



STAFF REPORT

DATE: November 12, 2019

DISCUSSION

AGENDA ITEM: Four Corners Development

SUBMITTED BY: Kristina Handt, City Administrator

REVIEWED BY: Sarah Sonsalla, City Attorney

BACKGROUND:

On July 17, 2018 the City Council approved zoning text amendment and preliminary and final plats for Four Corners 1st Addition and a Conditional Use Permit (CUP) for the Stillwater School District Bus Facility. On October 16, 2018 Council approved the Development Agreement for Four Corners 1st Addition. The sale of a parcel of land within the Four Corners 1st Addition subdivision from the Developer (Terry Emerson) to the Stillwater School District occurred a few weeks after. This property is being used by the School District for a school bus facility pursuant to a CUP issued by the City.

A copy of the City Council resolution approving the Four Corners 1st Addition preliminary and final plats is included in your packet. Condition numbers 10 and 11 of the resolution relate to the reconstruction of Hudson Boulevard and extending water and sewer. A copy of the executed Development Agreement for Four Corners 1st Addition is also included in your packet.

Since the time of approval of the preliminary and final plats last year, City staff has approved construction plans, met with utility providers, and met with the Developer and his representatives regarding Four Corners 1st Addition on numerous occasions.

The City Council approved the Four Corners 2nd Addition final plat on August 19, 2019. This plat includes the Metro Transit Park and Ride facility. The Planning Commission held the public hearing on Metro Transit's proposed park and ride CUP this spring. Metro Transit has waived the time limits under the 60 Day Rule as the recording of the final plat of Four Corners 2nd Addition is required before the City Council may consider the CUP. The plat has not yet been recorded as the development agreement has not yet been approved.

The deadline under the Development Agreement for Four Corners 1st Addition for the Developer to install the public improvements (including the extension of water and sewer) was October 31, 2019. The Developer has not commenced the installation of these improvements. Meanwhile, the School District has made investments into its school bus facility property but it is not able to meet the condition in its CUP to connect to water and sewer because the Developer has not brought it to the site as required in the City's 2018 approvals.

On October 1, 2019 the Council received a letter from Mr. Nick Dragisich on behalf of the Developer that made several requests of the City pertaining to Four Corners 1st Addition and Four Corners 2nd Addition. A copy of the letter is included in your packet. City staff met to review the requests of the letter and had some follow up questions, however Mr. Dragisich was not able to meet with us prior to the packet deadline. He did speak to the City Attorney on November 7th and they were able to discuss the requests that were being made by the Developer in the letter.

ISSUE BEFORE COUNCIL:

Should the City amend the project approvals and the Development Agreement as requested by the Developer?

PROPOSAL DETAILS/ANALYSIS:

The requested changes by the Developer related to the Phase 1 (Four Corners 1st Addition) Development Agreement in Mr. Dragisich's letter include: *(staff comments in blue)*

- Time extension to December 1, 2020
 - *Policy decision for council. Will impact the Council's decision on the school bus facility CUP.*
- Section 26D-City pays for insurance policy. Vali-Hi is not required to hook up to water and sewer until property develops with no penalty.
 - *Staff would not recommend that the City pay for the Developer's insurance policy. Standard practice is to require these items with release of the plat for recording. The City is not at fault for delay in construction.*
 - *With respect to Vali-Hi, if water and sewer stubs are placed in front of any property, the property owner is required to connect within two years of notification per City Code requirements, otherwise there is a penalty. The City has charged the penalty to other properties waiting for redevelopment. If the City wants to change this, it will require that the City's code be amended. The Council could choose to not require stubs to the Vali-Hi property so that the connection requirement is not triggered. This would require tapping into the mains at a later date when redevelopment occurs.*
- Sec 31 - City pays EN Properties (the Developer) for the LOC provided with the Development Agreement in 2018.
 - *Similar to the previous item, this is a common requirement of the City before releasing a plat for recording. Staff would not recommend the City pay these fees.*
- Sec 32 - numbers revised to reflect actual costs.
 - *Staff does not understand the ask here. This was one of the items we sought clarification from Mr. Dragisich. Mr. Dragisich did not have any additional information regarding this request.*
- New section to allow late comers' payment for utilities and possibly road costs.
 - *This is one of the areas we sought more information from Mr. Dragisich to clarify which statutory authority would allow this and how specifically it could be implemented in Lake Elmo. Mr. Dragisich concurred with the City Attorney that what was being referred to here in this letter is actually a lateral benefit charge. Council could consider charging a lateral benefit charge in the future when these properties connect to water and sewer and then pass some of that charge onto the Developer. The challenge is that the future development is unknown and therefore the impact of such an agreement may actually hurt economic development efforts. For example, Vali-Hi is guided as Mixed-Use Business Park in the 2040 Comp Plan. What happens if high density residential (such as a Continental type project) wants to go there? That would mean 300 RECs used in the calculation of the lateral benefit charge. Furthermore, the City is limited to only charging the amount of the lateral benefit charge that is in its fee schedule. The current lateral benefit charge for sewer is \$11,600 per REC and for water \$5,800 per REC.*

Changes requested in Phase 2 (Four Corners 2nd Addition) include:

- Site data 53.29 acres
 - *Whatever the correct data is; staff has no issues*
- Outlot C-City take ownership
 - *Staff has no issues with this.*
- Park Land Dedication paid by Metro Transit
 - *Minnesota Statutes Section 462.358, subdivision 2b requires park land dedication to occur at the time of subdivision. Therefore, it was a requirement in the City's approval of the final plat and will be a requirement in the development agreement as has been our past*

practice. The Developer is free to negotiate with Metro Transit to have the Metro Transit pay the fee similar to what he did with the School District, but the City should keep the requirement attached to the subdivision process.

