



## **STAFF REPORT**

DATE: 8/18/2020

**REGULAR**

**MOTION**

**TO:** City Council

**FROM:** Kristina Handt, City Administrator

**AGENDA ITEM:** Four Corners 1<sup>st</sup> Addition Development Agreement

**REVIEWED BY:** Jack Griffin, City Engineer  
Ken Roberts, Planning Director  
Jared Shepherd, City Attorney

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### **BACKGROUND:**

In 2018, EN Properties, LLC (“Developer”) sought to develop parcels along Hudson Boulevard, including the property at 11530 Hudson Boulevard (“Property”), to be known as Four Corners. On July 17, 2018, the City Council adopted Resolution 2018-076 approving the Final Plat for Four Corners 1<sup>st</sup> Addition. As a condition of final plat approval, the Developer was required to enter into a development agreement with the City.

As part of the Four Corners 1<sup>st</sup> Addition, the Developer entered into purchase agreement with Stillwater Area Public Schools (“School District”) for the Property for use as a school bus terminal. The School District applied for rezoning the property to Business Park which was approved by the City. The School District also applied for a zoning text amendment to allow “bus terminal” as a conditionally permitted use within the Business Park zoning district. On July 17, 2018, the City approved a Conditional Use Permit (CUP) by Resolution 2018-077. The Resolution allowed the Stillwater School District to operate a “School District Transportation Center,” a school bus terminal, from the property at 11530 Hudson Boulevard under certain conditions. The conditions included: “9) The property shall be connected to sewer and water prior to operation of the bus terminal.”

The Developer and the City negotiated the Development Agreement, Four Corners 1<sup>st</sup> Addition, dated October 22, 2018 (“Development Agreement”) (attached), which required the Developer to build the water and sewer infrastructure and bring it to the Property (i.e., Subdivision Improvements) (“the Project”) and improve Hudson Boulevard along the property frontage. The Development Agreement required the Subdivision Improvements were required to be installed by October 31, 2019.

On October 23, 2018, the School District closed on the purchase of the Property. In Fall 2019, the School District began utilizing the Property as its bus terminal. The Property was not connected to sewer and water prior to operation of the bus terminal. On May 5, 2020, the City Council adopted Resolution 2020-043, which revoked the School District’s Conditional Use Permit. The School District has vacated the Property. To date, the Property remains unconnected to sewer and water and Hudson Boulevard has not been improved.

**Project Update:**

The Project is currently secured by an Irrevocable Letter of Credit No. 158, issued by Premier Bank, in the amount of \$ 1,136,805.00. The Bank confirmed orally that it automatically extended for a one-year term from October 22, 2019. The expiration date is, therefore, October 22, 2020.

Since early summer 2020, the City has seen some action by the Developer, indicating that the Project might commence this year. On June 15, 2020, the City was provided with all of the necessary easements, in proper form, from adjacent property owners that were required for the installation of City utilities. On July 17, 2020, a preconstruction meeting for the Project was held via video conference. Pursuant to direction of the City Engineer and the small utilities, the Developer staked property corners and easements corners and alignment for sewer and water by Friday, July 31, 2020.

The City has provided notice to Xcel Energy and Xcel Gas (by letters in June and July 2020) of the requirement to relocate their utilities for the project. The developer's contractor has subsequently met on-site with each small utility owner as part of the relocation coordination efforts. By letter dated July 28, 2020, Xcel confirmed they were working on a plan for relocation and expected to have relocation plans and right-of-way permit applications within a few weeks.

The Developer provided the contractor's Project schedule in early August 2020, but it will need to be updated in light of the private utility relocation schedule.

