

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

RESOLUTION NO. 2011-008

**A RESOLUTION APPROVING A PURCHASE OPTION WITH
LAKE ELMO BUSINESS PARK COMPANY FOR THE LOCATION
OF AN EARLY CHILDHOOD AND FAMILY CENTER IN THE
CITY OF LAKE ELMO**

WHEREAS, Independent School District No. 834 has identified the need to construct an early childhood education facility (the "Facility") within its boundaries to serve the population within the District; and

WHEREAS, the District has identified certain real property located in the City of Lake Elmo as potential site for the Facility; and,

WHEREAS, the City is willing to extend its municipal sanitary sewer and water systems to serve the Property, both as part of its long-term community planning and as an incentive to the District to construct an early childhood education facility (the "Facility") on the Property; and

WHEREAS, the City has negotiated an option agreement with respect to the Property and, subject to the terms set forth in the Purchase Option, is willing to purchase the Property or convey the Purchase option to the District, at a price of \$74,500 per acre; and

WHEREAS, the parties desire to enter into an Option Contract to provide for the purchase or conveyance of the purchase option of the property; and


WHEREAS, cities are authorized to enter into such contracts as contemplated in Minnesota Statutes.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lake Elmo does hereby approve an Option Contract with Lake Elmo Business Park Company in the form attached herein, for purchase or conveyance of this option for the location of an Early Childhood and Family Center in the City of Lake Elmo.

BE IT FURTHER RESOLVED that the Option Contract is subject to such non-substantive changes and/or other adjustments, to be made by the City Administrator and City Attorney, as necessary to effect the intent of the City Council under this agreement.

BE IT FURTHER RESOLVED that the City Administrator and Mayor are hereby directed to immediately execute such Option Agreement for, by and on behalf of the City of Lake Elmo, Minnesota.

Date: February 17, 2011 CITY OF LAKE ELMO

By: 
Dean A. Johnston
Mayor

ATTEST:


Sharon Lumby
City Clerk


Bruce A. Messelt
City Administrator

OPTION CONTRACT

Option Contract ("Agreement or "Option Contract") made and given this _____ day of _____, 2011 (the "Effective Date").

For and in consideration of the sum of One Thousand and No/100 Dollars (\$1,000.00) ("Initial Option Fee"), which the City of Lake Elmo, a Minnesota municipal corporation ("Buyer") shall within five (5) days after this Option Contract is fully executed, deliver to Lake Elmo Business Park Company, a Minnesota partnership ("Seller"), Seller does hereby grant unto Buyer or its Successor or Assigns, the exclusive right and option for a period commencing on the date hereof and ending at 11:59 p.m. on March 15th, 2011, ("Termination Date") to purchase all or any parcels of land lying and being in the City of Lake Elmo, in the County of Washington and the State of Minnesota, as shown on Exhibit A attached and legally described on Exhibit B attached hereto (the "Property").

However, this Option Agreement is subject to each of the terms and conditions hereinafter set forth.

1. **PURCHASE PRICE:** The purchase price for the identified Lots are as follows,

For Lot 3, Block 2, Brookman 3rd Addition (PIN 1302921220014), the purchase price is \$ 74,500 per acre, based on 5.01 acres;

For Lot 2, Block 2, Brookman 3rd Addition (PIN 1302921220013), the purchase price is \$ 74,500 per acre, based on 5.01 acres;

For Lot 1, Block 1, Brookman 3rd Addition (PIN 1302921220011), the purchase price is \$ 74,500 per acre, based on 2.68 acres;

For Lot 1, Block 2, Brookman 3rd Addition (PIN 1302921220012), the purchase price is \$ 74,500 per acre, based on 3.73 Acres;

~~If the option is exercised on all of the Lots listed above by March 15th, 2011, the purchase price shall be \$ 67,500 per acre, based on 16.43 acres.~~

~~Under separate consideration, for Lot 1, Block 3, Brookman 3rd Addition (PIN 1302921210007), the purchase price is \$ 87,120 per acre based on 4.57 Acres, if the option is exercised by March 15th, 2011, after which time the option shall revert to a Right of First Refusal, as determined by demonstration by the Seller of a bona fide and binding Purchase Agreement, effective until December 31st, 2011.~~

- A. \$1,000.00 Initial Option Fee which will be held and disbursed in accordance with Agreement and if Buyer purchases any of the identified Lots, the Initial Option Fee will be credited against the purchase price of the last Lots in the development.
- B. Buyer agrees, subject to extension for delays in Seller's performance of its obligations under this Agreement, that it must exercise its option rights on any or all of the 4 Lots in the development as follows:

Lot 3, Block 2, Brookman 3rd Addition – by March 15th, 2011, with projected closing on or before June 1, 2011.

