



## **STAFF REPORT**

DATE: 01/07/2020

**REGULAR**

**TO:** City Council  
**FROM:** Ken Roberts, Planning Director  
**AGENDA ITEM:** **Inwood 6<sup>th</sup> Addition (Kwik Trip) - Development Agreement**  
**REVIEWED BY:** Jack Griffin, City Engineer  
Sarah Sonsalla, City Attorney

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### **BACKGROUND:**

On October 15, 2019, the City Council adopted Resolution 2019-076 approving the minor subdivision for the Inwood 6<sup>th</sup> Addition and a resolution approving a conditional use permit (CUP) a Kwik Trip fuel station and convenience store. An executed developer's agreement is a condition of final plat approval and is required before the developer records the final plat with Washington County.

### **ISSUE BEFORE CITY COUNCIL:**

The City Council is being asked to adopt Resolution 2020-006 approving the developer agreement for the Inwood 6<sup>th</sup> Addition (Kwik Trip).

### **REVIEW/ANALYSIS:**

A condition of approval of the Inwood 6<sup>th</sup> Addition is that the developer enter into a Developer's Agreement with the City before the execution of the plat by City officials. The key aspects of the agreement include the following components:

- That all public improvements to be completed by October 31, 2020 due to phasing within the development.
- That the developer provide a letter of credit in the amount of \$439,246 related to the cost of the proposed public improvements.
- That the developer provide the City with a cash deposit of \$50,215 for the donation for the traffic signal at Inwood Avenue and 5<sup>th</sup> Street, the park dedication fee and engineering administration escrow.

City staff is in the process of reviewing and approving the final construction plans for the project, subject to changes and corrections. Upon execution of this Agreement, receipt of all fees and securities, recording of the final plat and the completion of a preconstruction meeting with the City, the applicant may start site grading and construction.

## **FISCAL IMPACT:**

The future financial impacts include maintenance of sanitary sewer mains, watermains and other public infrastructure and other public financial responsibilities typically associated with a new development. The City will collect any necessary building permit fees, Sewer Accessibility Charges and Water Accessibility Charges and property taxes at the time of building permit application for each building as they develop.

## **OPTIONS:**

The City Council is being asked to consider the approval of the developer's agreement and has the following options:

- 1) Adopt Resolution 2020-006 approving the developer agreement for the Inwood 6<sup>th</sup> Addition; or
- 2) Direct Staff to amend the draft developer agreement to bring back to a future City Council meeting.

## **RECOMMENDATION:**

Staff recommends the City Council adopt Resolution 2020-006 approving the developer's agreement for the Inwood 6<sup>th</sup> Addition (Kwik Trip) with the following motion:

***“Move to adopt Resolution 2020-006 approving the developer’s agreement for the Inwood 6<sup>th</sup> Addition (Kwik Trip)”***

## **ATTACHMENTS:**

- Resolution 2020-006
- Inwood 6<sup>th</sup> Addition (Kwik Trip) Development Agreement

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

**RESOLUTION NO. 2020-006**

***A RESOLUTION APPROVING A DEVELOPER'S AGREEMENT FOR THE INWOOD 6<sup>TH</sup>  
ADDITION (KWIK TRIP) FINAL PLAT***

**WHEREAS**, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

**WHEREAS**, RPS Legacy LLC, Little Canada, Minnesota ("applicant") has previously submitted an application to the City of Lake Elmo ("City") for a minor subdivision for the Inwood 6<sup>th</sup> Addition; and

**WHEREAS**, the Lake Elmo City Council approved a minor subdivision for the Inwood 6<sup>th</sup> Addition on October 15, 2019; and

**WHEREAS**, RPS Legacy is now proposing to final plat the Inwood 6<sup>th</sup> Addition; and

**WHEREAS**, the Lake Elmo City Council adopted Resolution 2019- 076 on October 15, 2019 approving the minor subdivision and Final Plat for the Inwood 6<sup>th</sup> Addition; and

**WHEREAS**, a condition of approval of said Resolution 2019-076, establishes that prior to execution of the Final Plat by City officials, the Applicant shall enter into a Developer's Agreement with the City; and

**WHEREAS**, the Applicant and the City have agreed to enter into such a contract and a copy of the Developer's Agreement was submitted to the City Council for consideration at its January 7, 2020 meeting;

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council does hereby approve the Developer's Agreement for Inwood 6<sup>th</sup> Addition (Kwik Trip) and authorizes the Mayor and City Clerk to execute the document.