**Status of Development Agreement:**

In approximately mid July 2020, legal counsel for the City and Developer began discussing an amendment to the Development Agreement. The City has notified the Developer, through counsel, that the City's position is that the Developer is in default of the Development Agreement, chiefly, Section 11. The City has made three attempts to remedy this default by amendment, and each time, the Developer refused to execute an amendment. The most recent amendment, included the following major points:

- The Developer shall install all required Subdivision Improvements by July 31, 2021, including all punch list work, and submittal of all final record drawing information in the city standard form and as acceptable to the City Engineer.
- Project Commencement, physical construction and site work, utility pipe installation, shall begin within the same week that small utility work in the field is complete.
- The developer is responsible to closely monitor the utility relocation work and to have his contractor prepared to mobilize accordingly.
- The water and sewer utility pipes shall be installed within 8 weeks of Project Commencement up to and including boring under the natural gas pipeline.
- All work must be substantially completed by July 31, 2021, including installation of all watermain, sanitary sewer and storm sewer utilities, installation of storm water drainage facilities, utility testing and televising, placement of non-wearing paving, wearing course paving, pavement markings and traffic devices, and restoration.

- In accordance with Sections 11 and 31 of the Agreement, the Developer shall furnish a new irrevocable letter of credit or cash escrow in the amount of \$1,766,526.00 (125% of estimated project costs) within 10 days of execution of this Agreement, in a form and with a financial institution that is acceptable to the City.

**ISSUE BEFORE COUNCIL:**

The City Council is being asked to provide direction to staff with respect to the Developer's compliance with the Development Agreement.

**REVIEW/ANALYSIS:**

Section 11 of the Development Agreement provides for "Time of Performance." It states the following:

The Developer shall install all required Subdivision Improvements by October 31, 2019. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be condition upon updating the Security posted by the Developer to reflect cost increases and amending this Agreement to reflect the extended completion date.

Section 26(F) of the Development agreement provides:

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.

Section 28 provides for Remedies on Default as follows:

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.

While the Developer has made efforts to commence the Project, the Developer has not timely performed the Development Agreement. The Developer is, therefore, in violation of Section 11 of the agreement. The City has been willing to enter into an Amendment to grant an extension of time, in accordance with Section 11 of the Development Agreement, but the Developer has also ultimately refused to execute any agreement negotiated between legal counsel. The City has not granted an extension of time under the Development Agreement and the Developer remains in violation of it. Additionally, any extension would require updated security.

**FISCAL IMPACT:**

The project is currently secured by an Irrevocable Letter of Credit No. 158, issued by Premier Bank, in the amount of \$ 1,136,805.00. Section 30 of the Agreement also provides for special assessment of unreimbursed costs against lots in the Subdivision, and the waiver of right to a hearing by the Developers, and its successors, and assigns.

Based upon our Engineer’s estimate of current construction costs, the Subdivision Improvements contemplated to be performed by the Developer would cost the City approximately \$1,413,221.00.

**OPTIONS:**

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

- 1) Take No Action
- 2) **Direct City Attorney to draft notice of default** to Developer with opportunity to cure through *all* of following actions: 1) commencing project within the same week that utility relocation work is complete; 2) Execution of Amendment to DA by no later than October 5, 2020; 3) Provision of New LOC in amount of \$1,766,526.00 by no later than October 5, 2020. **If the Developer does not cure the default through *all* of the above actions, City staff may enforce the agreement** by drawing on the Letter of Credit, and utilizing any all other default remedies provided under the Agreement, and the City may perform the work.

**RECOMMENDATION:**

Staff recommends the City Council direct the City Attorney to draft a default notice to the Developer and enforce the Development Agreement if necessary.

**“Motion to direct the City Attorney to draft notice of default to Developer with opportunity to cure as recommended by staff and to provide for enforcement of the Agreement if the Developer does not cure the default.”**

**ATTACHMENTS:**

- Four Corners 1<sup>st</sup> Addition Development Agreement
- Premier Banks, Irrevocable Letter of Credit

Receipt:# 412714

DAG \$46 00

Return to:  
TERRY EMERSON  
EN PROPERTIES LLC  
2204 LEGION LN CIR N  
LAKE ELMO MN 55042

**4172662**



Certified Filed and/or recorded on:

10/22/2018 4 04 PM

**4172662**

**Office of the County Recorder**  
**Washington County, Minnesota**  
*Jennifer Wagenius, County Recorder*

*(reserved for recording information)*

## **DEVELOPMENT AGREEMENT**

*(Public sewer and water)*

### ***Four Corners 1<sup>st</sup> Addition***

**THIS DEVELOPMENT AGREEMENT** is dated October 27, 2018, by and between the **CITY OF LAKE ELMO**, a Minnesota municipal corporation (the "City") and EN Properties, LLC, a Minnesota limited liability company (the "Developer").