Lot 2, Block 2, Brookman 3rd Addition – by March 15th, 2011, with projected closing on or before June 1, 2011.

Lot 1, Block 2, Brookman 3rd Addition – by March 15th, 2011, with projected closing on or before January 2nd, 2012.

Lot 1, Block 1, Brookman 3rd Addition – by March 15th, 2011, with projected closing on or before January 2nd, 2012.

~~Lot 1, Block 3, Brookman 3rd Addition – by March 15th, 2011, with projected closing on or before June 1, 2011, or via Right of First Refusal by December 31st, 2012, with project closing thereafter as mutually determined.~~

This option may be exercised as to one, more than one, or all of the Lots and will not terminate by exercise of the option right as to less than all of the Lots.

2. **FAILURE TO EXERCISE OPTION:** Buyer shall have no obligation to purchase any Lot under this Agreement, it being agreed by the parties hereto that this is an Option Contract and not a purchase agreement.
3. **MANNER OF PAYMENT:** If Buyer exercises any option right to purchase a Lot, the entire purchase price for any Lot or Lots shall be payable in cash or other terms, as mutually determined and agreed upon. The purchase price for each Lot shall be payable on the date ("Closing Date") the purchase of such Lot is closed.
4. **CLOSING:** The Closing Date for each Lot shall be a date specified by Buyer in the notice delivered by Buyer to inform Seller that Buyer, or its Successor or Assigns is exercising its option with respect to such Lots, which date shall be no later than ninety (90) days after the date of such notice unless otherwise stated herein, or such date is extended by the mutual agreement of Seller and Buyer. On any Closing Date, Seller shall execute and deliver to Buyer the following:

- A. A Warranty Deed conveying the Lot or Lots purchased to Buyer, free and clear of all liens, charges and encumbrances, except for Permitted Exceptions as defined in Section 6 below.
- B. All other documents which are necessary or desirable to convey the Lots being purchased, including all documents required by Chicago Title Insurance Company or any other title insurance in form acceptable to Buyer and Buyer's Lender, if any.

The closing and delivery of all such documents shall take place at the office of Chicago Title Insurance Company or at such other place as may be reasonably specified by Buyer or its Successor or Assigns. Seller agrees to deliver possession of the Lot or Lots purchased to Buyer on the Closing Date.

Buyer may terminate Purchase Agreement prior to closing of any identified Lot if any of the following conditions apply:

- A. A Phase I Environmental Survey conducted at Buyer's expense identifies conditions making the site unacceptable for an Early Childhood and Family Education Facility or general public/civic facility.
- B. The Stillwater Area School District fails to secure approval from the State of Minnesota for placement of an Early Childhood and Family Education Facility on the site or fails to secure appropriate financing to construct such facility.
- C. The Buyer, or its Successor or Assigns, fails to acquire necessary zoning and land use authority for construction of such facility or fails to secure appropriate financing to execute this Agreement.

Buyer shall forfeit to Seller initial Option Fee should such termination occurs prior to closing.

- 5. **APPLYING OPTION PAYMENTS TO PURCHASE PRICE:** If Buyer purchases any of the Lots, the Initial Option Fee shall be credited against the purchase price for the last Lot remaining subject to this Agreement after conveyance of all the Lots to Buyer. If this Agreement is terminated prior to conveyance of all the Lots to Buyer, the Initial Option Fee, shall be retained by Seller.
- 6. **TITLE AND EXAMINATION:** As quickly as reasonably possible after Final Acceptance of this Purchase Agreement:

- A. Seller shall surrender any abstract of title and a copy of any owner's title insurance policy for the property, if in Seller's possession or control, to Buyer or Buyer's designated title service provider; and
- B. Buyer shall obtain the title services determined necessary or desirable by Buyer or Buyer's lender, including but not limited to title searches, title examinations, abstracting, a title insurance commitment or an attorney's title opinion at Buyer's selection and cost and provide a copy to Seller.

