

DEVELOPMENT CONTRACT

AGREEMENT dated this 1st day of August, 2006, by, between, and among the City of Farmington, a Minnesota municipal corporation (CITY) and <DEVELOPER>, a Minnesota corporation partnership (DEVELOPER).

1. **Request for Plat Approval.** The Developer has asked the City to approve a plat for <DEVELOPMENT> (also referred to in this Development Contract [CONTRACT or AGREEMENT] as the PLAT). The land is situated in the City of Farmington, County of Dakota, State of Minnesota, and is legally described on the attached Exhibit "A":

2. **Conditions of Approval.** The City hereby approves the plat on the conditions that:
 - a) the Developer enter into this Agreement; and
 - b) the Developer provide the necessary security in accordance with the terms of this Agreement; and
 - c) the Developer record the plat with the County Recorder or Registrar of Titles within 6 months after City Council approval of the final plat.

3. **Development Plans and Right to Proceed.** The Developer shall develop the plat in accordance with the following plans. The plans shall not be attached to this Agreement. The plans may be prepared by the Developer, subject to City approval, after entering into this Agreement but before commencement of any work in the plat. If the plans vary from the written terms of this Contract, subject to paragraphs 6 and 34G, the plans shall control. The required plans are:
 - Plan A - Final Plat
 - Plan B - Soil Erosion Control and Grading Plans
 - Plan C - Landscape Plan
 - Plan D - Park Improvement Plan
 - Plan E - Zoning/Development Map
 - Plan F - Wetlands Mitigation as required by the City
 - Plan G - Final Street and Utility Plans and Specifications

The Developer shall use its best efforts to assure timely application to the utility companies for the following utilities: underground natural gas, electrical, cable television, and telephone. The installation of these utilities shall be constructed within public rights-of-way or public drainage and utility easements consistent with the city's engineering guidelines and standard detail plates.

Within the plat or land to be platted, the Developer may not construct sewer lines, water lines, streets, utilities public or private improvements or any building until all of the following conditions have been satisfied:

- a) This agreement has been fully executed by both parties and filed with the City Clerk,
- b) The necessary security has been received by the City,
- c) The plat has been submitted for recording with the Dakota County Recorder's Office, and
- d) The City Clerk has issued a letter stating that all conditions have been satisfied and that the Developer may proceed.

4. **Sales Office Requirements.** At any location within the plat where lots and/or homes are sold which are part of this subdivision, the Developer agrees to install a sales board on which a copy of the approved plat, final utility plan and a zoning map or planned unit development plan are displayed, showing the relationship between this subdivision and the adjoining neighborhood. The zoning and land use classification of all land and network of major streets within 350 feet of the plat shall be included.

5. **Zoning/Development Map.** The Developer shall provide an 8 1/2" x 14" scaled map of the plat and land within 350' of the plat containing the following information:
 - a. platted property;
 - b. existing and future roads;
 - c. future phases;
 - d. existing and proposed land uses; and
 - e. future ponds.

6. **Required Public Improvements and <ASSESSED AREA> Assessments.** The Developer shall install and pay for the following:

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| <ol style="list-style-type: none"> a. Sanitary Sewer Lateral System b. Water System (trunk and lateral) c. Storm Sewer d. Streets e. Concrete Curb and Gutter f. Street Signs g. Street Lights | <ol style="list-style-type: none"> h. Sidewalks and Trails i. Erosion Control, Site Grading and Ponding j. Traffic Control Devices k. Setting of Lot & Block Monuments l. Surveying and Staking m. Landscaping, Screening, Blvd. Trees |
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The improvements shall be installed in accordance with Plans A through G, and in accordance with all laws, City Standards, Engineering Guidelines, Ordinances and plans and specifications which have been prepared by a competent registered professional engineer furnished to the City and reviewed by the City Engineer. Work done not in accordance with the final plans and specifications, without prior authorization of the City Engineer, shall be considered a violation of this agreement and a Default of the Contract. The Developer shall obtain all necessary permits from the Metropolitan Council and other agencies before proceeding with construction. 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 City 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 inspector(s) and a soil engineer inspect the work on a full or part time basis. The Developer or his engineer shall schedule a pre-construction meeting at a mutually agreeable time at the City Council chambers with all parties concerned, including the City staff, to review the program for the construction work. Within sixty (60) days after the completion of the improvements and before the security is released, the Developer shall supply the City with a complete set of "As Built" plans as specified in the City's Engineering Guidelines.