**1. REQUEST FOR PLAT APPROVAL.** The Developer has asked the City to approve a plat for Four Corners 1<sup>st</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. the Developer has executed and recorded with Washington County the Storm Water Maintenance and Easement Agreement in the City's standard form;
- C. this Agreement has been executed by the Developer and the City;
- D. the required Security (as hereinafter defined) have been received by the City from or on behalf of the Developer;
- E. final construction plans and specifications have been submitted by the Developer and approved by the City Engineer;
- F. the Developer has paid the City for all legal, engineering, and administrative expenses incurred by the City regarding the City approvals and has given the City the additional City Engineering Administration Escrow required by this Agreement;
- G. the Developer has paid any outstanding assessments and taxes for the property or property being deeded to the City;
- H. the Developer has fulfilled any park dedication requirements as specified under this Agreement;
- I. the Developer has received all necessary permits from the MPCA, MDH, DNR, applicable

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

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

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

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

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

N. the City has issued a written notice that all above conditions have been satisfied and that the Developer may proceed;

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

**5. PRELIMINARY PLAT STATUS.** If the Subdivision is a phase of a multi-phased preliminary plat, the preliminary plat approval for all phases not final platted shall lapse and be void unless final platted into lots and blocks, not outlots, within five years after preliminary plat approval.

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



no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the use, development density, lot size, lot layout or dedications of the approved final plat unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Agreement to the contrary, to the full extent permitted by state law, the City may require compliance with any changes to the City's Comprehensive Plan, official controls, platting, or dedication requirements enacted after the date of this Agreement.

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

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

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

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

All improvements shall be installed in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards as a condition of City acceptance. In addition, the City may, at the City's discretion and at the Developer's expense, have one or more City inspectors or a soil engineer inspect the Developer's work on a full or part-time basis. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor.

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

problems regarding the project, coordination for testing, final inspection and acceptance, project monitoring during the warranty period, and processing of requests for reduction in the Security. Construction observation shall include, at the discretion of the City, part or full time inspection of proposed public utilities and street construction. Services will be billed by the City on an hourly basis.

The direction and review provided by the City through the inspection of the Subdivision Improvements should not be considered a substitute for the Developer-required management of the construction of the Subdivision Improvements. The Developer must require the Developer's contractor(s) to furnish the City with a schedule of proposed operations at least five days prior to the commencement of construction of each type of Subdivision Improvement. The City shall inspect all Developer-installed Subdivision Improvements during and after construction for compliance with the Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer will notify the City at such times during construction as the City requires for inspection purposes. Such inspection is pursuant to the City's governmental authority, and no agency or joint venture relationship between the City and the Developer is thereby created.

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

**11. TIME OF PERFORMANCE.** The Developer shall install all required Subdivision Improvements by October 31, 2019, The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the Security posted by the Developer to reflect cost increases and amending this Agreement to reflect the extended

completion date.

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

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

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

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

Developer to construct the Subdivision Improvements in a sequence which will allow progress and compliance points to be measured and evaluated. The Developer and the Developer's representatives are required to supervise and coordinate all construction activities for all Subdivision Improvements and must notify the City in writing stating when the work is ready for the inspection at each of the measurable points defined in the following paragraphs.

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

If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the City for any cost the City incurred for such work within 10 days, the City may draw down the Security to pay any costs. No development, utility, or street construction will be allowed and no building permits will be issued by the City unless the Subdivision is in full compliance with the approved erosion control plan.