Seller shall use Seller's best efforts to provide marketable title by the date of closing. Seller agrees to pay all costs and fees necessary to convey marketable title including obtaining and recording all required documents, subject to the following:

In the event Seller has not provided marketable title by the date of closing, Seller shall have an additional 30 days to make title marketable, or in the alternative, Buyer may waive title defects by written notice to Seller. In addition to the 30-day extension, Buyer and Seller may, by mutual agreement, further extend the closing date. Lacking such extension, either party may declare this Purchase Agreement canceled by written notice to the other party, or licensee representing or assisting the other party, in which case this Purchase Agreement is canceled. If either party declares this Purchase Agreement canceled, Buyer and Seller shall immediately sign a Cancellation of Purchase Agreement confirming said cancellation and directing all earnest money paid hereunder to be refunded to Buyer.

7. **SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**
Seller represents, warrants and covenants to Buyer as follows:

- A. Authority. This Agreement has been duly executed and delivered; any closing documents to be signed by Seller will be duly executed and delivered on each Closing Date; such execution, delivery and performance by Seller do not and will not conflict with or result in a violation of any judgment, order, or decrees of any court or arbiter to which Seller is a party or by which it is bound; this Agreement and those closing documents to be signed by Seller will contain the valid and binding obligations of Seller, and be enforceable in accordance with their terms.
- B. Leases. As of the Effective Date and the Closing Date, the Property is not, and will not be, subject to any lease or occupancy agreement.
- C. Special Assessments. Seller shall pay the outstanding balance due to the City of Lake Elmo for all special assessments levied or pending against

any Lot on the Closing Date for such Lot. Seller shall pay all availability charges required for development. Buyer shall pay for SAC, WAC and building permit charges.

- D. Environmental Laws. Seller has no knowledge, after exercising due diligence in reviewing its files, correspondence and other relevant information concerning the Property, that any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitations, asbestos, area formaldehyde, the group of organic compounds known as polychlorinated biphenyl's, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601-9657, as amended) have been generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located in the Property, nor does Seller have any knowledge, after exercising due diligence as described above, or any activity having been undertaken on the Property that would cause or contribute to (i) the Property becoming a treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recover Act of 1976 ("RCRA"), 42 U.S.C. 6901 et seq., or any similar state law or local ordinance, (ii) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants from the Property within the ambit of CERCLA or any similar state law or local ordinance, or (iii) the discharge of pollutants or effluents into any water source of system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water act, 33 U.S.C. 1251 et se ., or the Clean Air Act, 42 U.S.C. 7401 et seq., or any similar state law or local ordinance. After exercising due diligence as described above, Seller knows of no substances or conditions in or on the Property tat may support a claim or cause of action under RCRA, CERCLA or any other federal, state or local environmental statutes, regulations, ordinances or other regulatory requirements.
- E. Rights of Others to Purchase Property. Seller has not entered into any other contracts for the sale of the Property, nor are there any rights of first refusal or options to purchase the Property or any other rights of others that might prevent the consummation of this Agreement.
- F. Seller's Defaults. Seller is not in default concerning any of its obligations or liabilities regarding the Property.

- G. FIRPTA. Seller is not a "foreign person," "foreign partnership," "foreign trust" or "foreign estate" as those terms is defined in Section 1445 of the Internal Revenue Code.
- H. Proceedings. There are no claims, actions, suits, proceedings or investigations pending or, to Seller's knowledge, threatened by any governmental department or agency, or any corporation, partnership, entity or person, which in any manner or to any extent may affect (i) the Property, (ii) Seller's right, title and interest in and to any part or all of the Property, or (iii) Seller's ability to vest in Buyer a fee simple ownership interest in the Property free and clear of any and all liens, claims encumbrances and rights of redemption except the Permitted Exceptions.
- I. Access. The Property has public access by roadways duly dedicated and accepted by the public bodies having jurisdiction thereof and said roadways provide access to the public roadway system of the State of Minnesota.
- J. Wetlands. The Property is not in a designated wetland, flood plain or flood insurance area.
- K. Encroachments. Seller is aware of no encroachments on the property.
- L. Well Abandoned. Prior to Closing, Seller shall take all actions which are necessary to properly seal any wells which may be located on the Property in accordance with Minnesota Statute and the rules adopted by the Minnesota Commissioner of Health.