If the Developer does not provide such information, the City will produce the as-built drawings. All costs associated with producing the as-built drawings will be the responsibility of the Developer.

All bike trails and sidewalks to be constructed as part of the development must be completed before building permits will be issued.

Before the security for the completion of the utilities is released, iron monuments must be installed in accordance with M.S. §505.02. The Developer's surveyor shall submit a written notice to the City certifying that the monuments have been installed.

<ASSESSED AREA> Assessments

The parent parcels of <DEVELOPMENT> have been assessed for improvements to <ASSESSED AREA>. The total levied assessment amount for the parcels is:

<u>Parcel Nos.</u>	Total amount levied: \$<ASSESSED AMOUNT>
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<PARCEL>

A portion of the levied assessment plus interest becomes due with the final platting of <DEVELOPMENT>. The amount due with <DEVELOPMENT> will be calculated proportionally based on the area of <DEVELOPMENT> being developed in relation to the entire area of the property. The remaining balance of the levied assessment shall remain levied against the unplatted portion of the parent parcel.

The Developer may elect to pay the assessment in cash at the time of final plat approval or have it prorated and reassessed to the lots and blocks of <DEVELOPMENT>. If assessed, the assessments shall be spread over a 10-year period with 6.5% interest on the unpaid balance from the time of the initial adoption of the assessment to the parent parcel. The reassessments shall be deemed adopted on the date this Contract is signed by the City. The Developer 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 property. The Developer waives any appeal rights otherwise available pursuant to M.S.A. 429.081.

7. **Time of Performance.** The Developer shall install all required public utilities, by September 30, 2004, in accordance with the requirements set forth in the City's Engineering Guidelines. 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. An extension of the security shall be considered an extension of this contract and the extension of the contract will coincide with the date of the extension of the security.
8. **Ownership of Improvements.** Upon the completion of the work and construction required to be done by this Agreement, and written acceptance by the City Engineer, the improvements lying within public easements shall become City property, except for cable TV, electrical, gas, and telephone, without further notice or action.

Outlots A, B, C, D, and E shall be deeded to the City following the completion and approval of improvements as required under Plans A – G. 10% of the total security amount shall be held until the required outlots are deeded to the City and the required As-built plans are submitted and approved. A Letter of Exemption, attached to this contract as Exhibit "B", shall be submitted to the County for each outlot at the time that the deed for the outlot is filed with the County.

9. **Warranty.** The Developer and the Developers Engineer represent and warrant to the City that the design for the project meets all laws, City Standards, Engineering Guidelines and Ordinances. The Developer warrants all improvements required to be constructed by it pursuant to this Contract against poor material and faulty workmanship. The warranty period for streets is one year. The warranty period for underground utilities is two years. The warranty period for the streets shall commence after the final wear course has been completed and the streets have been accepted by the City Engineer in writing. It is the responsibility of the Developer to request, in writing, City acceptance of the streets. Failure of the Developer to request acceptance of the streets in a timely manner shall not in any way constitute cause for the warranty period to be modified from the stipulations set forth above. The warranty period on underground utilities shall commence following their completion and acceptance by the City Engineer in writing. It is the responsibility of the Developer to complete the required testing of the underground utilities and request, in writing, City acceptance of the utilities. Failure of the Developer to complete the required testing or request acceptance of the utilities in a timely manner shall not in any way constitute cause for the warranty period to be modified from the stipulations set forth above. All trees shall be warranted to be alive, of good quality, and disease free for twelve (12) months after the security for the trees is released. Any replacements shall be warranted for twelve (12) months from the time of planting. The Developer shall post maintenance bonds or other surety acceptable to the City to secure the warranties. The City shall retain ten percent (10%) of the security posted by the Developer until the bonds or other acceptable surety are furnished to the City or until the warranty period has been completed, whichever first occurs. The retainage may be used to pay for warranty work. The City's Engineering Guidelines identify the procedures for final acceptance of streets and utilities.
10. **Grading Plan.** The plat shall be graded and drainage provided by the Developer in accordance with Plan B. Notwithstanding any other provisions of this Agreement, the Developer may start rough grading the lots within the stockpile and easement areas in conformance with Plan B before the plat is filed if all fees have been paid, a MPCA Construction Storm Water Permit has been issued, and the City has been furnished the required security. Additional rough grading may be allowed upon obtaining written authorization from the City Engineer.