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

**17. STREET AND UTILITY IMPROVEMENTS.** All storm sewers, sanitary sewers, watermain improvements, and streets (including, but not limited to, turn lanes) shall be installed in accordance with the approved Plans, the City approvals, the City Code, and the City's Engineering Design and Construction Standards Manual. Installation of curb and gutter, installation of the first lift of the bituminous streets, the grading of boulevards, the installation of street signs, and restoration work on the site must be completed in accordance with the approved Plans. Once the work is completed, the Developer or the Developer's representative shall submit a written request to the City asking for an inspection of the initial improvements. The City will then schedule a walk-through to create a punch list of outstanding items to be completed. Upon receipt of the written punch list provided by the City, the punch list items must be completed by the Developer and the City notified to re-inspect the improvements.

The final bituminous wear course shall be installed by the Developer after the first bituminous course has weathered a winter season. Prior to placement of the final bituminous wear course, the Developer shall repair or replace all broken or failing curbs, sidewalks, and damaged or settled streets as determined by the City from a pre-wear course walk-through inspection.

**18. LANDSCAPING AND TREE REPLACEMENT IMPROVEMENTS.**

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

Standards Manual, and the City's Landscape and Irrigation Standards. All landscaping materials such as trees, shrubs, grasses, or other vegetation installed by the Developer must be 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."

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

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

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

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

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

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

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



The sewer availability charge (SAC) in the amount of \$3,000.00 per REC shall be payable and collected by the City at the time the building permit is issued for the building to connect to City sewer.

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

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

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

### **23. RESPONSIBILITY FOR COSTS.**

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

pertains to the funds deposited with the District Court, except that the Court shall retain jurisdiction to determine attorneys' fees pursuant to this Agreement.

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

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

**24. CITY PAYMENTS.** The City shall reimburse the Developer in the amount of \$70,150 for oversizing costs associated with the installation of a trunk water main, \$120,760 for oversizing costs associated with the installation of a trunk sanitary sewer main, and \$18,200 for mill and overlay of the south side of Hudson Blvd as identified in the Plans. City payments shall be made within 30 days of the City's final acceptance of the Improvements, but only if the Developer is not in default with respect to any terms of this Agreement. This payment by the City shall be the City's only responsibility with regard to construction of the Improvements and in no case shall act as a waiver of any other right of the City under this Agreement or under applicable laws, ordinances or rules.

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

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

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

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

**26. MISCELLANEOUS.**

- A. The Developer may not assign this Agreement without the written permission of the City Council. The Developer's obligations hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire Property, or any portion of it.
- B. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a professional engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved Plans. All retaining walls identified on

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

- C. Legal documents regarding any covenants and restrictions, if applicable, shall be submitted to the City prior to recording of the final plat for review and approval by the City Attorney.
- D. The Developer shall take out and maintain or cause to be taken out and maintained until six months after the City has accepted the public Subdivision Improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them.

Limits for bodily injury and death shall be not less than \$500,000 for one person and \$1,500,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a combination single limit policy of \$1,500,000 or more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate of insurance evidencing coverage prior to the City signing the plat. The certificate shall provide that the City must be given 30 days' advance written notice of the cancellation of the insurance.

- E. Third parties shall have no recourse against the City under this Agreement.
- F. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in

writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.

- H. This Agreement shall run with the land and may be recorded against the title to the Property at the Developer's expense. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the Property being final platted and has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the Property, including, but not limited to, mortgagees; that there are no unrecorded interests in the Property being final platted; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.
- I. Each right, power, or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.
- J. The Developer represents to the City that the Subdivision and the Subdivision Improvements comply or will comply with all City, County, metropolitan, state, and federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances, and environmental regulations. If the City determines that the Subdivision is not in compliance, the City may, at its option, refuse to allow construction or development work in the Subdivision until it is brought into compliance. Upon the City's demand, the Developer shall cease work until there is compliance.

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

- A. Subject to unavoidable delays, failure by the Developer to commence and complete construction of the public Subdivision Improvements pursuant to the terms, conditions, and limitations of this Agreement.
- B. Failure by the Developer to substantially observe or perform any material covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement.