Passed and duly adopted this 7<sup>th</sup> day of January, 2020 by the City Council of the City of Lake Elmo, Minnesota.

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Mike Pearson, Mayor

ATTEST:

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Julie Johnson, City Clerk

*(reserved for recording information)*

## **DEVELOPMENT AGREEMENT**

*(Public sewer and water)*

### **Lot 1, Block 1, Inwood 6<sup>th</sup> Addition (Kwik Trip)**

**THIS DEVELOPMENT AGREEMENT is** dated \_\_\_\_\_, 2020—, by and between the **CITY OF LAKE ELMO**, a Minnesota municipal corporation (the “City”) and Kwik Trip, Inc., a Wisconsin corporation (the “Developer”).

**1. REQUEST FOR PLAT APPROVAL.** RPS Legacy Desoto, LLC, a Minnesota limited liability company (the “Fee Owner”) has asked the City to approve a plat for Inwood 6<sup>th</sup> 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 that Fee Owner 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 Lot 1, Block 1, Inwood Sixth Addition (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 Property 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 Property 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. this Agreement has been executed by the Developer, Fee Owner and the City;
- C. the required Security (as hereinafter defined) have been received by the City from or on behalf of the Developer;
- D. final construction plans and specifications have been submitted by the Developer and approved by the City Engineer;
- E. 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;
- F. the Developer has paid any outstanding assessments and taxes for the Property;
- G. the Developer has fulfilled any park dedication requirements as specified under this Agreement;
- H. the Developer has received all necessary permits from the MPCA, MDH, DNR, applicable watershed, Washington County, and any other agency having jurisdiction over the Property;
- I. the Developer has provided the City with a certificate of insurance required by this Agreement;
- J. 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;

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

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

M. 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 Nos. 2019-075 and 2019-077, 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 Property in accordance with the Plans, the Developer shall make or install at its sole expense the following public and private improvements (collectively, the “Property 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. 5<sup>th</sup> Street turn lane, signage, sidewalk and public right-of-way improvements;
- F. Underground private utilities;
- G. Landscaping;
- H. Tree preservation and reforestation; and
- I. 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 34 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 Property 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 Property Improvements should not be considered a substitute for the Developer-required management of the construction of the Property 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 Property Improvement. The City shall inspect all Developer-installed Property 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 Property Improvements identified in paragraph 8 above.

**11. TIME OF PERFORMANCE.** The Developer shall install all required Property Improvements by October 31, 2020. The Developer may, however, request an extension of time from the City. If the City grants a time extension, 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 Property Improvements until the Property Improvements are accepted by the City in writing. The Developer is also responsible to locate all underground utilities until the Property Improvements are 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. The Developer and contractors must keep 5<sup>th</sup> Street

North 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 Property 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 Property. 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 AND PARKING.** Construction traffic access and egress for all work on the site including grading, utility construction, building construction, and Property Improvements is restricted to access the Property via 5<sup>th</sup> Street at the approved new turn lane and designated rock construction entrance per the approved erosion control plans. No construction traffic is permitted on other adjacent local streets or at any other location along 5<sup>th</sup> Street North.

All construction parking and staging, including the loading and unloading of equipment and supplies during the construction of the site improvements and buildings must be completed interior to the Subdivision and is not allowed to occur within any public right-of-way. The Developer and contractors shall be responsible for the repair, replacement, or restoration of any damage to the street, curb and boulevard caused by the construction activities. Such work shall meet all City standards and specifications.

**15. CONSTRUCTION SEQUENCE AND COMPLIANCE.** The City will require the Developer to construct the Property Improvements in a sequence that 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 Property

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 Property 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. Before initiating any work on the site, the Developer must implement an erosion control plan and have the City inspect and approve the erosion control measures. The Developer shall coordinate and install erosion and sediment control measures 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. The Developer shall promptly reseed all areas disturbed for site improvements 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 30 days, the City may draw down the Security to pay any costs. The City will not allow any development, utility, or street construction and the City will not issue any building permits unless the Property is in full compliance with the approved erosion control plan.

