

(reserved for recording information)

DEVELOPMENT AGREEMENT

(Public sewer and water)

10TH AND LAKE ELMO SCHOOL ADDITION

THIS DEVELOPMENT AGREEMENT is dated _____, 2____, by and between the **CITY OF LAKE ELMO**, a Minnesota municipal corporation (the “City”), and **Independent School District, No. 834, Stillwater Area Public Schools**, a Minnesota body corporate and politic (the “Developer”).

1. REQUEST FOR PLAT APPROVAL. The Developer has asked the City to approve a plat for 10th and Lake Elmo School 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** (the “Property”).

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 no later than 180 days after the City Council approves the 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. Unless separate written approval has been granted by the City, within the plat or land to be platted, 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. this Agreement has been executed by the Developer and the City;
- B. all issues set forth in the City Attorney's plat opinion letter dated December 10, 2024 must be addressed to the satisfaction of the City;
- C. final plat, construction plans and specifications, and final landscape plans have been revised to comply with any conditions of approval then submitted by the Developer and approved by the City;
- D. 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;
- E. the Developer has executed and recorded with Washington County the Stormwater Maintenance and Easement Agreement in the City's standard form;
- F. the required Security (as hereinafter defined) has been received by the City from or on behalf of the Developer;
- G. 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;
- H. the Developer shall provide the City with a copy, and list the City as a beneficiary, in any temporary construction and permanent easements from adjacent or nearby properties necessary to construct the Subdivision Improvements, including all off-site public improvements, off-site grading work, or storm sewer discharges;
- I. the Developer has provided the City with a certificate of insurance required by this

Agreement, paragraph 24 (E);

- J. the Developer has received all necessary permits from the MPCA, MDH, DNR, MnDOT, the applicable watershed, Washington County, and any other agency having jurisdiction over the Subdivision;
- K. the Developer has installed tree protection fencing or additional measures per approved Tree Preservation Plan and the City has inspected and approved the protections;
- L. the final plat has been recorded with Washington County; and
- M. 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; and
- N. the City has issued a written notice that all above conditions have been satisfied and that the Developer may proceed.

4. CHANGES IN OFFICIAL CONTROLS. For five (5) 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.

5. 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. 2025-15, 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 Plans may not be modified by the Developer without the prior written approval of the City.

6. 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. Internal site access roadways, parking and sidewalks;
- F. Trails;
- G. Underground private utilities;
- H. Landscaping;
- I. Street lighting and signage;
- J. County roadway, turn lane and Intersection improvements (turn lanes, by-pass lanes, traffic control, etc.);
- K. Tree preservation and reforestation;
- L. Wetland mitigation and buffers; and
- M. 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, the City's Landscape Standards, and Stormwater Reuse Irrigation Design 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, and all applicable City design 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.

7. CITY ADMINISTRATION AND CONSTRUCTION OBSERVATION.

Prior to the execution of this Agreement, the Developer shall submit to the City an amount to be escrowed by the City for costs incurred by the City for administration and construction observation costs in an amount provided under paragraph 29 of this Agreement - Summary of Security Requirements. Thereafter, the Developer shall reimburse the City each month, within thirty (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. If the Developer has not paid the invoices after thirty (30) days of the invoice date, 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 improvements. Services will be billed 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 (5) 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, and the applicable City 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.

8. 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 6 above.

9. TIME OF PERFORMANCE. The Developer shall install all required Subdivision Improvements by October 31, 2026. The Developer may, however, request an extension of time from the City. If the City grants an extension, it shall be conditioned upon updating the Security posted by the Developer to reflect cost increases and amending this Agreement if necessary to reflect the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.

10. 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 also is 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 shall maintain a smooth surface and provide proper surface drainage to ensure that the access roads are passable for emergency vehicles. The Developer shall be responsible for keeping streets within and around 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.

11. 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.