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

- A. The City may suspend its performance under the Agreement until it receives assurances from the Developer, deemed adequate by the City, that Developer will cure its default and continue its performance under the Agreement. Suspension of performance includes the right of the City to withhold permits including, but not limited to, building permits.
- B. The City may initiate such action, including legal or administrative action, as is necessary for the City to secure performance of any provision of this Agreement or recover any amounts due under this Agreement from the Developer, or immediately draw on the Security, as set forth in this Agreement.

**29. ENFORCEMENT BY CITY; DAMAGES.** The Developer acknowledges the right of the City to enforce the terms of this Agreement against the Developer, by action for specific performance or damages, or both, or by any other legally authorized means. In the event of a default by the Developer as to construction or repair of any of the Subdivision Improvements or

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

The Developer also acknowledges that its failure to perform any or all of the Developer's obligations under this Agreement may result in substantial damages to the City; that in the event of default by the Developer, the City may commence legal action to recover all damages, losses, and expenses sustained by the City; and that such expenses may include, but are not limited to, the reasonable fees of legal counsel employed with respect to the enforcement of this Agreement.

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



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

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

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

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

This breakdown is for historical reference; it is not a restriction on the use of the Security. The City may draw down the Security, without notice, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term. If the required public Subdivision Improvements are not completed at least 30 days prior to the expiration of the Security, the City may also draw it down. If the Security is drawn down, the proceeds shall be used by the City to cure the default.

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

- A. Up to 75 percent of the Security associated with the itemization on **Exhibit C** may be released upon completion of the following key milestones of the project as determined by the City Engineer:
  1. Construction Categories 2 and 3: The amount of \$565,092 may be released when all sanitary sewer and watermain utilities have been installed, all testing and televising has been successfully completed, sanitary sewer as-built inverts have been verified, and the utilities are considered ready for use by the City Engineer.
  2. Construction Categories 4 and 5: The amount of \$223,718 may be released when the Hudson Boulevard Improvements, including street and drainage, turn

lanes, pavement markings and signage, and bituminous trail has been installed and has been found to be complete to the satisfaction of the City Engineer including all corrective work for any identified punch list items and including verification of storm sewer as-built inverts, but not including the final wear course.

3. Construction Categories 6-10 and 14-17: The amount of \$57,231 may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) bio retention facilities; (2) iron monuments for lot corners have been installed; (3) all financial obligations to the City satisfied; (4) the required "record" plans in the form of the City standards have been received and approved by the City; and (5) the public Subdivision Improvements are accepted by the City Engineer and the City Council.
  4. Construction Categories 11-13: The amount of \$6,563 may be released when landscaping Subdivision Improvements have been installed to the satisfaction of the City including all corrective work for any identified punch list items.
- B. Twenty-five percent of the original Security amount, excluding grading and landscaping improvements shall be retained until: (1) all Subdivision Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.
- C. Twenty-five percent of the original Security amount associated with landscaping shall be retained by the City until: (1) all landscaping Subdivision Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items being completed by the Developer; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.
- D. It is the intent of the parties that the City at all times have available to it Security in an

amount adequate to ensure completion of all elements of the Subdivision Improvements and other obligations of the Developer under this Agreement, including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of the Security shall be evaluated by the City in light of that principle.

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

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

**34. NOTICES.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: 11530 Hudson Boulevard North, Lake Elmo, MN 55042. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator, or mailed to the City by certified mail in care of the City Administrator at the following address: Lake Elmo City Hall, 3880 Laverne Avenue N, Suite 101, Lake Elmo, Minnesota 55042.

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

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

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

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

**38. NON-WAIVER.** Each right, power, or remedy conferred upon the City by this Agreement is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereafter arising, or available to the City at law or in equity, or under any other agreement. Each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

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



EN PROPERTIES, LLC

By: Terry Emerson

Its: Chief Manager

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF Washington

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



[Signature]  
NOTARY PUBLIC

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

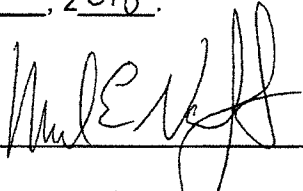




**MORTGAGEE CONSENT TO  
DEVELOPMENT AGREEMENT**

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

Dated this 16<sup>th</sup> day of October, 2018.