If the City issues building permits before the acceptance of public Property Improvements, the Developer assumes all responsibility for erosion control compliance throughout the Property 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. SITE GRADING.** In order to construct the Property Improvements and otherwise prepare the Property for development, it will be necessary for the Developer to grade the Property. All grading must be done in compliance with this Agreement and the approved grading plans. Within 30 days after completion of the grading, the Developer shall provide the City with an "as built" grading plan and a certification by a registered land surveyor or engineer as required in the City's Engineering Design and Construction Standards Manual.

**18. STREET AND UTILITY IMPROVEMENTS.** All storm sewers, sanitary sewers, watermain, and streets, including the 5th Street turn lane improvements, 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. Curb and gutter, bituminous streets including base and wear course, 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 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 Developer must complete the punch list items and notify the City to reinspect the improvements.

**19. 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 (2) 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 Property 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 Property 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.”

**20. SIGNAGE, STREET LIGHTING, AND OTHER UTILITIES.** The Developer agrees to install street signs, traffic and parking signs, and pavement markings within the Property all in accordance with the approved Plans and the City Engineering Design Standards Manual. The Developer shall submit street and traffic sign details 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 Property all in accordance with the approved plans and right-of-way permits.

**21. OWNERSHIP OF IMPROVEMENTS.** Upon completion of the work and construction required by this Agreement, the Property Improvements lying within public easements shall become City property. Prior to acceptance of the public Property 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 Property Improvements have been completed in accordance with the terms of this Agreement, the City Engineer will accept the completed public Property Improvements.

**22. PARK DEDICATION.** The Developer shall pay a cash contribution of \$10,215 in satisfaction of the City's park dedication requirements. The amount of the cash contribution was calculated as follows: 2.27 acres (for Lot 1, Block 1) at \$4,500 per acre.

**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 Property 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 City issues a building permit for the building.

The water availability charge (WAC) in the amount of \$3,000.00 per REC shall payable

and collected by the City at the time the City issues a building permit for the building.

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 City issues a building permit for the building.

#### **24. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY<sup>[1]</sup>.**

- A. The City will not issue a certificate of occupancy for any building on the Property until such time that sanitary sewer, water, storm sewer, and the 5<sup>th</sup> street turn lane improvements are installed and as-built plans have been submitted and approved by the City.
- B. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and withholding of other permits, inspection or actions and the halting of all work in the Property.
- C. If the City issues building permits before the acceptance of the public Property Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of public Property Improvements and damage to public Property Improvements caused by the City, the Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any third parties.

#### **25. 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 Property, 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 Property, 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 Property. 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 Property. 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.

**26. SPECIAL PROVISIONS.** The following special provisions shall apply to the Property:

A. Implementation of the recommendations and requirements listed in the August 6, 2019, Engineering memorandum.

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

C. The final plat must show a 10-foot-wide drainage and utility easement along all property lines.

D. All easements as requested by the City Engineer and the Public Works Department shall be documented on the final plat before the execution of the final plat by City officials. The City must receive separate drainage and utility easements in the City's standard form of easement agreement for any off-site Property Improvements (beyond the plat limits). Any off-site easements, if required, must be clearly shown on the street, grading, and utility plans with all dimensions labeled. The easements must be obtained by the Developer before the start of grading.

**27. 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 Property 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 a contract to purchase from Fee Owner 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 Property and the Property 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 Property is not in compliance, the City may, at its option, refuse to allow construction

or development work in the Property until it is brought into compliance. Upon the City's demand, the Developer shall cease work until there is compliance.

**28. 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 Property 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.

**29. 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.

**30. 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 Property 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 Property 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 Property 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.

**31. WARRANTY.** During the warranty period, the Developer warrants that all Property 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 Property 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 Property 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 Property 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 the Property 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 Property of the repair or replacement of the Property 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 (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 the 5<sup>th</sup> Street turn lane, concrete curb and gutter, sidewalks and trails, materials, and equipment shall be one (1) year from the date of final written acceptance of the work.

C. The required warranty period for sod, trees, and landscaping is two (2) years from the date of final written City acceptance of the installation.