Seller will define, identify and hold Buyer, its successors and assigns, harmless from and against any expenses or damages (including reasonable attorneys' fees) that Buyer incurs because of the breach of any of the above representations, warranties, or covenants whether such breach is discovered before or after any Closing Date, and all expenses and attorneys' fees incurred by Buyer in enforcing its right to defense, indemnification and reimbursement. Each of the representations, warranties and covenants herein contained shall survive each Closing and consummation of this Agreement by Buyer with knowledge of any such breach by Seller will not constitute a waiver or release by Buyer of any claims due to such breach.

- M. Seller shall convey, upon request by Buyer, all easements reasonably necessary to extend trunk sewer and water to the lots without cost to the City and the City shall provide sewer and water to the property lines,

including Lot 1, Block 3, Brookman 3rd Addition (PIN 1302921210007) and Lot 2, Block 3, Brookman 3rd Addition (PIN 1302921210016).

8. **BUYER'S REPRESENTATIONS AND WARRANTIES.**

Buyer represents, warrants and covenants to Seller as follows:

- A. Buyer is duly organized and is in good standing under the laws of the State of Minnesota; that Buyer has the requisite power and authority to enter into the Agreement and the execution and delivery of this Agreement has been duly authorized by all necessary action on the part of Buyer.
- B. Buyer agrees to initiate and use its best efforts to complete realignment of current public right-of-way easement located between Lot 3, Block 2 and Lot 1, Block 3, Brookman 3rd Addition to a mutually-agreed upon alternative location.
- C. Buyer agrees to limit local SAC and WAC charges, or any future initial sewer and water service assessments, for all Lots not purchased by Buyer under this Purchase Option, to that currently calculated for sewer and water service to such Lots and included as exhibit C, including Lot 1, Block 3, Brookman 3rd Addition (PIN 1302921210007) and Lot 2, Block 3, Brookman 3rd Addition (PIN 1302921210016).
- D. Buyer agrees to indemnify Seller from any future initial assessments for provision of public parking on or adjacent to all Lots not purchased by Buyer under this Purchase Option, including Lot 1, Block 3, Brookman 3rd Addition (PIN 1302921210007) and Lot 2, Block 3, Brookman 3rd Addition. For such consideration, Seller agrees to provision of necessary additional utility, parking and public sidewalk/pathway easement and consents to Buyer's utilization of reasonable financing tools, including but not limited to Tax Increment Financing, to underake such public improvements.

9. **CONDITIONS.** Seller's right to receive the Initial Option Fee from the Escrow Agent is contingent upon each of the following:

- A. Seller's delivery, promptly after the execution of this Agreement, to Buyer or Buyer's Successor or Assigns of copies of all surveys, plans, designs, environmental reports, governmental approvals and any documents relating to the development or design or platting of the Property that Seller has in its possession, if any;

- B. Buyer or Buyer's Successor or Assigns receiving and approving an environmental study satisfactory to it acquired at Buyer's expense within 60 days of the date this agreement is signed by all parties.
- C. Seller's delivery of an agreement in form acceptable to Buyer's or Buyer's Successor's or Assigns' counsel which has been dully executed by the holder of any mortgage against the Property, which agreement will obligate any such mortgagee to deliver a release of its mortgage for any property that is acquired by Buyer or Buyer's Successor or Assigns pursuant to this Agreement.
- D. Buyer, or Buyer's Successor or Assigns, and Seller agree to mutually and affirmatively consider any lot line adjustments or replatting, at Buyer's or Buyer's Successor's or Assigns' expense, and as mutually beneficial to effect exercise of this Purchase Option for the identified purposes and uses.

If any of the forgoing conditions are not satisfied, Buyer or Buyer's Successor or Assigns shall have the right to terminate this Option Contract and, in such case, the Initial Option Fee shall be immediately returned to Buyer. Any and all of the foregoing conditions are for the sole benefit of Buyer or Buyer's Successor or Assigns and may be waived, in writing, by Buyer or Buyer's Successor or Assigns.