Preliminary Plat/PUD Conditions:

- Ponding area to the north-watershed has easement and maintains it.
 - *This area will go away in the future as land to the north develops. Easements and responsibilities need to be verified.*
- Metro Transit pay park land dedication fee.
 - *See previous comments.*

Recommend Conditions:

- 5. Metro Transit pays park land dedication
 - *See previous comments.*
- 8. City pays oversize costs
 - *Staff has no issue with this. Oversizing was provided in 1st Addition. Once the Developer provides cost estimates for 2nd Addition, staff can calculate the specific amounts.*
- 10. City owns and maintains Outlot C
 - *See previous comments.*

Other Issues:

- Xcel Energy Gas Main easement area
 - *This may be possible but requires more review by legal.*
- Hudson Blvd North
 - *Has been a Municipal State Aid road since 2013. Washington County is requiring the realignment for better access management along Manning Ave. While land may be used to relocate the road it also frees up land for development by the Developer in the location where the road is vacated.*
 - *Any amount of the \$250,000 not used for the stoplight will be refunded to the Developer per the Development Agreement.*
 - *The Developer's \$150,000 contribution was volunteered by the Developer's representative at the City Council meeting on July 17, 2018.*

While staff cannot recommend support of all of the items requested by the Developer in Mr. Dragsich's October 1, 2019 letter, we have exhaustively reviewed all options. Staff also looked into creating a sewer district under statute. However, this would result in immediate increased property tax assessments for the properties not developing which is not consistent with the idea of a late comer's fee. The sewer could be redesigned to allow for a lift station and force main rather than gravity. However, this would require the gravity main to be converted to a force main over time and the City loses the benefit of immediate access to sewer as was a requirement in the approvals. This could also have an impact on the School District who has already invested in infrastructure to connect to gravity sewer.

Another common option that has been discussed multiple times over the past year is for the City to take over the project and proceed with a 429 special assessment project (similar to other road and sewer projects in the City). This means that the City would construct the project and specially assess all of the benefitting properties which would include the Developer's property but also other properties (i.e. Vali-Hi). If the City proceeded with this option, and did not receive waivers of special assessments from all benefitting properties (as was done to bring sewer to Wildflower/Village Preserve and the Savona neighborhoods) the City will face increased costs in potential assessment challenges, both in legal fees and in reduced assessments if the City is not successful in defending these assessments. The project also requires easements to be acquired from neighboring property owners. The cost of easements was not included in the letter of credit received for the project as the Developer was in the process of acquiring them. If

easements are not obtained from owners willingly and the City does the project, the City would need to acquire the easements through eminent domain proceedings which adds additional costs and legal exposure to the City, including legal costs and property acquisition costs. Additionally, while it would be a City project, the utility companies may still argue that the project is for a private benefit and refuse to move their utilities out of the right of way without additional charges to the City resulting in relocation costs and legal costs. The overall project costs may also increase as the City will not be able to accept the bids the Developer has received for the project but will have to follow the formal competitive bidding process that is required by statute. Lastly, the project timeline would need to be pushed back in order to accommodate all these things.

The City could proceed as described above and use the Developer's letter of credit to cover some of the costs with respect to Four Corners 1st addition. Then any costs beyond that are authorized by the Development Agreement to be specially assessed against the properties in the subdivision. In the case of Four Corners 1st Addition, the only other property in the subdivision that is not owned by the Developer is the School District property.

The City could also finance the project improvements through the sale of GO bonds, though not tax exempt so the interest rate would be higher. In that event, the City would not be required to specially assess the other benefitted properties, which would remove the possibility of assessment appeals should the City go this route. However, this would only leave the property owned by the Developer to be assessed which could result in a rather large assessment being imposed on that property. Given the large assessment, this could mean that there is a more significant risk that the property will into tax forfeiture and the assessment will not be paid in full. In that event, the City would have to levy taxes to pay off the bonds.

The City could consider tax abatement to finance the project improvements. The taxes (likely just the City portion of about \$10,000/year as the City would need the consent of the School District and the County for their portions to be abated) could be redirected to pay off the costs of the project. The maximum amount of time for tax abatement is 20 years. It is unlikely that 20 years of the City's portion of the taxes alone will pay off the project costs.

FISCAL IMPACT:

Depends upon direction from the Council.

ATTACHMENTS:

- Dragisich October 1, 2019 Letter
- Resolution 2018-076 Approving the Four Corners 1st Addition Final and Preliminary Plat
- Four Corners 1st Addition Development Agreement



now joined with
Sprinastad and Umbaugh

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October 1, 2019

Mayor Pearson & Members of the City Council
City of Lake Elmo
3880 Laverne Avenue North
Lake Elmo, Minnesota 55042

RE: Four Corners Development, Lake Elmo, Minnesota

Dear Mayor Pearson & Members of the City Council:

The Four Corners Development planning has presented a number of difficult challenges as you are aware. These challenges have established a need to for Mr. Emerson to request changes to the Development Agreement if this project is to move forward successfully for both the City and Mr. Emerson.

The requested changes in Phase 1 of the Development Agreement include:

- A time extension is requested until December 1, 2020
- Section 26D. – The City pays for the insurance policy which wasn't needed until work started. Vali Hi is not required to hook up to sewer & water until property develops with no penalty payments.
- Section 31. - The City pays EN Properties LLC for the letter of credit that it should not have been required to put up until work started.
- Section 32.- The numbers will have to be revised to actual costs. Using the existing numbers, the City holds \$56,840 plus a LOC for \$227,361 after completion and final approval of the project. Is there a valid reason to hold \$56,840 of EN Properties LLC's money when you still have LOC through Warranty period?
- A new section needs to be added to establish a late comers' payment for connecting to the sewer and water to be constructed as part of this development. The agreement needs to provide that the City will require late comers to pay a connection fee in an amount sufficient to reimburse EN Properties LLC for the cost it will incur in the construction of the sewer and water improvements for which the late comers will benefit. The cost should include both the construction costs plus an annual interest charge to recognize the time value of money to EN Properties LLC.
 - The construction costs need to include the costs of all required improvements for bringing Hudson Boulevard North up to City standards if Vali Hi and Scott Sayer are unwilling to grant the 15 foot permanent easement and 40 foot temporary easement needed for the initial construction and subsequent access to the water and sewer utilities to be constructed by EN Properties LLC. Their refusal to grant these easements will require EN Properties LLC to

construct these utilities within the existing Hudson Boulevard North right-of-way at an increased cost to EN Properties LLC currently estimated to be in the range of \$500,000 depending on City requirements.

The requested changes in Phase 2 of the Development Agreement include:

- Site data 53.29 Acres
- Outlots - Outlot C. The ponding volume is approximately 50% ponding volume for the City street. EN Properties LLC agrees to design and build the pond to City specifications at no cost to the City. Upon completion, EN Properties LLC will deed the pond to the City who take ownership and assume maintenance of the pond going forward.
- Park land dedication: - When a lot is developed by the owner the Parkland Dedication fee will be paid to the City. Metro Transit will pay the 25,470.00 for its parcel.