**32. SUMMARY OF SECURITY REQUIREMENTS.** To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public Property Improvements, and construction of all public Property 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 \$439,246. 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 upon the Security 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 Property Improvements are not completed at least 30 days prior to the expiration of the Security, the City may also draw upon it. If the Security is drawn upon, the proceeds shall be used by the City to cure the default.

**33. 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. Upon completion of grading operations, including temporary site restoration. The Developer must submit an as-built grading survey to the City that at a minimum established 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 by the City, 100 percent or \$203,053\_\_\_\_\_, of the Security associated with grading may be released. This Security reduction does not include amounts related to erosion and sedimentation control.

B. 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 \$54,244 \_\_\_\_\_ may be released when all sanitary sewer and watermain utilities have been installed, all testing and televising have 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 \$67,988 \_\_\_\_\_ may be released when all streets, sidewalks, and storm sewer has been installed and tested, 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.
3. Construction Categories 6-10 and 14-17: The amount of \$27,255 \_\_\_\_\_ may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) iron monuments for lot corners have been installed, if required; (2) all financial obligations to the City are satisfied; (3) the required "record" plans in the form of the City standards have been received and approved by the City; and (5) the public Property Improvements are accepted by the City Engineer and the City Council.
4. Construction Categories 11, 12, and 13: The amount of \$27,659 \_\_\_\_\_ may be released when landscaping Property Improvements have been installed to the satisfaction of the City including all corrective work for any identified punch list items.

C. Twenty-five percent of the original Security amount, excluding grading and landscaping improvements shall be retained until: (1) all Property 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.

Twenty-five percent of the original Security amount associated with the landscaping shall be retained by the City until: (1) all landscaping Property 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. In addition to the above project milestone based Security reductions, the Developer may submit a written request and upon receipt of proof satisfactory to the City Engineer that work is progressing 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 a one-time reduction in the Security for Construction Categories 2-5 in an amount not to exceed 50 percent of the initial Security amount. This one-time Security reduction does not apply to Categories 4-5 if sidewalks have not been installed.

E. 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 Property 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.

**34. 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:

<u>Park Dedication:</u>	<u>\$10,215</u>
<u>Special Assessments Due:</u>	<u>\$0</u>
<u>Donation for Traffic Signal (Inwood and 5<sup>th</sup> St)</u>	<u>\$30,000 (estimated)</u>

City Engineering Administration Escrow: \$10,000

**TOTAL CASH REQUIREMENTS: \$50,215**

**35. 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: Kwik Trip, Inc., Attn: Legal Department, 1626 Oak Street, La Crosse, WI 54603. 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.

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

**37. 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 Property. This Agreement shall be construed according to the laws of the state of Minnesota.

**38. 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.

**39. 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.

**40. 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.

---

DRAFT

**CITY OF LAKE ELMO**

By: \_\_\_\_\_  
Mike Pearson  
Its: Mayor

By: \_\_\_\_\_  
Julie Johnson  
Its: City Clerk

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020—, 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

\_\_\_\_\_

KWIK TRIP, INC. (DEVELOPER)

By: \_\_\_\_\_

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

STATE OF WISCONSIN \_\_\_\_\_ )  
\_\_\_\_\_) ss.  
COUNTY OF LA CROSSE)

The foregoing instrument was acknowledged before me this \_\_\_\_\_, day of \_\_\_\_\_, 2020—, by \_\_\_\_\_, the \_\_\_\_\_ of Kwik Trip, Inc. a Wisconsin corporation on behalf of the corporation.

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

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

**FEE OWNER CONSENT TO  
DEVELOPMENT AGREEMENT**

RPS Legacy DeSoto, LLC, fee owner of all or part of the subject property, the development of which is governed by the foregoing Development Agreement, 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 owned by it.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, ~~2020~~.

\_\_\_\_\_  
By: \_\_\_\_\_

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, the \_\_\_\_\_ of RPSLegacyDeSoto, 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

**EXHIBIT A TO  
DEVELOPMENT AGREEMENT**

**Legal Description of Property Being Final Platted**

Lot 1, Block 1, Inwood 6<sup>th</sup> Addition, according to the recorded plat thereof, Washington County,  
Minnesota.