- 10. **PLAT APPROVAL.** (Intentionally Deleted)
- 11. **RIGHT OF ENTRY.** Seller hereby grants Buyer or Buyer's Successor or Assigns, and its agents the right of access onto the Property without charge and at all reasonable times for the purpose of Buyers or Buyer's Successor or Assigns investigating the physical condition thereof, including, with limitation, topographic and soil conditions and for the purpose of making test pits, soil borings, market and engineering studies, feasibility studies, environmental investigations and any other test, studies or investigations of the Property. Buyer or Buyer's Successor or Assigns shall immediately repair any damage to the Property caused by such inspections and studies and shall indemnify and hold Seller harmless from any loss, cost, damage or expense, including without limitation, reasonable attorneys' fees, arising from or in connection with Buyer's or Buyer's Successor or Assigns entry upon the Property for the foregoing inspection, testing and related purposes.

12. **BUYER'S CLOSING DOCUMENTS.** On the Closing Date for any Lot, Buyer, or Buyer's Successor or Assigns, will execute and/or deliver to Seller the following (collectively, the "Buyer's Closing Documents"):
 - A. The Purchase Price for the Lot in cash, certified funds or wire transfer.
 - B. Such documents as may be reasonably required by Title Insurer to record the Warranty Deed and issue any title policies required by this Agreement.
13. **CLOSING COSTS AND PRORATIONS.** Real estate taxes due and payable in the year any Lot is purchased shall be prorated to the Closing Date between Seller and Buyer, or Buyer's Successor or Assigns, with Buyer, or Buyer's Successor or Assigns, paying all real estate taxes payable after the Closing Date and Seller paying all real estate taxes against the Property through the Closing Date. At closing Seller shall pay all special assessments against the Lot which are levied or pending as of the Closing Date for any Lot and all deferred real estate taxes and special assessments. Seller shall also pay the real estate transfer fees and the costs of preparing the Commitment and performing any searches. Buyer, or Buyer's Successor or Assigns, shall pay all of the recording fees and the premium for the title policies. Buyer, or Buyer's Successor or Assigns, and Seller shall each pay one-half of the Title Insurer's closing fees, with respect to the closing for any Lot.
14. **CONDEMNATION.** If, prior to the Closing Date, eminent domain proceedings are commenced against all or any part of the Property, Seller shall immediately give Buyer written notice of such fact and Buyer or Buyer's Successor or Assigns shall have the right (to be exercised within thirty (30) days after receipt of Seller's notice) to terminate this Agreement and recover all monies paid by Buyer or Buyer's Successor or Assigns hereunder. If this Agreement is so terminated, neither party will have further obligations under this Agreement and any monies paid by Buyer hereunder shall be immediately returned to Buyer. If Buyer does not terminate this Agreement, the purchase price for the last Lots to be purchased by Buyer or Buyer's Successor or Assigns shall be reduced by any condemnation awards paid to Seller prior to closing on such Lots and Seller shall, at closing, assign to Buyer or Buyer's Successor or Assigns all of Seller's right, title and interest in and to any award made or to be made in the condemnation proceedings.
15. **REMEDIES.** If Buyer, or Buyer's Successor or Assigns, fails to purchase a Lot in accordance with this Agreement, and Seller has fully performed all of Seller's obligations under this Agreement, as and when due, Seller shall have the right to terminate this Agreement by giving written notice to Buyer. If Buyer, or Buyer's Successor or Assigns, fails to cure such failure within the time period specified in Section 2 of this Agreement, this Agreement will

terminate. Upon such termination, the Initial Option Fee and the Additional Option Payment shall be delivered to Seller if such funds have not already been paid to Seller and Seller shall retain such funds, and Buyer or Buyer's Successor or Assigns, shall have no claim to such funds. The termination of this Agreement and retention of such funds by Seller will be the sole remedy available to Seller for such failure by Buyer, or Buyer's Successor or Assigns, and Buyer, or Buyer's Successor or Assigns, will not be liable for damages or specific performance, it being agreed by the parties hereto that this Agreement is an Option Contract and not a purchase agreement. If Seller defaults under this Agreement, Buyer, or Buyer's Successor or Assigns, shall have the right to seek and recover damages from Seller for nonperformance or to seek specific performance of this Agreement.

16. **SURVIVAL.** All of the representations, warranties and other terms of this Agreement will survive and be enforceable after the closing on any Lot and will not merge into any Warranty Deed for the Lot which will be delivered by Seller to Buyer, or Buyer's Successor or Assigns.
17. **NOTICES.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon (i) personal service, (ii) three (3) business days following deposit in the United States first class mail, postage prepaid, and addressed as set forth below, or (iii) facsimile transmission (confirmation received) at the facsimile numbers listed below. Said addresses and numbers may be changed by written notice in the manner described in this Section.