Preliminary Plat/ PUD conditions:

- 13. Ponding area to the North - The Watershed District has an easement on it and maintains it. The pond is approximately a 9-acre regional pond which the City or Watershed did not have to pay for and EN Properties LLC is developing it at no cost to the City.
- 17. EN Properties is not developing this lot, Metro Transit is developing the lot and paying the fee.

Recommend Conditions:

- 5. Metro Transit pays
- 8. City pays oversized costs
- 10. City owns and maintains Outlot C

Other Issues

Existing Xcel Energy Gas Main

In a recent meeting EN Properties LLC had with Xcel Energy, they indicated they like to be on an easement as opposed to a right-of-way. Lake Elmo's code provides that Xcel Energy's gas main would be provided with an easement in the Hudson Boulevard North vacated right of way if it is realigned as requested/required. Xcel Energy also stated they prefer to have an easement equal the entire width of the vacated right-of-way. However, an easement of that width would preclude the use of the parcel by Metro Transit and pretty much any other entity as there would be no building or construction of improvements allowed within the limits of the easement. An easement of 20 feet (10 feet each side of the Xcel Energy gas main) would be more reasonable allowing Xcel Energy to access their gas main while also allowing the development of this property.

Hudson Boulevard North

EN Properties LLC would like Hudson Boulevard North to stay in its current alignment, same as the County Rd. 19 intersection. EN Properties LLC agreed to relocate and realign Hudson Boulevard North to line up with the street providing access to the Holiday station before the City designated the road a Municipal State Aid Street. This designation changed the construction standards costing EN Properties LLC hundreds of thousands of dollars in increased costs. EN Properties LLC also agreed to pay for Lake Elmo's portion of the stop lights. Washington County informed EN Properties LLC that the cities portion of stop lights would be \$60,000 not \$250,000 which EN Properties LLC has already given to the City. EN Properties LLC also gave the City \$150,000 for selling two parcels of land after they agreed to relocate

Hudson Boulevard North. Relocating Hudson Boulevard North requires dedicating approximately 2 to 3 acres of land to the public for its use as part of the City's local road network at no cost to the City which saves the City hundreds of thousands of dollars. This dedicated right-of-way has a value of hundreds of thousands of dollars.

In addition, EN Properties LLC would point out that the construction of these sewer and water improvements provides a significant future benefit to the City by enabling the development of a large area of land beyond the area included in our development. This future development will increase the City's tax base providing new revenues to the City.

EN Properties LLC respectfully requests a meeting to further discuss these issues with you to reach a mutually beneficially and financially equitable development agreement for both the City and EN Properties LLC that will enable the development of this area to move forward.

Sincerely,



Nicholas R. Dragisich, P.E.
Firm Director

**CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA**

RESOLUTION NO. 2018-076

A RESOLUTION APPROVING THE FOUR CORNERS PRELIMINARY AND FINAL PLAT

WHEREAS, Terry Emerson, 2204 Legion Lane Circle North, Lake Elmo, MN 55042 (“Applicant”), has submitted an application to the City of Lake Elmo (“City”) for approval of Preliminary and Final Plat for Four Corners; and

WHEREAS, the Lake Elmo Planning Commission held a Public Hearing on June 4, 2018 and June 18, 2018 to consider the Preliminary and Final Plat for Four Corners and recommended approval subject to a number of conditions; and

WHEREAS, the City Council reviewed the recommendation of the Planning Commission and the proposed Four Corners Preliminary and Final Plat at a meeting on July 17, 2018; and

NOW, THEREFORE, based upon the testimony elicited and information received, the City Council makes the following:

FINDINGS

1. That the Four Corners preliminary and final plat is consistent with the Lake Elmo Comprehensive Plan and the Future Land Use Map for this area.
2. That the Four Corners preliminary and final plat complies with the minimum lot frontage and area requirements of the City’s BP – Business Park zoning district.
3. That the Four Corners preliminary and final plat complies with the City’s subdivision ordinance.
4. That the Four Corners preliminary and final plat meets other City zoning ordinances, such as landscaping, erosion and sediment control, and other ordinances, provided comments outlined in the City Engineer Review Memo dated May 30, 2018 are met; or as may be amended due to changes in the site plan or proposed use.
5. That the Four Corners preliminary and final plat is consistent with the City’s engineering standards provided final plans are updated to address the City Engineer’s comments documented in a letter dated May 30, 2018; or as may be amended due to changes in the site plan or proposed use.
6. The land being subdivided is legally described as:

S1/2-SE1/4 EXC WEST 2 RODS EXC TO HWY EXC HWY PARCEL 44 MN DOT R/W PLAT #82-35 SECTION 36
TOWNSHIP 029 RANGE 021

7. That the Four Corners preliminary and final plat will create one new lot of 11 acres to be legally described as Lot 1, Block 1, Four Corners; and three outlots: A (46.64 acres), B (5.01 acres), and C (1.08 acres).

CONCLUSIONS AND DECISION

Based on the foregoing, the Applicants' application for Preliminary and Final Plat, subject to the following conditions of approval:

- 1) The property shall be rezoned to BP – Business Park.
- 2) The applicant shall pay a fee in lieu of parkland dedication in the amount of \$4500 per acre of the newly created lot (11 acres X \$4500 = \$49,500 total) prior to any formal City authorization.
- 3) Prior to the execution of the Final Plat by City officials, the Developer shall enter into a Developer's Agreement acceptable to the City Attorney and approved by the City Council that delineates who is responsible for the design, construction, landscaping, and payment of the required improvements for the Four Corners Final Plat with financial guarantees therefore.
- 4) Final grading, drainage and erosion control, sanitary sewer and stormwater management, street and utility construction plans shall be submitted, reviewed and approved by the City Engineer, meeting City Engineering Design Standards, prior to the recording of the Final Plat. All changes and modifications to the plans requested by the City Engineer in a memorandum dated May 30, 2018 and all subsequent memorandums regarding the plans shall be incorporated into these documents before they are approved.
- 5) The applicant must obtain all other necessary City, State, and other governing body permits prior to the commencement of any construction activity on the parcel including but not limited to building permits, conditional use permits, etc.
- 6) Any plans for construction on the newly created parcel must comply with the Lake Elmo Design Standards Manual and specific general site considerations and development standards for specific uses within the Business Park District.
- 7) The site plan is subject to a storm water management plan meeting State, Valley Branch Watershed District and City rules and regulations. All applicable permits must be obtained. Maintenance access roads meeting City engineering design standards must be provided for all storm water facilities.