If the developer needs to change grading affecting drainage *after homeowners are on site, he must notify all property owners/residents of this work prior to its initiation.* This notification cannot take place until the City Engineer has

approved the proposed grading changes. A MPCA Construction Storm Water Permit must be obtained before any grading can commence on the site.

- 11. Erosion Control and Fees.** After the site is rough graded, but before any utility construction is commenced or building permits are issued, the erosion control plan, Plan B, shall be implemented by the Developer and inspected and approved by the City. The City may impose additional erosion control requirements if it is determined that the methods implemented are insufficient to properly control erosion. All areas disturbed by the excavation and back-filling operations shall be re-seeded forthwith after the completion of the work in that area. All seeded areas shall be fertilized, mulched and disc anchored as necessary for seed retention. 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, or in an emergency determined at the sole discretion of the City, the City may take such action as it deems appropriate to control erosion immediately, without notice to the Developer. 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 the City's rights or obligations hereunder. If the Developer does not reimburse the City for any costs of the City incurred for such work within thirty (30) days, the City may draw down the letter of credit to pay such costs. No development will be allowed and no building permits will be issued unless the plat is in full compliance with the erosion control requirements.

The Developer is responsible for **Erosion Control inspection fees at the current rates.** The Developer is also responsible for a **Surface Water Quality Management Fee of \$ <SURFACE WATER QUALITY MANAGEMENT FEE>** (p. 6 – fee schedule) based upon the number of acres in the plat. This fee is due and payable at the time of execution of this agreement.

- 12. Landscaping.** The Developer shall landscape the plat in accordance with Plan C. The landscaping shall be accomplished in accordance with a time schedule approved by the City.
- A. The Developer shall be solely responsible for the installation of all project landscaping including but not limited to the boulevard trees. The responsibility for the installation of boulevard trees will not be transferred to builders, homeowners, etc.
 - B. All graded areas, including finish grade on lots, will require a minimum of 6" of black dirt/topsoil. The responsibility for the installation of black dirt/topsoil shall not be transferred to homeowners.
 - C. Retaining walls with 1) a height that exceeds four feet or 2) a combination of tiers that exceed four feet or 3) a three foot wall with a back slope greater than 4 to 1 shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical 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 and specifications. All retaining walls that are part of the development plans, or special conditions referred to in this Contract that are required to be constructed, shall be constructed and certified before any building permit is issued for a lot on which a retaining wall is required to be built. All landscaping features, including those constructed within public rights of way, remain the property and responsibility of the developer and subsequent property owners, subject to the City's or other governmental unit's rights to access and maintain their rights of way.
- 13. Phased Development.** The plat shall be developed in one (1) phase in accordance with Plans A – G. No earth moving shall be done in any subsequent phase until the necessary security has been furnished to the City. No construction of public improvements or other development shall be done in any subsequent phase until a final plat for the phase has been filed in the County Recorder's office and the necessary security has been furnished to the City. The City may refuse to approve final plats of subsequent phases until public improvements for all prior phases have been satisfactorily completed. Subject to the terms of this Agreement, this Development Contract constitutes approval to develop the plat. Development of subsequent phases may not proceed until development agreements for such phases are approved by the City.
- 14. Effect of Subdivision Approval.** For two (2) years from the date of this Agreement, no amendments to the City's Comprehensive Plan, except an amendment placing the plat in the current urban service area, or removing any part thereof which has not been final platted, or official controls, shall apply to or affect the use, development density, lot size, lot layout or dedications or platting required or permitted by the approved preliminary 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 amendments to the City's Comprehensive Plan (including removing unplatted property from the urban service area), official controls, platting or dedication requirements enacted after the date of this Agreement and may require submission of a new plat.