DRAFT

# EXHIBIT B TO DEVELOPMENT AGREEMENT

## List of Plan Documents

The following documents prepared by Carlson McCain constitute the Plans:

THOSE DOCUMENTS BY

AS FOLLOWS:

<u>SHEET</u>	<u>TITLE</u>	<u>REVISION DATE</u>
<u>C1 of</u>	<u>Title Sheet</u>	
<u>C2 of</u>	<u>Existing Conditions and Removals Plan</u>	
<u>C3 of</u>	<u>Site &amp; Sign Plan</u>	
<u>C4 of</u>	<u>Site Plan (Keynote)</u>	
<u>C5 of</u>	<u>Grading, Drainage, &amp; Erosion Control Plan</u>	
	<u>Utility Plan</u>	
	<u>Utility Plan (Storm Sewer)</u>	
<u>C6 of</u>	<u>Stormwater Pollution Prevention Plan</u>	
<u>C7 of</u>	<u>Details</u>	
<u>L1-L3 of L3</u>	<u>Landscape Plan</u>	
	<u>Shrub Plan</u>	
	<u>Photometric Plan</u>	
<u>SW1.0</u>	<u>SWPPP Existing Conditions</u>	
<u>SW1.1</u>	<u>SWPPP Proposed Conditions</u>	
<u>SW1.2</u>	<u>SWPPP Details</u>	
<u>SW1.3</u>	<u>SWPPP Narrative</u>	



## EXHIBIT C TO DEVELOPMENT AGREEMENT

### Property Improvements Cost/Security Amount Estimate

<u>CONSTRUCTION CATEGORY</u>	<u>COST</u>	<u>125 percent</u>
1 <u>Grading</u>	<u>\$162,442</u>	<u>\$203,053</u>
2 <u>Sanitary Sewer</u>	<u>\$NA</u>	<u>\$NA</u>
3 <u>Watermain</u>	<u>\$57,860</u>	<u>\$72,325</u>
4 <u>Storm Sewer (includes pond structures and outfall pipes)</u>	<u>\$13,635</u>	<u>\$17,044</u>
5 <u>Streets and Sidewalks</u>	<u>\$58,885</u>	<u>\$73,606</u>
6 <u>Trails</u>	<u>\$NA</u>	<u>\$NA</u>
7 <u>Surface Water Facilities</u>	<u>\$NA</u>	<u>\$NA</u>
8 <u>Street Lighting</u>	<u>\$NA</u>	<u>\$NA</u>
9 <u>Street and Traffic Signs</u>	<u>\$NA</u>	<u>\$NA</u>
10 <u>Private Utilities</u>	<u>\$NA</u>	<u>\$NA</u>
11 <u>Landscaping Improvements</u>	<u>\$29,503</u>	<u>\$36,878</u>
14 <u>Monuments</u>	<u>\$600</u>	<u>\$750</u>
15 <u>Erosion and Sedimentation Control</u>	<u>\$23,472</u>	<u>\$29,340</u>
17 <u>Developer's Record Drawings</u>	<u>\$5,000</u>	<u>\$6,250</u>
<b><u>TOTALS</u></b>	<b><u>\$351,397</u></b>	<b><u>\$439,246</u></b>

## FORM OF 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 , 20 , 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, 20 .

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, 3880 Laverne Ave. N., Suite 101, 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: \_\_\_\_\_

(reserved for recording information)

# **DEVELOPMENT AGREEMENT**

*(Public sewer and water)*

## ***Inwood 6<sup>th</sup> - Addition (Kwik- Trip)***

**THIS DEVELOPMENT**

**AGREEMENT is dated**

\_\_\_\_\_, 20\_\_\_\_, by

and between the **CITY OF**

**LAKE ELMO**, a Minnesota

municipal corporation (the

“City”) and RPS Legacy

Desoto LLC, a Minnesota

limited liability company

(the “Developer”).