- 8) Stormwater facilities shall remain privately owned and maintained. The applicant will be required to execute a Stormwater Maintenance and Easement Agreement in the City's standard form of agreement.
- 9) A Traffic Impact Study shall be completed and submitted in order to determine timing and extent of improvements required for the CSAH 15 and Hudson Boulevard intersection realignment and traffic signal improvements as well as the need for an eastbound left turn lane along Hudson Boulevard for site access. Additional right-of-way along Hudson Boulevard may be required if the eastbound left turn lane is required.
- 10) Hudson Boulevard must be improved per the City design standards to an urban section on the north side of the street including a west bound right turn lane to the site, a four foot shoulder (curb reaction), a nine foot boulevard, and a ten foot shared use bituminous trail with two foot clear zone.
- 11) Provisions for connecting municipal sanitary sewer service and for connecting to the municipal water supply must be provided on submitted plans. The applicant shall be responsible to extend and connect to the City sanitary sewer system and municipal water at the applicant's sole cost and extend such services to adjacent properties. The applicant shall be required to obtain easements from adjacent properties in order to extend water. A detailed description of the sanitary sewer and water capacity demands shall be provided.
- 12) Hydrants will be required to be placed at the direction of the Fire Department, and all fire hydrants shall be owned and maintained by the City.
- 13) All easements as requested by the City Engineer and Public Works Department shall be documented on the Final Plat prior to its execution by City Officials.

Passed and duly adopted this 17th day of July, 2018 by the City Council of the City of Lake Elmo, Minnesota.



Mike Pearson, Mayor

ATTEST:



Julie Johnson, City Clerk

(reserved for recording information)

DEVELOPMENT AGREEMENT

(Public sewer and water)

Four Corners 1st Addition

THIS DEVELOPMENT AGREEMENT is dated October 22, 2018, by and between the **CITY OF LAKE ELMO**, a Minnesota municipal corporation (the "City") and EN Properties, LLC, a Minnesota limited liability company (the "Developer").

1. REQUEST FOR PLAT APPROVAL. The Developer has asked the City to approve a plat for Four Corners 1st Addition (referred to in this Agreement as the "Subdivision"). The property being platted 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 Subdivision on condition that the Developer enter into this Agreement, furnish the security required by it, and record the plat with the County Recorder or Registrar of Titles within 180 days after the City Council approves the final plat.

3. RIGHT TO PROCEED. This Agreement is intended to regulate the development of the Property and the construction therein of certain public and private improvements. The Developer may not grade or otherwise disturb the earth, remove trees or construct public or private improvements or any buildings within the Subdivision until all the following conditions precedent have been satisfied:

- A. the Developer has executed and recorded with Washington County all drainage and utility easements required for the Subdivision by the City Engineer and Public Works Director in the City's standard form or the easements have been dedicated to the City on the plat;
- B. the Developer has executed and recorded with Washington County the Storm Water Maintenance and Easement Agreement in the City's standard form;
- C. this Agreement has been executed by the Developer and the City;
- D. the required Security (as hereinafter defined) have been received by the City from or on behalf of the Developer;
- E. final construction plans and specifications have been submitted by the Developer and approved by the City Engineer;
- F. the Developer has paid the City for all legal, engineering, and administrative expenses incurred by the City regarding the City approvals and has given the City the additional City Engineering Administration Escrow required by this Agreement;
- G. the Developer has paid any outstanding assessments and taxes for the property or property being deeded to the City;
- H. the Developer has fulfilled any park dedication requirements as specified under this Agreement;
- I. the Developer has received all necessary permits from the MPCA, MDH, DNR, applicable

watershed, Washington County, and any other agency having jurisdiction over the Subdivision;

J. the Developer has provided the City with a certificate of insurance required by this Agreement;

K. the Developer or the Developer's engineer and the Developer's contractor(s) have initiated and attended a preconstruction meeting with the City Engineer and City staff;

L. the final plat has been recorded with Washington County;

M. a title insurance policy has been issued in the amount of \$100,000 in favor of the City insuring the City's interests as they appear on the plat; and

N. the City has issued a written notice that all above conditions have been satisfied 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 of the development if the Developer is not in compliance with any term of this Agreement and the non-compliance has not been remedied. Development of subsequent phases of the development may not proceed until development agreements for such phases are approved by the City. Park dedication charges and availability charges for sewer and water referred to in this Agreement are not being imposed on outlots that are designated in the plat for future subdivision into lots and blocks, if any, in the plat. Such charges will be calculated and imposed when these outlots, if any, are platted into lots and blocks.

5. PRELIMINARY PLAT STATUS. If the Subdivision 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, within five years after preliminary plat approval.

6. CHANGES IN OFFICIAL CONTROLS. For five years from the date of this Agreement,

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 Agreement to the contrary, to the full extent permitted by state law, the City may require compliance with any changes to the City's Comprehensive Plan, official controls, platting, or dedication requirements enacted after the date of this Agreement.

7. DEVELOPMENT PLANS. The Developer agrees to develop the Property in accordance with the City approvals, including the terms and conditions of approval of the final plat as detailed in City Council Resolution No. 2018-076, and to construct all improvements in accordance with the approved construction plans and specifications (collectively, the "Plans") prepared by a professional engineer registered in the State of Minnesota at its sole expense. All terms and conditions of the City approvals are hereby incorporated by reference into this Agreement. The documents which constitute the Plans are those on file with and approved by the City and are listed on **Exhibit B** attached hereto. The Plans may not be modified by the Developer without the prior written approval of the City.

8. IMPROVEMENTS. In developing the Subdivision in accordance with the Plans, the Developer shall make or install at its sole expense the following public and private improvements (collectively, the "Subdivision Improvements"):

- A. Grading and erosion control;
- B. Sanitary sewer;
- C. Water system improvements;
- D. Stormwater improvements (storm sewer pipe, control structures, ponds, BMPs, etc.);
- E. Hudson Boulevard improvements;
- F. Streets;
- G. Trails;
- H. Underground private utilities;
- I. Landscaping;

- J. Intersection improvements (turn lanes, by pass lanes, traffic control, etc.);
- K. Tree preservation and reforestation; and
- L. Monuments required by Minnesota Statutes.