15. **Surface Water Management Fee.** The Developer shall pay an area storm water management charge of \$ <SURFACE WATER MANAGEMENT FEE> (p. 6 – fee schedule) in lieu of the property paying a like assessment at a later date. The charge shall be assessed against the lots (not outlots) in the plat over a 10 year period with interest on the unpaid balance calculated at five percent (5%) per annum. The assessment shall be deemed adopted on the date this Agreement is signed by the City. The assessments may be assumed or prepaid at any time. The Developer waives any and all procedural and substantive objections to the assessments including any claim that the assessments exceed the benefit to the property. The Developer waives any appeal rights otherwise available pursuant to MSA 429.081. Storm sewer charges for subsequent phases shall be calculated and paid based upon requirements in effect at the time the Development Contracts for those phases are entered into.
16. **Wetland Conservation and Mitigation.** The Developer shall comply with the 1991 Wetlands Conservation Act, as amended, and the Wetlands Mitigation Plan. The Developer shall pay all costs associated with wetlands conservation and the Wetlands Mitigation Plan.
17. **Water Main Trunk Area Charge.** The Developer shall pay a water main trunk area charge of \$ <WATER MAIN TRUNK AREA CHARGE> (p. 5 – fee schedule) for the plat in lieu of the property paying a like assessment at a later date. The charge shall be assessed against the lots (not outlots) in the plat over a ten (10) year period with interest on the unpaid balance calculated at five percent (5%) per annum. The assessment shall be deemed adopted on the date this Agreement is signed by the City. The assessments may be assumed or prepaid at any time. The Developer waives any and all procedural and substantive objections to the assessments including any claim that the assessments exceed the benefit to the property. The Developer waives any appeal rights otherwise available pursuant to MSA 429.081. Water area charges for subsequent phases shall be calculated and paid based upon requirements in effect at the time the Development Contracts for those phases are entered into. *A credit of \$<TRUNK WATER MAIN CREDIT> will be given to the Developer for Water Main Trunk oversizing within the plat. The net result is that the Water Main Trunk Area Charge to be paid with this plat is \$<ADJUSTED WATER MAIN TRUNK AREA CHARGE>.*
18. **Water Treatment Plant Fee.** The Developer shall pay a water treatment plant fee of \$ <WATER TREATMENT PLANT FEE> (p. 6 – fee schedule) for the plat in lieu of the property paying a like assessment at a later date. The charge shall be assessed against the lots (not outlots) in the plat over a ten (10) year period with interest on the unpaid balance calculated at five percent (5%) per annum. The assessment shall be deemed adopted on the date this Agreement is signed by the City. The assessments may be assumed or prepaid at any time. The Developer waives any and all procedural and substantive objections to the assessments including any claim that the assessments exceed the benefit to the property. The Developer waives any appeal rights otherwise available pursuant to MSA 429.081. Water treatment plant fees for subsequent phases shall be calculated and paid based upon requirements in effect at the time the Development Contracts for those phases are entered into.
19. **Sanitary Sewer Trunk Area Charge.** The Developer shall pay a sanitary sewer trunk area charge of \$ <SANITARY SEWER TRUNK AREA CHARGE> (p. 6 – fee schedule) for the plat in lieu of the property paying a like assessment at a later date. The charge shall be assessed against the lots (not outlots) in the plat over a ten (10) year period with interest on the unpaid balance calculated at five percent (5%) per annum. The assessment shall be deemed adopted on the date this Agreement is signed by the City. The assessments may be assumed or prepaid at any time. The Developer waives any and all procedural and substantive objections to the assessments including any claim that the assessments exceed the benefit to the property. The Developer waives any appeal rights otherwise available pursuant to MSA 429.081. Sanitary Trunk Sewer charges for subsequent phases shall be calculated and paid based upon requirements in effect at the time the Development Contracts for those phases are entered into.
20. **Park Dedication.** The Developer shall be required to dedicate <PARK ACREAGE> acres of land for park purposes. This park land shall be improved in accordance with the approved Park Improvement plan and the City's Engineering Guidelines. The Developer shall pay the City \$ <PARK DEDICATION> (p. 5 – fee schedule) as cash in lieu of land in satisfaction of the City's park dedication requirements for the plat. The park dedication fee shall be assessed against the lots (not outlots) in the plat over a ten (10) year period with interest on the unpaid balance calculated at five percent (5%) per annum. The assessment shall be deemed adopted on the date this Agreement is signed by the City. The assessments may be assumed or prepaid at any time. The Developer waives any and all procedural and substantive objections to the assessments including any claim that the assessments exceed the benefit to the property. The Developer waives any appeal rights otherwise available pursuant to MSA 429.081. The park dedication fees for subsequent phases shall be calculated and paid based upon requirements in effect at the time the Development Contracts for those phases are entered into.