### **1. REQUEST FOR PLAT**

**APPROVAL.** The

Developer has asked the

City to approve a plat for  
Inwood 6<sup>th</sup> 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. this Agreement has been  
executed by the Developer  
and the City;~~

~~C. the required Security (as  
hereinafter defined) have  
been received by the City  
from or on behalf of the  
Developer;~~

~~D. final construction plans and  
specifications have been  
submitted by the Developer  
and approved by the City  
Engineer;~~

~~E. 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;~~

~~F. the Developer has paid any  
outstanding assessments  
and taxes for the property  
or property being deeded to  
the City;~~

~~G. the Developer has fulfilled  
any park dedication  
requirements as specified  
under this Agreement;~~

~~H. 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;~~

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

~~J. 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;~~

~~K. the final plat has been  
recorded with Washington  
County;~~

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

~~M. 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.  
2019-XX, 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.)~~

~~5<sup>th</sup> Street turn lane,  
signage, sidewalk and  
public right-of-way  
improvements;~~

~~E. Underground private  
utilities;~~

~~F. Landscaping;~~

~~G. Tree preservation and  
reforestation; and~~

~~H. 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  
34 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. CONTRACTOR S/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, 2020. The Developer  
may, however, request an  
extension of time from the  
City. If the City grants a  
time extension, 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. MAINTENANC~~

~~E 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.~~

~~The Developer and  
contractors must keep 5<sup>th</sup>  
Street North 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. CONSTRUCTI**

**ON ACCESS AND**

**PARKING.** Construction

~~traffic access and egress for all work on the site including grading, utility construction, building construction, and~~

~~Subdivision Improvements is restricted to access the Subdivision via 5<sup>th</sup> Street at the approved new turn lane and designated rock construction entrance per the approved erosion control plans. No construction traffic is permitted on other adjacent local streets or at any other location along 5<sup>th</sup> Street North.~~

~~All construction parking and staging, including the loading and unloading of equipment and supplies during the construction of the site improvements and buildings must be completed interior to the Subdivision and is not allowed to occur within any public right-of-way. The Developer shall repair or~~



~~replace all street, curb and boulevard damage caused by the construction activities at no cost to the City and meeting City standards and specifications. The Developer and contractors shall be responsible for the repair and restoration of any damage to the street, curb and boulevard caused by the construction activities. Such work shall meet all City standards and specifications.~~

~~**15. CONSTRUCTION SEQUENCE AND COMPLIANCE.** The City will require the Developer to construct the Subdivision Improvements in a sequence that 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. Before initiating  
any work on the site, the  
Developer must implement  
an erosion control plan and  
have the City inspect and  
approve the erosion control  
measures. The Developer  
shall coordinate and install  
erosion and sediment  
control measures 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. The  
Developer shall promptly  
reseed all areas disturbed  
for site improvements 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.  
The City will not allow any  
development, utility, or  
street construction and the  
City will not issue any  
building unless the  
Subdivision is in full  
compliance with the  
approved erosion control  
plan.~~

~~If the City issues  
building permits before 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. SITE~~

~~**GRADING.** In order to construct the Subdivision Improvements and otherwise prepare the Property for development, it will be necessary for the Developer to grade the Subdivision. All grading~~

~~must be done in  
compliance with this  
Agreement and the  
approved grading plans.~~

~~Within 30 days after  
completion of the grading,  
the Developer shall provide  
the City with an "as built"  
grading plan and a  
certification by a registered  
land surveyor or engineer  
as required in the City's  
Engineering Design and  
Construction Standards  
Manual.~~

~~18. **STREET AND  
UTILITY**~~

~~**IMPROVEMENTS.** All  
storm sewers, sanitary  
sewers, and watermain,  
and streets, including the  
5th Street turn lane  
improvements, 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. Curb and gutter, bituminous streets including base and wear course, 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 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 Developer must complete the punch list items and notify the City to reinspect the improvements.

**19. 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 warrantied 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."~~

~~**20. SIGNAGE,  
STREET LIGHTING,  
AND OTHER UTILITIES.**~~

~~The Developer agrees to  
install street signs, traffic  
and parking signs, and  
pavement markings within  
the Subdivision all in~~

~~accordance with the approved Plans and the City Engineering Design Standards Manual. The Developer shall submit street and traffic sign details 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.~~

~~**21. 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.~~

~~22. **PARK**~~

~~**DEDICATION.** The~~

~~Developer shall pay a cash  
contribution of \$10,215 in  
satisfaction of the City's  
park dedication  
requirements. The amount  
of the cash contribution  
was calculated as follows:~~

~~2.27 acres (for Lot 1, Block  
1) at \$4,500 per acre.~~

~~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 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 City issues a building permit is issued for the building.