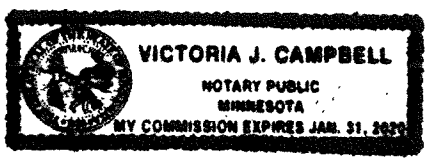
  
President / CEO

STATE OF MINNESOTA )  
COUNTY OF Ramsay ) ss.

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

  
NOTARY PUBLIC

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



## **EXHIBIT A TO DEVELOPMENT AGREEMENT**

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

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

**EXHIBIT B TO  
DEVELOPMENT AGREEMENT**

**List of Plan Documents**

The following documents prepared by Larson Engineering constitute the Plans:

THOSE DOCUMENTS BY

AS FOLLOWS:

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

**EXHIBIT C TO  
DEVELOPMENT AGREEMENT**

**Subdivision Improvements Cost/Security Amount Estimate**

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



Who we are.  
Where we've been.  
Where we're destined.  
We travel together.  
Donald B. Regan  
Chairman

2866 WHITE BEAR AVENUE • MAPLEWOOD, MINNESOTA 55109-1384 • PHONE 651-777-7700 • FAX 651-777-3761 • premierbanks.com

## IRREVOCABLE LETTER OF CREDIT

No. 1058

Date: October 22, 2018

TO: City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, Minnesota 55042

Dear Sir or Madam:

We hereby issue, for the account of EN Properties, LLC, a Minnesota limited liability company, and in your favor, our Irrevocable Letter of Credit No. 1058 in the amount of \$1,136,805.00.00, issued to guarantee and assure performance by EN Properties, LLC, a Minnesota limited liability company, of the terms and conditions of that certain Development Contract between the CITY OF LAKE ELMO and EN Properties, LLC, a Minnesota limited liability company, with respect to Four Corners 1<sup>st</sup> Addition, Washington County, Minnesota. All drafts under this Irrevocable Letter of Credit No. 1058 will be honored upon presentation of the original of this Irrevocable Letter of Credit No. 1058 and your draft drawn on sight on the undersigned Bank.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. 1058, dated, October 22, 2018, of PREMIER BANK";
- b) Be signed by the Mayor or City Administrator of the City of Lake Elmo;
- c) Be presented for payment at 2866 White Bear Avenue, Maplewood, Minnesota 55109, on or before 4:00 p.m. on October 22, 2019 and
- d) Be accompanied by a certification signed by the Mayor or City Administrator of the City of Lake Elmo indicating that EN Properties, LLC, a Minnesota limited liability company, has defaulted with respect to the Development Contract beyond any applicable cure period, identifying the default, and stating that the amount of such default corresponds with the requested draw.

This Letter of Credit shall expire on October 22, 2019, but will automatically be extended on identical terms for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be October 22nd of each year), the Bank delivers written notice to the Lake Elmo City Administrator that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: City Administrator, City Hall, 3800 Laverne Ave. N. Lake Elmo Minnesota 55042 and is actually received by the City Administrator at least thirty (30) days prior to the renewal date.

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

Letter of Credit No. 1058



MAPLEWOOD • OSSEO • ROSEVILLE • WHITE BEAR LAKE • BLAINE • WOODBURY • HUGO • ANDOVER



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.

The amount of this Letter of Credit may be reduced in accordance with the Development Contract. This Letter of Credit shall be governed in all respects by the laws of the State of Minnesota, including the Uniform Commercial Code in effect in the State of Minnesota. Except as otherwise stated, this Letter of Credit is subject to the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600, and as amended. This Letter of Credit shall be deemed to be a contract made under the laws of the State of Minnesota and, as to matters not governed by the Uniform Customs, shall be governed by and constructed in accordance with the laws of the State of Minnesota, including the Uniform Commercial Code in effect in the State of Minnesota.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation. The undersigned Bank has no obligation to investigate or make assurance that a default by EN Properties, LLC, a Minnesota limited liability company, with respect to the Development Contract has occurred.

PREMIER BANK

BY: 

Its: President/CEO