All improvements shall be installed in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. 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 Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation 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 or a soil engineer inspect the Developer's 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.

9. CITY ADMINISTRATION AND CONSTRUCTION OBSERVATION. At the time of the City's approval of the final plat for the Subdivision, the Developer shall submit to the City an amount to be escrowed by the City for City administration and construction observation costs in an amount provided under paragraph 33 of this Agreement - Summary of Cash Requirements. Thereafter, the Developer shall reimburse the City each month, within 30 days of receiving an invoice, for all administration and construction observation costs incurred by the City during the construction of the Subdivision Improvements by the City's engineering, public works, planning, and landscape architecture staff and consultants. After 30 days of the invoice, the City may draw upon the escrow and stop the work on site until the escrow has been replenished in its full amount. City administration and oversight will include monitoring of construction progress and construction observation, consultation with the Developer and the Developer's professionals 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 the Security. 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 by the City on an hourly basis.

The direction and review provided by the City through the inspection of the Subdivision Improvements should not be considered a substitute for the Developer-required management of the construction of the Subdivision Improvements. The Developer must require the Developer's contractor(s) to furnish the City with a schedule of proposed operations at least five days prior to the commencement of construction of each type of Subdivision Improvement. The City shall inspect all Developer-installed Subdivision Improvements during and after construction for compliance with the Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer will notify the City at such times during construction as the City 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 percent ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the Subdivision Improvements identified in Paragraph 8 above.

11. TIME OF PERFORMANCE. The Developer shall install all required Subdivision Improvements by October 31, 2019, 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.

12. MAINTENANCE DURING CONSTRUCTION. The Developer shall be responsible for all maintenance of the Subdivision Improvements until the Subdivision Improvements are accepted by the City in writing. The Developer is also responsible to locate all underground utilities until the Subdivision is accepted in writing by the City. Warning signs shall be placed by the Developer 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 by the Developer. Hudson Boulevard must remain open to traffic at all times unless a right-of-way obstruction permit is obtained from the City. The Developer shall be responsible for keeping streets within and outside of the Subdivision clean and clear of dirt and debris that may spill, track, or wash onto the street from the Developer's operations. The Developer shall contract for street cleaning for streets within and immediately adjacent to the Subdivision. At a minimum, scraping and sweeping shall take place on a weekly basis and on a daily basis during heavy tracking days.

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

14. CONSTRUCTION ACCESS. Construction traffic access and egress for all work on the site including grading, public utility construction, and site improvements is restricted to access the Subdivision via Hudson Boulevard North at the designated rock construction entrances per the approved erosion control plans. No construction traffic is permitted on other adjacent local streets. All construction parking, and loading and unloading of equipment and supplies must be completed interior to the Subdivision and is not allowed to occur within any public right-of-way without a right-of-way obstruction permit.

15. CONSTRUCTION SEQUENCE AND COMPLIANCE. The City will require the

Developer to construct the Subdivision Improvements in a sequence which will allow progress and compliance points to be measured and evaluated. The Developer and the Developer's representatives are required to supervise and coordinate all construction activities for all Subdivision 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. EROSION CONTROL. All construction regarding the Subdivision Improvements shall be completed in a manner designed to control erosion and in compliance with the City Code, the City's Engineering Design and Construction Standards Manual, all watershed district permits, the Minnesota Pollution Control Agency's best management practices, and other requirements including the City's permit with the Minnesota Pollution Control Agency for the municipal separate storm sewer system program. Prior to initiating any work on the site, an erosion control plan must be implemented by the Developer and inspected and approved by the City. Erosion and sediment control measures shall be coordinated with the various stages of development. The City may impose additional erosion control requirements at any stage in development as deemed necessary to maintain a compliant site. All areas disturbed for site improvements must be reseeded by the Developer promptly after the work in the area is complete unless construction of the next stage of the improvements will begin in that area within seven days. 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 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 by the City unless the Subdivision is in full compliance with the approved erosion control plan.

If building permits are issued prior to the acceptance of public Subdivision Improvements, the Developer assumes all responsibility for erosion control compliance throughout the Subdivision 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. STREET AND UTILITY IMPROVEMENTS. All storm sewers, sanitary sewers, watermain improvements, and streets (including, but not limited to, turn lanes) shall be installed in accordance with the approved Plans, the City approvals, the City Code, and the City's Engineering Design and Construction Standards Manual. Installation of curb and gutter, installation of the first lift of the bituminous streets, the grading of boulevards, the installation of street signs, and restoration work on the site must be completed in accordance with the approved Plans. Once the work is completed, the Developer or the Developer's 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 by the Developer after the first bituminous course has weathered a winter season. Prior to placement of the final bituminous wear course, the Developer shall repair or replace all broken or failing curbs, sidewalks, and damaged or settled streets as determined by the City from a pre-wear course walk-through inspection.

18. LANDSCAPING AND TREE REPLACEMENT IMPROVEMENTS.

- A. The Developer agrees to install landscaping in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction

Standards Manual, and the City's Landscape and Irrigation Standards. All landscaping materials such as trees, shrubs, grasses, or other vegetation installed by the Developer must be warranted and maintained for a period of two years. The two 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 the landscaping complete an inspection 30 days prior to the end of the two 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 the 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 Subdivision boundaries according to a landscape maintenance plan approved by the City. The Developer agrees to achieve "substantial performance" on all seeded or sodded areas 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 eight inches free of eroded, bare, or dead spots and no visible surface soil."

19. SIGNAGE, PAVEMENT MARKINGS, AND OTHER UTILITIES. The Developer

agrees to install street signs, traffic and parking signs, and pavement markings along Hudson Boulevard all in accordance with the approved Plans and the City Engineering Design Standards Manual. Street and traffic sign details shall be submitted by the Developer to the City for approval prior to installation. In addition, the Developer shall be responsible for the cost and all coordination work to extend private utilities along with street lighting within the Subdivision all in accordance with the approved plans and right-of-way permits.

20. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction required by this Agreement, the Subdivision Improvements lying within public easements shall become City property. Prior to acceptance of the public Subdivision Improvements by the City, the Developer must furnish the City with a complete set of reproducible "record" plans and 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 Agreement. 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 that the public Subdivision Improvements have been completed in accordance with the terms of this Agreement, the City Engineer will accept the completed public Subdivision Improvements.

21. PARK DEDICATION. The Developer shall pay a cash contribution of \$49,500 in satisfaction of the City's park dedication requirements. The charge was calculated as follows: \$4,500 per acre at 11 acres.

22. 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 Subdivision 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 REC shall be payable and collected by the City at the time the building permit is issued for the building to connect to City sewer.

The Developer has previously paid \$200,000 to the City in connection with the placement of municipal water services to the terminus located at the northeast corner of the Air Lake Property as per the WAC Prepayment Agreement between the Developer and the City dated June 2, 2014 (the "Prepayment Agreement").

The water availability charge (WAC) in the amount of \$3,000.00 per REC shall be payable and collected by the City at the time the building permit is issued for each building. Actual payments for WAC fees for the Subdivision will be deducted from the fees otherwise owed annually under the Prepayment Agreement if the WAC fees are more than the minimum amount owed of \$50,000 per year.

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

23. RESPONSIBILITY FOR COSTS.

- A. In the event that the City receives claims from labor, materialmen, or others that work required by this Agreement has been performed and the amounts due to 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 Security 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 funds deposited with the District Court, except that the Court shall retain jurisdiction to determine attorneys' fees pursuant to this Agreement.

- 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 Subdivision, including but not limited to legal, planning, engineering, and inspection expenses incurred in connection with the City's approval and acceptance of the plat and the Subdivision, the preparation of this Agreement, the City's review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting development of the Subdivision. All amounts incurred and due to the City at the time of the recording of the final plat must be fully paid by the Developer prior to the City executing and releasing the final plat for recording.
- C. The Developer shall hold the City and its officials, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from the City's approval of the plat and the development of the Subdivision. The Developer shall indemnify the City and its officials, 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 Agreement, 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 special assessments referred to in this Agreement. This is a personal obligation of the Developer and shall continue in full force and effect even if the Developer sells one or more lots, the entire Property, or any portion of it.
- F. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within 30 days after receipt. Bills not paid within 30 days shall be assessed a late fee per the City adopted fee schedule. Upon request,

the City will provide copies of detailed invoices of the work performed by the City and its consultants.

24. CITY PAYMENTS. The City shall reimburse the Developer in the amount of \$70,150 for oversizing costs associated with the installation of a trunk water main, \$120,760 for oversizing costs associated with the installation of a trunk sanitary sewer main, and \$18,200 for mill and overlay of the south side of Hudson Blvd as identified in the Plans. City payments shall be made within 30 days of the City's final acceptance of the Improvements, but only if the Developer is not in default with respect to any terms of this Agreement. 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 Agreement or under applicable laws, ordinances or rules.

25. SPECIAL PROVISIONS. The following special provisions shall apply to the Subdivision:

- A. Implementation of the recommendations listed in the May 30, 2018, Engineering memorandum and all subsequent Engineering memorandums.
- B. The Developer must obtain a sign permit from the City prior to installation of any subdivision identification signs.
- C. All public trails shall be located within outlots, be at least 30 feet in width and either be dedicated to the City in the plat or granted to the City in an easement in a form acceptable to the City.
- D. The Developer shall enter into a Landscape License Agreement with the City that clarifies the individuals or entities responsible for maintenance of any landscaping installed in areas outside of land dedicated as public park and open space on the final plat.
- E. The Developer shall pay the City a cash contribution of \$150,000 in recognition of

lost tax revenue that will be caused due to the fact that the intended use of the property will be tax exempt. Said cash contribution shall be paid in full prior to the recording of the Plat.

- F. The Developer shall reimburse the City for all costs incurred by the City for the City's cost share in the installation of a future traffic signal at the intersection of Hudson Boulevard and Manning Avenue (CSAH 15) and the construction of a southbound right turn lane and a northbound left turn lane along Manning Avenue (CSAH 15) to be designed and constructed by Washington County. The Developer shall pay the City \$250,000, which is the estimated City cost share for the future traffic signal and turn lanes. Said payment shall be made to the City in full prior to the recording of the Plat. If the actual City cost share exceeds this estimated amount, the Developer shall be responsible for reimbursing the City for the remaining portion of the City cost share within 30 days of being invoiced for such amount by the City. If the actual City cost share is less than \$250,000, the City shall return the remaining portion to the Developer within 30 days of the City paying Washington County's final invoice for the project.

26. MISCELLANEOUS.

- A. The Developer may not assign this Agreement without the written permission of the City Council. The Developer's obligations hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire Property, or any portion of it.
- B. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a professional 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. All retaining walls identified on

the Plans or by special conditions referred to in this Agreement shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.

- C. Legal documents regarding any covenants and restrictions, if applicable, shall be submitted to the City prior to recording of the final plat for review and approval by the City Attorney.
- D. The Developer shall take out and maintain or cause to be taken out and maintained until six months after the City has accepted the public Subdivision 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 \$1,500,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a combination single limit policy of \$1,500,000 or more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate of insurance evidencing coverage prior to the City signing the plat. The certificate shall provide that the City must be given 30 days' advance written notice of the cancellation of the insurance.
- E. Third parties shall have no recourse against the City under this Agreement.
- F. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. 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 Agreement shall not be a waiver or release.

- H. This Agreement shall run with the land and may be recorded against the title to the Property at the Developer's expense. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the Property being final platted and has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the Property, including, but not limited to, mortgagees; 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 Subdivision and the Subdivision Improvements comply or will comply 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 Subdivision is not in compliance, the City may, at its option, refuse to allow construction or development work in the Subdivision until it is brought into compliance. Upon the City's demand, the Developer shall cease work until there is compliance.

27. 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 Subdivision 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.

28. 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 Security, as set forth in this Agreement.

29. 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. In the event of a default by the Developer as to construction or repair of any of the Subdivision Improvements or

any other work or undertaking required by this Agreement, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek an order from any court for permission to enter the Subdivision for such purposes. If the City does such work, the City may, in addition to its other remedies, levy special assessments against the land within the Subdivision to recover the costs thereof. For this purpose, the Developer, for itself and its successors and assigns, expressly waives any and all procedural and substantive objections to the special assessments, including, but not limited to, hearing requirements, and any claim that the assessments exceed the benefit to the land so assessed. The Developer, for itself and its successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes Section 429.081.