If to Seller: Lake Elmo Business Park Property,
 A Business Partnership
 118 Main Street South
 P.O. Box 36
 Stillwater, MN 55082

If to Buyer: City of Lake Elmo
 3800 Laverne Avenue North
 Lake Elmo, MN 55042

- 18 **CAPTIONS.** The paragraph headings or captions appearing in this Agreement have been inserted for convenience only, are not part of this Agreement and are not to be considered in interpreting this Agreement.
- 19 **ENTIRE AGREEMENT; MODIFICATION.** This written Agreement together with the Exhibits attached hereto constituted the completed agreement between the parties and supersedes and prior to contemporaneous oral or written

agreements between the parties regarding the Property. There are not verbal agreements between the parties regarding the Property. There are not verbal agreements that change this Agreement and on waiver of any of its terms will be effective unless in a writing executed by the party against whom enforcement is sought.

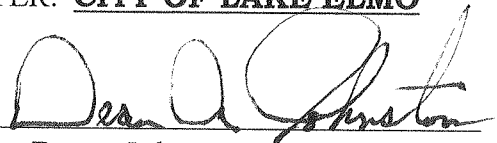
- 20 **TIME.** Where any date or time prescribed by this Agreement falls on a Saturday, Sunday, or holiday, such date or time shall automatically be extended to the next business day.
- 21 **BINDING EFFECT.** This Agreement binds and benefits the parties and their successors and assigns.
- 22 **CONTROLLING LAW.** This Agreement has been made under the laws of the State of Minnesota, and such laws will control its interpretation.
- 23 **INDEMNIFICATION AGAINST BROKERAGE FEES OR COMMISSION.** Buyer and Seller represent and warrant to one another that no broker or finder has been engaged in connection with the purchase and sale hereof. Furthermore, Buyer and Seller each hereby agree to indemnify and hold the other harmless from any claim for any brokerage fee or commission or finder's fee or commission claimed or incurred as the result of the action of the party other than the party against whom the claim is made.

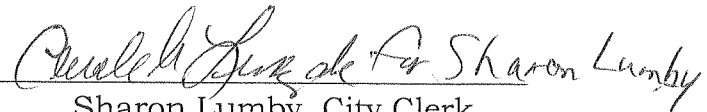
IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

SELLER: **Lake Elmo Business Park Property**

By _____
Its: _____

BUYER: **CITY OF LAKE ELMO**

By 
Dean Johnston, Mayor

By 
Sharon Lumby, City Clerk

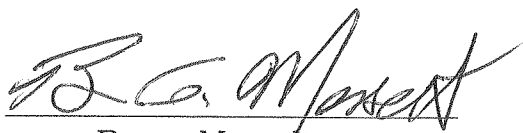
Attest 
Bruce Messelt
City Administrator