12. CONSTRUCTION ACCESS. Construction traffic access and egress for all building and Subdivision Improvements is restricted to access the Subdivision at the approved designated rock construction entrance(s) per the approved erosion control plans and as permitted by Washington County. All construction parking and staging, including the loading and unloading of equipment and supplies during the construction of the Subdivision Improvements must be completed interior to the Subdivision and are not allowed to occur on any adjacent public street or public right-of-way, including, but not limited to Lake Elmo Avenue (CSAH 17) or 10th Street North (CSAH 10). The Developer and its contractors shall be responsible for the repair and restoration of any damage to any street, curb, trail, sidewalk, and boulevard caused by the construction activities. All such repairs shall be inspected by the City and meet all City standards and specifications.

The Developer must maintain adequate access for emergency vehicles that is acceptable to the City in its sole discretion at all times during construction.

13. 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.

14. EROSION CONTROL. All construction regarding the Subdivision Improvements shall

be completed in a manner designed to control erosion and in compliance with the approved plans and specifications for the construction, 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, 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 Subdivision Improvements will begin in that area within seven (7) 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 and warnings received from the City, the City may take such action as it deems appropriate to control erosion. If the Developer does not reimburse the City for any cost the City incurred for such work within 10 business 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 the City issues building permits before the acceptance of 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 will be required in accordance with the City's building permit requirements, or as required by the City or City Engineer.

15. 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 thirty (30) days after completion of the grading, the Developer shall provide the City with an “as built” grading plan and a certification prepared by the Developer’s engineer as required in the City’s Engineering Design and Construction Standards Manual. Within (5) days after completion of the grading, the Developer shall request an inspection of tree preservation plan compliance from the City Planner. If additional tree plantings are required, the landscape plan shall be modified and additional replacement trees planted as approved by the City prior to the warranty period beginning.

16. ACCESS ROADS, PARKING AND UTILITY IMPROVEMENTS. All 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. 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 fully addressed or corrected by the Developer. Upon receipt of the written punch list provided by the City, the Developer must complete all items on the punch list and then notify the City to re-inspect the Improvements.

17. LANDSCAPING AND TREE REPLACEMENT IMPROVEMENTS.

- A. Prior to installation of landscaping, the Developer shall notify the City Planner and a pre-construction meeting shall be held with the City’s Landscape Architect to review landscaping requirements and best practices and inspection schedules.
- B. 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, with the exception of trees planted on lots that have single-family homes, which are not required to be warrantied. The two-year warranty period for landscaping materials shall be deemed to start once all required landscaping identified as responsibility of Developer in the approved Plans for the Subdivision has been field verified and accepted by the City. The Developer agrees to have the installer of the landscaping complete an inspection thirty (30) days before 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 that any landscaping installed by the Developer is deemed through this inspection 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.

- C. 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 lawns and yards disturbed during the construction of Subdivision Improvements. For the purpose of this Agreement "substantial performance" shall be defined for areas seeded or sodded with a turf or lawn mix as "square foot turf areas with an average blade height of three inches free of eroded, bare, or dead spots and free from perennial weeds or unwanted grasses with no visible surface soil." The City and the Developer understand and agree that the Property will be used as a school and will have facilities such as athletic fields and playgrounds, and that reasonable wear and tear of grasses at the Property will occur from student, staff, and public use. Said reasonable wear and tear shall be permissible for purposes of determining substantial performance of the seeded or sodded lawns

and yards. 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.”

18. 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. Street and traffic sign details shall be submitted for approval by the City prior to installation. In addition, the Developer shall be responsible for the cost and all coordination work to extend private utilities and street lights within the Subdivision all in accordance with the approved plans and right-of-way permits.

19. 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. Before 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. 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, including all punch list items, the City will accept the completed public Subdivision Improvements.

20. 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 Residential Equivalent Charge ("REC") and the water availability charge (WAC) in the amount of \$3,000.00 per REC shall be paid by the Developer to the City before issuing any building permits.

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 each building with the development.

21. WETLAND MITIGATION. The Developer shall follow all of the rules and regulations set forth in the Minnesota Wetland Conservation Act. The Developer shall complete wetland mitigation/restoration in accordance with the approved Plans and in accordance with any applicable watershed or agency permits. If the mitigation work is found to be incomplete or restoration is unsuccessful, the City may draw down the Security at any time during the warranty period to perform the work if the Developer fails to take corrective measures after being provided notice by the City.

22. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

- A. The City will issue building permits for buildings provided that the final plat has been recorded with Washington County and all required fees are paid by the Developer.
- B. Before the City issues any building permits, the Developer shall install wetland buffer monuments in accordance with the City's zoning ordinance. The monument design shall be approved by the City Planning Department.
- C. The City will not schedule a final building inspection or issue a certificate of occupancy (temporary, permanent or otherwise) for the building to be constructed

until all Subdivision Improvements have been installed and have been installed by the Developer and are accepted by the City in accordance with Section 19 of this Agreement.

- D. 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.
- E. If the City issues a building permit prior to the acceptance of the Subdivision Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of the Subdivision Improvements and damage to the Subdivision Improvements caused by the City, the Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any third parties.

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 before the City will execute and release the final plat for recording.

- C. To the extent permitted by law, 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. To the extent permitted by law, the Developer shall indemnify and defend 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 thirty (30) days after receipt. Bills not paid within thirty (30) days shall be assessed a late fee per the City adopted fee schedule. Upon request, request, the City will provide copies of detailed invoices of the work performed by the City and its consultants.

24. MISCELLANEOUS.

- A. The Developer must obtain a sign permit from the City Building Official before the installation of any subdivision identification signs.
- B. Prior to the construction of any subdivision identification signs or other internal signs within the development, the Developer shall submit sign plans for review and obtain a sign permit from the City.
- C. 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.
- D. 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 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.
- E. 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: 1) commercial general liability insurance (CGL) covering bodily injury and property damage; 2) automobile liability insurance (coverage must apply to owned autos, non-owned autos, and hired autos); 3) workers' compensation insurance as required by state statute; and 4) employer's liability insurance.

Limits for the commercial general liability insurance policy shall be not less than \$2,000,000 for each occurrence. The City shall be named as an additional insured

on the commercial general liability insurance 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 thirty (30) days' advance written notice of the cancellation of the insurance.

- F. Third parties shall have no recourse against the City under this Agreement.
- G. 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.
- H. 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.
- I. This Agreement shall run with the land and will 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, the fee owner and the 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.
- J. 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.

- K. 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.

25. 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.

26. 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.

27. 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.

28. 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 forty-five (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 lot 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 sanitary 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 site improvements, including pavements, concrete curb and gutter, sidewalks and trails, materials and equipment shall be subject to one (1) year from the date of final written acceptance of the work.
- C. The required warranty period for sod, trees, and landscaping is two (2) years from the date of final written City acceptance of the installation as provided by LEC 105.12.480(i).

29. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all Subdivision Improvements, and construction of all 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 \$_____. 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 B. 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 forty-five (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 forty-five (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 Subdivision Improvements are not completed at least thirty (30) days prior to the expiration of the Security, the City may also draw it down. If the Security is drawn down, the proceeds shall be used by the City to cure the default.

30. 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 B** 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 all pavements, sidewalks, and storm sewer have been installed, televised and tested, and have been found to be complete to the satisfaction of the City Engineer including all corrective work for any identified punch list items and including verification of storm sewer as-built inverts, but not including the final wear course.
3. Construction Categories 6--10 and 15--17: The amount of \$_____ may be released when the Subdivision Improvements are accepted by the City Engineer and the City Council, including all improvements in categories 6-10 and 15-17: (1) bituminous wear course and sidewalks; (2) trails; (3) bio retention and infiltration facilities; (4) street lighting; (5) street and traffic signs; (6) all private utilities; (7) iron monuments for lot corners have been installed; (8) turf is established and all erosion and sedimentation control has been removed; (9) County roadway, turn lane and intersection improvements; (10) the required "record" plans in the form of the City standards have been received and approved by the City; (11) all financial obligations to the City have been satisfied.