The Developer also acknowledges that its failure to perform any or all of the Developer's 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.

30. WARRANTY. During the warranty period, the Developer warrants that all Subdivision Improvements will be free from defects and that they will continue to meet all technical specifications and standards. During the warranty period, the Developer agrees to repair or replace any Subdivision Improvement, or any portion or element thereof, which shows signs of failure, normal wear and tear excepted. If the Developer fails to repair or replace a defective Subdivision Improvement during the warranty period, the City may repair or replace the defective portion and may use the Security to reimburse itself for such costs. The Developer agrees to reimburse the City fully for the cost of all Subdivision Improvement repair or replacement if the cost thereof exceeds the remaining amount of the Security. Such reimbursement must be made

within 45 days of the date upon which the City notifies the Developer of the cost due under this paragraph. The Developer hereby agrees to permit the City to specially assess any unreimbursed costs against any lots in the Subdivision which have not been sold to home buyers if the Developer fails to make required payments to the City. The Developer, on behalf of itself and its successors and assigns, acknowledges the benefit to the lots within the Subdivision of the repair or replacement of the Subdivision Improvements and hereby consents to such assessment and waives the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.

- A. The required warranty period for all work relating to the public sewer and water shall be two years from the date of final written City acceptance of the work.
- B. The required warranty period for all work relating to the Hudson Boulevard Improvements shall be one year from the date of final written City acceptance of the work.
- C. The required warranty period for sod, trees, and landscaping shall be two years from the date of final written City acceptance of the installation.

31. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public Subdivision Improvements, and construction of all public Subdivision Improvements, the Developer shall furnish the City with an irrevocable letter of credit or a cash escrow or a combination of a cash escrow and letter of credit (the "Security") in the amount of \$1,136,805. The bank originating the letter of credit shall be determined by the City to be solvent and creditworthy. The letter of credit shall substantially be in the form attached to this Agreement and must be approved by the City. The amount of the Security was calculated as itemized on **Exhibit C**. If at any time the City reasonably determines that the bank issuing the letter of credit no longer satisfies the City's requirements regarding solvency and creditworthiness, the City shall notify the

Developer and the Developer shall provide to the City within 45 days a substitute for the letter of credit from another bank meeting the City's requirements. If the Developer fails to provide the City within 45 days with a substitute letter of credit from an issuing bank satisfactory to the City, the City may draw under the existing letter of credit.

This breakdown is for historical reference; it is not a restriction on the use of the Security. The City may draw down the Security, without notice, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term. If the required public Subdivision Improvements are not completed at least 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 by the City to cure the default.

32. REDUCTION OF SECURITY. Upon written request by the Developer and upon receipt of proof satisfactory to the City Engineer that work has been completed in accordance with the approved Plans and the terms of this Agreement and that all financial obligations to the City have been satisfied, the City Engineer may approve reductions in the Security in the following instances:

A. Up to 75 percent of the Security associated with the itemization on **Exhibit C** may be released upon completion of the following key milestones of the project as determined by the City Engineer:

1. Construction Categories 2 and 3: The amount of \$565,092 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.
2. Construction Categories 4 and 5: The amount of \$223,718 may be released when the Hudson Boulevard Improvements, including street and drainage, turn

lanes, pavement markings and signage, and bituminous trail has been installed and has 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.

3. Construction Categories 6-10 and 14-17: The amount of \$57,231 may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) bio retention facilities; (2) 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 Subdivision Improvements are accepted by the City Engineer and the City Council.
 4. Construction Categories 11-13: The amount of \$6,563 may be released when landscaping Subdivision Improvements have been installed to the satisfaction of the City including all corrective work for any identified punch list items.
- B. Twenty-five percent of the original Security amount, excluding grading and landscaping improvements shall be retained until: (1) all Subdivision Improvements have been fully completed and accepted 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.
- C. Twenty-five percent of the original Security amount associated with landscaping shall be retained by the City until: (1) all landscaping Subdivision Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items being completed by the Developer; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.
- D. It is the intent of the parties that the City at all times have available to it Security 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 Security shall be evaluated by the City in light of that principle.

33. SUMMARY OF CASH REQUIREMENTS. The following is a summary of the cash requirements under this Agreement which must be paid to the City prior to recording the final plat:

Park Dedication:	\$49,500
Special Assessments Due:	\$0
City Base Map Upgrading (\$25.00 per REU):	\$25
City Engineering Administration Escrow:	\$10,000
Cash Contribution for Payment in Lieu of Taxes	\$150,000
City Cost Share of Hudson Boulevard and Manning Avenue (CSAH 15) Traffic Signal/Turn Lanes	\$250,000
TOTAL CASH REQUIREMENTS:	\$459,525

34. 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: 11530 Hudson Boulevard North, Lake Elmo, MN 55042. 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, 3880 Laverne Avenue N, Suite 101, Lake Elmo, Minnesota 55042.

35. EVIDENCE OF TITLE. The Developer shall furnish the City with evidence of fee ownership of the property being platted by way of an a title insurance policy dated not earlier than 30 days prior to the execution of the plat.

36. COMPLIANCE WITH LAWS. The Developer agrees to comply with all laws, ordinances, regulations, and directives of the state of Minnesota and the City applicable to the Subdivision. This Agreement shall be construed according to the laws of the Minnesota.

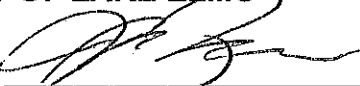
37. SEVERABILITY. In the event that any provision of this Agreement shall be held invalid,

illegal, or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other provision of this Agreement.

38. NON-WAIVER. Each right, power, or remedy conferred upon the City by this Agreement is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereafter arising, or available to the City at law or in equity, or under any other agreement. 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. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

39. COUNTERPARTS. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

CITY OF LAKE ELMO

By: 

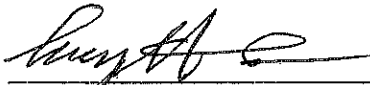
Its: Mike Pearson
Mayor

By: 

Its: Julie Johnson
City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 16th day of October, 2018, by Mike Pearson and Julie Johnson, the Mayor and City Clerk, respectively, 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



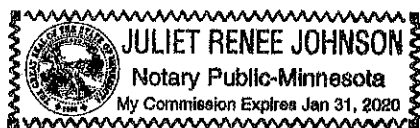
EN PROPERTIES, LLC

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF Washington)

The foregoing instrument was acknowledged before me this 22nd day of October, 2018, by Terry Emerson, the Chief Manager of EN Properties, LLC, a Minnesota limited liability company on behalf of the company.