The water availability charge (WAC) in the amount of \$3,000.00 per REC shall payable and collected by the City at the time the City issues a



~~building permit is issued for  
the building.~~

~~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 City issues a  
building permit is issued for  
the building.~~

~~24. **BUILDING**  
**PERMITS/CERTIFICATE**  
**S OF OCCUPANCY**~~ <sup>(2)</sup>

~~A. The City will not issue a  
**Certificate of Occupancy for**  
**any building building permit**  
**on for any lot** within the  
Subdivision, or within a~~

~~completed phase of the  
Subdivision in a City  
preapproved phasing plan,  
until such time that sanitary  
sewer, water, and storm  
sewer, and the 5<sup>th</sup> street  
turn lane improvements are  
installed and grading as  
built plans have been  
submitted and approved by  
the City. 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 Subdivision. Once the  
construction has started,  
the City will not consider  
revisions to the phasing  
plan for the purpose of  
issuing building permits.~~

~~B. Breach of the terms of this~~

~~Agreement by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and withholding of other permits, inspection or actions and the halting of all work in the Subdivision.~~

~~C. If the City issues building permits before the acceptance of the public Subdivision Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of public Subdivision Improvements and damage to public Subdivision Improvements caused by the City, the Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any third parties.~~

~~D.— 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.~~

~~**25.**~~  
~~**— 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.~~



~~26. SPECIAL~~

~~PROVISIONS. The~~

~~following special provisions~~

~~shall apply to the~~

~~Subdivision:~~

~~A. Implementation of the  
recommendations and  
requirements listed in the  
August 6, 2019,  
Engineering memorandum.~~

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

~~C. The final plat must shall  
show a 10-foot wide  
drainage and utility  
easement along all property  
lines.~~

~~D. All easements as requested  
by the City Engineer and  
the Public Works  
Department shall be~~

~~documented on the fFinal  
pPlat before the execution  
of the final plat by City  
Officials.~~

~~E. — Before recording the Final  
Plat, the Developer shall  
enter into a Developers  
Agreement or Site Work  
Agreement with the City.  
This agreement shall be in  
a form acceptable to the  
City Attorney and shall  
delineate who is  
responsible for the design,  
construction, and payment  
of public improvements and  
other site management and  
operation considerations  
including erosion control  
and construction staging.~~

~~F. — The City must Final Plat  
shall be contingent upon  
the City receiveving  
separate drainage and  
utility easements in the~~

~~City's standard form of  
easement agreement for  
any off-site  
Subdivision development  
improvements (beyond the  
plat limits). Any off-site  
easements, if required,  
must be clearly shown on  
the street, grading and  
utility plans, with all  
dimensions labeled. The  
easements must be  
obtained by the Developer  
before the start of grading,  
or construction.~~

~~G. The applicant must submit  
and receive approval of a  
building permit application;  
grading, drainage,  
landscaping, erosion  
control, and other  
applicable plans before  
starting any construction  
activity on Lot 1, Block 1  
and on the future~~

development sites.

**27.**

**~~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.~~

~~28. **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.~~

~~**29. 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.~~

~~30.~~

~~**—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.~~

~~**31. 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 the Subdivision 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 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 two years from the  
date of final written City  
acceptance of the work.~~

~~— The required warranty  
period for all work relating  
to street construction,  
including the 5<sup>th</sup> Street turn-  
lane, 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.~~

~~B.— The required warranty  
period for sod, trees, and~~

landscaping is two years  
from the date of final written  
City acceptance of the  
installation.

**32. 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 \$ [REDACTED]. 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.~~

~~33. 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. Upon completion of grading operations, including temporary site restoration. The Developer must 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 by the City, 100 percent, or \$ \_\_\_\_\_, of the Security associated with grading may be released. This Security reduction does not include amounts related to erosion and sedimentation control.~~

~~B. 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 \$ \_\_\_\_\_ 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  
\$ \_\_\_\_\_ may be released  
when the all streets,  
sidewalks, and storm sewer  
storm sewer has been  
installed and tested, 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.~~

~~3.— Construction Categories 6-  
10 and 14-17: The amount  
of \$ \_\_\_\_\_ may be~~