4. Construction Category 11: The amount of \$_____ may be released when all Landscaping Subdivision Improvements have been installed to the satisfaction of the City including all corrective work for any identified punch list items.
 5. Construction Categories 12, 13 and 14: The amount of \$_____ may be released when Developer Landscaping Subdivision Improvements, Tree Preservation and Restoration work, and Wetland Mitigation and Buffers have been completed and 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 for the sanitary sewer and watermain utilities shall be retained until: (1) all sanitary sewer and watermain utilities 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.
- D. Twenty-five percent of the original Security amount for Construction Categories 4-10 and 15-17 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.
- E. 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.
- H. 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 boulevard sidewalks or trails have not been installed.

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

City Base Map Upgrading (\$25.00 per REU):	\$ _____
City Engineering Administration Escrow:	\$ _____
TOTAL CASH REQUIREMENTS:	\$ _____

32. 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: Stillwater Area Public Schools, 1875 Greeley Street South, Stillwater, MN 55082, Attn: Mark Drommerhausen and email address drommerhausenm@stillwaterschools.org. 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., Lake Elmo, Minnesota 55042.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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: _____
Charles Cadenhead
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 Charles Cadenhead and Julie Johnson, the Mayor and City Clerk, respectively, of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the City and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

Independent School District No. 834

By: _____
Board Chair

By: _____
Its: Board Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this ____, day of _____, 20__, by _____, the Board Chair and Board Clerk, respectively, of Independent School District No. 834, Stillwater Area Public Schools, a Minnesota body corporate and politic, on behalf of the school district.

NOTARY PUBLIC

DRAFTED BY:
City of Lake Elmo
3880 Laverne Avenue North
Lake Elmo, MN 55042
(651) 747- 3900

EXHIBIT A TO DEVELOPMENT AGREEMENT

Legal Description of the Property

Legal Description (Pre-Plat):

The Southeast 1/4 of the Southeast 1/4 of Section 26, Township 29, Range 21, Washington County, Minnesota, and all that part of the Southwest 1/4 of the Southeast 1/4, lying Easterly of the West 435.6 feet of the East 2006 feet of the South 1/2 of the Southeast 1/4 of said Section, Washington County, Minnesota.

Platted Legal Description:

Lot 1, Block 1, 10TH AND LAKE ELMO SCHOOL ADDITION, according to the recorded plat thereof, County of Washington, State of Minnesota.

Abstract Property

**EXHIBIT B TO
DEVELOPMENT AGREEMENT**
Subdivision Improvements Cost/Security Amount Estimate

<u>CONSTRUCTION CATEGORY</u>	<u>COST</u>	<u>125 percent</u>
1 <u>Grading (included in grading security)</u>	NA	NA
2 Sanitary Sewer	\$	\$
3 Watermain	\$	\$
4 <u>Storm Sewer (includes pond structures and outfall pipes)</u>	\$	\$
5 Access Roads, Parking <u>and Sidewalks</u>	\$	\$
6 <u>Trails</u>	\$	\$
7 <u>Surface Water Facilities (ponds, infiltration basins, other BMPs)</u>	\$	\$
8 <u>Street Lighting</u>	\$	\$
9 <u>Street and Traffic Signs</u>	\$	\$
10 <u>Private Utilities (electricity, natural gas, telephone, and cable)</u>	\$	\$
11 <u>Landscaping Improvements</u>	\$	\$
12 <u>Tree Preservation and Restoration</u>	\$	\$
13 <u>Wetland Mitigation and Buffers</u>	\$	\$
14 <u>Monuments</u>	\$	\$
15 <u>Erosion and Sedimentation Control</u>	\$	\$
16 County Roadway, Turn Lane and Intersection <u>(including traffic signals)</u>	\$	\$
17 <u>Developer's Record Drawings</u>	\$	\$
<u>TOTALS</u>	\$	\$

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____.

We hereby agree that all sight drafts drawn under and in conformity with the terms of this Letter of Credit will be duly honored if drawn and presented for payment together with the documents required herein to [INSERT NAME AND ADDRESS OF BANK AND CONTACT PERSON] if presented before _____p.m. on or before the expiration date. Presentations may be made by certified mail, return receipt requested, or by Federal Express or any other recognized courier company.

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., 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. 600.

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

BY: _____

Its _____