NOTARY PUBLIC

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

**MORTGAGEE CONSENT TO
DEVELOPMENT AGREEMENT**

Premier Bank A Minnesota Corporation, which holds a mortgage on the Property, the development of which is governed by the foregoing Development Agreement, agrees that the Development Agreement shall remain in full force and effect even if it forecloses on its mortgage.

Dated this 16th day of October, 2018.

Mark E. Novitzki

President / CEO

STATE OF MINNESOTA)
COUNTY OF Ramsey) ss.

The foregoing instrument was acknowledged before me this 16th day of October, 2018, by Mark E. Novitzki.

Victoria J. Campbell

NOTARY PUBLIC

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



EXHIBIT A TO DEVELOPMENT AGREEMENT

Legal Description of Property Being Final Platted

That part of the South Half of the Southeast Quarter of Section 36, Township 29 North, Range 21 West, Washington County, Minnesota, lying easterly of the West 33.00 feet (2 rods) thereof, EXCEPT that part designated as Parcel 44 (to include existing right-of-way) on Minnesota Department of Transportation Right of Way Plat No. 82-35, State Project No. 8282 (94-392), recorded as Document No. 424557 in the Office of the County Recorder, Washington County, Minnesota.

EXHIBIT B TO DEVELOPMENT AGREEMENT

List of Plan Documents

The following documents prepared by Larson Engineering constitute the Plans:

THOSE DOCUMENTS BY

AS FOLLOWS:

<u>SHEET</u>	<u>TITLE</u>	<u>REVISION DATE</u>
T	Title	
C1	Demolition Plan	
C2	Paving and Dimension Plan	
C3	Grading and Erosion Control Plan	
C3.1	Landscape Plan	
C4	Utility Plan	
C5	Details	
C6	Details	

EXHIBIT C TO DEVELOPMENT AGREEMENT

Subdivision Improvements Cost/Security Amount Estimate

<u>CONSTRUCTION CATEGORY</u>		<u>COST</u>	<u>125 percent</u>
1	<u>Grading</u>	\$NA	\$NA
2	<u>Sanitary Sewer</u>	\$285,105	\$356,381
3	<u>Watermain</u>	\$317,660	\$397,075
4	<u>Storm Sewer (includes pond structures and outfall pipes)</u>	\$48,958	\$61,198
5	Streets and Sidewalks	\$189,675	\$237,094
6	Trails	\$13,183	\$16,479
7	<u>Surface Water Facilities (ponds, infiltration basins, other BMPs)</u>	\$NA	\$NA
8	Street Lighting	\$NA	\$NA
9	<u>Street and Traffic Signs</u>	\$2,863	\$3,579
10	<u>Private Utilities</u>	\$NA	\$NA
11	<u>Landscaping Improvements</u>	\$7,000	\$8,750
12	<u>Tree Preservation and Restoration</u>	\$NA	\$NA
13	<u>Wetland Mitigation and Buffers</u>	\$NA	\$NA
14	<u>Monuments</u>	\$NA	\$NA
15	<u>Erosion and Sediment Control</u>	\$37,000	\$46,250
16	Miscellaneous Facilities	\$NA	\$NA
17	Developer's Record Drawings	\$8,000	\$10,000
<u>TOTALS</u>		\$909,444	\$1,136,805

CONSENT TO PLAT

Whereas, the undersigned, Premier Bank, a Minnesota corporation (the "Mortgagee") is the holder of Mortgage Liens encumbering real property located in the County of Washington, State of Minnesota, legally described on Exhibit A (the "Property") attached hereto pursuant to the terms of a Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents dated October 25, 2001 and recorded in the office of the Washington County Recorder on October 26, 2001 as Document Number 3189136 and a Commercial Real Estate Mortgage, dated July 1, 2014 and recorded in the office of the Washington County Recorder on July 25, 2014 as Document Number 3995126.

Whereas, the Property has been platted pursuant to the Plat of Four Corners dated October ____, 2018 and recorded on October ____, 2018 in the office of the Washington County Recorder as Document Number _____; and

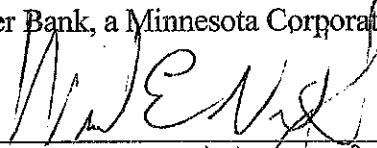
Whereas, Mortgagor did not join in the dedication of the plat and desires to consent to the plat.

Now, Therefore, the undersigned Mortgagor hereby consents to the platting of the Property described on Exhibit A as a part of the Plat of Four Corners and further consents to the donation and dedication to the public for public use forever the streets, right of ways, and easements as shown on the plat.

In Witness Whereof, Mortgagor has caused this Consent to Plat to be executed as of the day and year first above written.

Premier Bank, a Minnesota Corporation

By


Mark E. Novitski, President

STATE OF MINNESOTA }
 }
COUNTY OF Ramsey } ss.
 }

The foregoing instrument was acknowledged before me, a notary public, this 22nd day of October, 2018, by Mark G. Novitzki, the President of Premier Bank, a corporation under the laws of the state of Minnesota, on behalf of said corporation.



Notary Public



THIS INSTRUMENT WAS DRAFTED BY:

SJOBERG & TEBELIUS, P.A.
Woodhill Office Park
2145 Woodlane Drive, Suite 101
Woodbury, Minnesota 55125
Telephone: 651-738-3433

Error,

EXHIBIT A

Legal Description

That part of the South Half of the Southeast Quarter of Section 36, Township 29 North, Range 21 West, Washington County, Minnesota, lying easterly of the West 33.00 feet (2 rods) thereof, EXCEPT that part designated as Parcel 44 (to include existing right-of-way) on Minnesota Department of Transportation Right of Way Plat No. 82-35, State Project No. 8282 (94-392), recorded as Document No. 424557 in the Office of the County Recorder, Washington County, Minnesota

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