EXHIBIT A - Map of Property

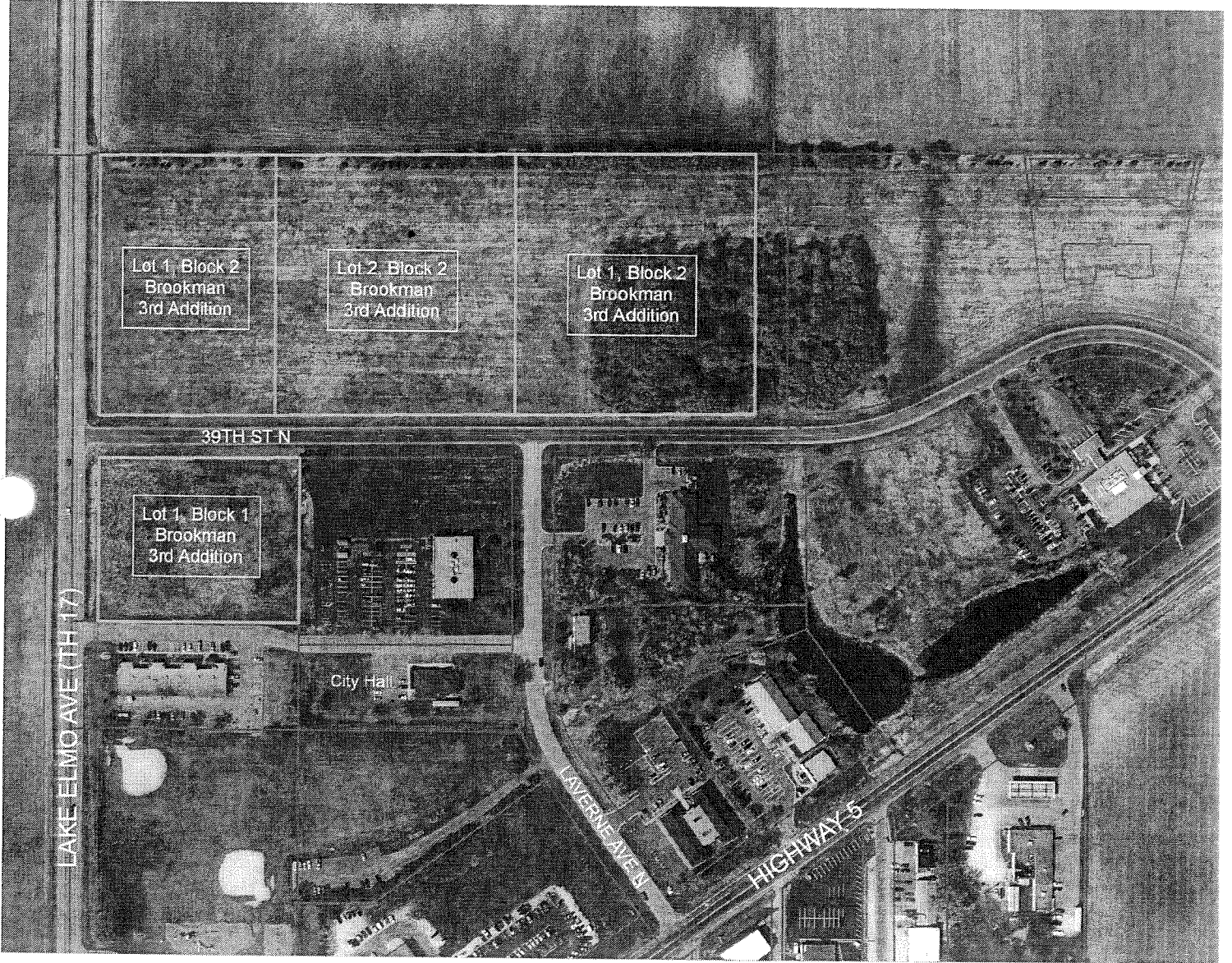


EXHIBIT B - Legal Description of Property

Lot 1, Block 2 of Brookman 3rd Addition, Washington County, Minnesota.

Lot 2, Block 2 of Brookman 3rd Addition, Washington County, Minnesota.

Lot 3, Block 2 of Brookman 3rd Addition, Washington County, Minnesota.

Lot 1, Block 1 of Brookman 3rd Addition, Washington County, Minnesota.

EXHIBIT C - City of Lake Elmo SAC and WAC Charges

The Buyer agrees that the Seller will be charged no more than the following development fees at the rates now in effect in the City, as set forth below:

City of Lake Elmo Sewer Availability Charge (SAC)	\$ <u>3,500 per REC/SAC Unit</u>
City of Lake Elmo Water Availability Charge (WAC)	\$ <u>3,900 per REC Unit</u>

The Buyer will charge Seller the Metropolitan Council sewer availability and water availability charges (SAC and WAC) at the rates in effect at the time of connection.

The Buyer and the Seller mutually agree to limit imposition of WAC/SAC charges for any/all future development on the Lots denoted in Section 8, Subsection C, as determined by the following (current MCES Guidelines), or a MCES-approved pro-rated portion thereof:

Assuming General Office Space or Library (both w/meeting rooms): 1 SAC = 1,650 s.f.

20,000 s.f building = 12 RECs

30,000 s.f building = 18 RECs

40,000 s.f building = 24 RECs – Maximum REC charged per Lot

Assuming General Office Space (no meeting rooms): 1 SAC = 2,400 s.f.

20,000 s.f building = 8 RECs

30,000 s.f building = 13 RECs

40,000 s.f building = 17 RECs – Maximum REC charged per Lot