 29 North, Range 21 West, Washington County, Minnesota, EXCEPT the East 60.00 feet of the North 967 feet of said South Half of the Northeast Quarter thereof. AND EXCEPT Parcel 3 of Washington County Highway Right of Way Plat 49-19B, recorded September 18, 1985 as Document Number 492530

## **IRREVOCABLE LETTER OF CREDIT**

No. \_\_\_\_\_

Date: \_\_\_\_\_

TO: City of Lake Elmo

Dear Sir or Madam:

We hereby issue, for the account of \_\_\_\_\_ (Name of Developer) and in your favor, our Irrevocable Letter of Credit in the amount of \$\_\_\_\_\_, available to you by your draft drawn on sight on the undersigned bank.

The draft must:

a) Bear the clause, "Drawn under Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 2\_\_\_\_\_, of \_\_\_\_\_ (Name of Bank) \_\_\_\_\_";

b) Be signed by the Mayor or City Administrator of the City of Lake Elmo.

c) Be presented for payment at \_\_\_\_\_ (Address of Bank) \_\_\_\_\_, on or before 4:00 p.m. on November 30, 2\_\_\_\_\_.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be November 30 of each year), the Bank delivers written notice to the Lake Elmo City Administrator that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: City Administrator, City Hall, 3800 Laverne Ave. N. Lake Elmo Minnesota 55042 and is actually received by the City Administrator at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: \_\_\_\_\_

Its \_\_\_\_\_