~~released when all remaining Developer's obligations under this Agreement have been completed including: (1) iron monuments for lot corners have been installed, if required; (2) all financial obligations to the City satisfied; (3) 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, 12 and 13: The amount of \$\_\_\_\_\_ 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.~~

~~C. 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.~~

~~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. In addition to the above project milestone based Security reductions, the Developer may submit a written request and upon receipt of proof satisfactory to the City Engineer that work is progressing 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 a~~

~~one time reduction in the  
Security for Construction  
Categories 2-5 in an  
amount not to exceed 50  
percent of the initial  
Security amount. This one  
time Security reduction  
does not apply to  
Categories 4-5 if sidewalks  
have not been installed.~~

~~E. 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.~~

~~**34. 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:~~

<del>Park Dedication:</del>	<del>\$10,215</del>
<del>Special Assessments Due:</del>	<del>\$0</del>
<del>Donation for Traffic Signal (Inwood and 5<sup>th</sup> St)</del>	<del>\$30,000 (estimated)</del>
<del>City Engineering Administration Escrow:</del>	<del>\$10,000</del>
<del><b>TOTAL CASH REQUIREMENTS:</b></del>	<del><b>\$50,215</b></del>

~~**35. 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:  
RPS Legacy, 2935 Country  
Drive, Suite 100, Little  
Canada, MN 55117.~~

~~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.~~

~~**36. EVIDENCE OF  
TITLE.** The Developer  
shall furnish the City with  
evidence of fee ownership  
of the property being  
platted by way of a title  
insurance policy dated not~~

earlier than 30 days prior to  
the execution of the plat.

**37. 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.

**38.**

**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.~~

~~39. 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.~~

~~40.~~

~~**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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mike Pearson

Its: Mayor

\_\_\_\_\_  
By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Julie Johnson

Its: City Clerk

STATE OF MINNESOTA

→

→ ss.

COUNTY OF  
WASHINGTON →

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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.

DRAFT



3800 Laverne Avenue  
North  
Lake Elmo, MN 55042  
(651) 747-3901

**FEE OWNER  
CONSENT TO  
DEVELOPMENT  
AGREEMENT**

\_\_\_\_\_, fee owners of all  
or part of the subject  
property, the development  
of which is governed by the  
foregoing Development  
Agreement, 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  
\_\_\_\_\_, 20\_\_.

---

NOTARY PUBLIC

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

**MORTGAGEE  
CONSENT TO  
DEVELOPMENT  
AGREEMENT**

\_\_\_\_\_, 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 \_\_\_ day of \_\_\_, 2\_.

---

---

STATE OF MINNESOTA

→

→) ss.

COUNTY OF \_\_\_\_\_)

The foregoing instrument  
was acknowledged before  
me this \_\_\_\_ day of

\_\_\_\_\_,

20\_\_\_\_, by

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

---

NOTARY PUBLIC

DRAFTED BY:

City of Lake Elmo

3800 Laverne Avenue  
North

Lake Elmo, MN 55042

(651) 747-3904

**CONTRACT  
PURCHASER  
CONSENT TO  
DEVELOPMENT  
AGREEMENT**

---

which/who has a contract  
purchaser's interest in all or  
part of the Property, the  
development of which is  
governed by the foregoing  
Development Agreement,  
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 Property in which there is a contract purchaser's interest.

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
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**

Outlot O, Inwood Addition,  
according to the recorded  
plat thereof, Washington  
County, Minnesota.

**EXHIBIT B TO  
DEVELOPMENT  
AGREEMENT**

**List of Plan Documents**

The following documents  
prepared by Carlson  
McCain constitute the  
Plans:

THOSE DOCUMENTS BY \_\_\_\_\_

\_\_\_\_\_ AS FOLLOWS:



DRAFT


DRAFT


DRAFT


DRAFT


DRAFT


**EXHIBIT C TO  
DEVELOPMENT-  
AGREEMENT**

Subdivision  
Improvements  
Cost/Security Amount  
Estimate

CONSTRUCTION  
CATEGORY

COST  
125 percent



DRAFT

DRAFT

DRAFT

DRAFT

DRAFT

DRAFT

---

**FORM OF 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 \_\_\_\_\_, 20\_\_\_\_, 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, 20\_\_\_\_.~~

~~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, 3880 Laverne Ave. N., Suite 101, 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: \_\_\_\_\_