21. **Park Development Fee.** The Developer shall pay a Park Development Fee of \$ <PARK DEVELOPMENT FEE> (p. 5 – fee schedule) that will be used to pay either for development of the park located in the development, or if no land is taken for park purposes, in the park closest to the development. The park to which the Park Development Fee for <DEVELOPMENT> shall be credited/coded to is the <PARK NAME> (<BUDGET NUMBER>). The City shall allow the Developer to either pay the entire park development fee at the time of final plat filing or to pay the park development fee on a per unit basis at the time that the building permit is issued for each unit to be constructed in the development, provided that all park development fees shall be paid within five (5) years of approval of the final plat. A credit of \$ <PARK DEVELOPMENT CREDIT> will be given to the Developer for park and trail improvements within the plat. The net result is that the Park Development Fee to be paid with this plat is \$ <ADJUSTED PARK DEVELOPMENT FEE>.
22. **Sealcoating.** The Developer agrees to pay a fee of \$ <SEALCOATING> (see City engineer) for initial sealcoating of streets in the subdivision. This fee shall be deposited in the City Road and Bridge Fund upon execution of this Agreement.
23. **GIS Fees.** The Developer is responsible for a Geographic Information System fee of \$ <GIS FEE> (p. 18 – fee schedule) based upon the acreage or number of lots within the subdivision. This fee shall be due and payable upon execution of this Agreement
24. **Easements.** The Developer shall furnish the City at the time of execution of this Agreement with the easements designated on the plat.
25. **License.** The Developer hereby grants the City, its agents, employees, officers and contractors, a license to enter the plat to perform all necessary work and/or inspections deemed appropriate by the City during the installation of public improvements by the City. The license shall expire after the public improvements installed pursuant to the Development Contract have been installed and accepted by the City.
26. **Clean Up.** The Developer shall weekly, or more often if required by the City Engineer, clear from the public streets and property any soil, earth or debris resulting from construction work by the Developer or its agents or assigns. All debris, including brush, vegetation, trees and demolition materials, shall be disposed of off site. Burning of trees and structures shall be prohibited, except for fire training only. The City has a contract for street cleaning services. The City will have the right to clean the streets as outlined in current City policy. The Developer shall promptly reimburse the City for street cleaning costs.
27. **Security.** To guarantee compliance with the terms of this Agreement, payment of real estate taxes including interest and penalties, payment of special assessments, payment of the costs of all public improvements in the plat and construction of all public improvements in the plat, the Developer shall furnish the City with a cash escrow, irrevocable letter of credit, or alternative security acceptable to the City Administrator, from a bank (security) for \$ <SECURITY>. The bank and form of the security shall be subject to the approval of the City Administrator. Letters of Credit shall be in the format and wording exactly as shown on the attached Letter of Credit form (Attachment “C”). The security shall be automatically renewing. The term of the security may be extended from time to time if the extension is furnished to the City Administrator at least forty-five (45) days prior to the stated expiration date of the security. If the required public improvements are not completed, or terms of the Agreement are not satisfied, at least thirty (30) days prior to the expiration of a letter of credit, the City may draw down the letter of credit. The City may draw down the security, without prior notice, for any violation of this Agreement or Default of the Contract. The amount of the security was calculated as follows:

Grading/Erosion Control	\$	Monuments	\$
Sanitary Sewer	\$	St. Lights/Signs	\$
Water Main	\$	Blvd. Trees	\$
Storm Sewer	\$	Blvd. Sodding	\$
Street Construction	\$	Wetland Mitigation	\$

Two Years Principal and Interest on Assessments \$ <PRINCIPAL & INTEREST>

This breakdown is for historical reference; it is not a restriction on the use of the security.

Upon receipt of proof satisfactory by the Developer's Engineer to the City Engineer that work has been completed in accordance with the approved plans and specifications, and terms of this Agreement, and that all financial obligations to the City, subcontractors, or other persons have been satisfied, the City Engineer may approve reductions in the security provided by the Developer under this paragraph from time to time by ninety percent (90%) of the financial obligations that have been satisfied. Ten percent (10%) of the amounts certified by the Developer's engineer shall be retained as security until all improvements have been completed, all financial obligations to the City satisfied, the required "as built" plans have been received by the City, a warranty security is provided, and the public improvements are accepted by the City Council.

28. Responsibility for Costs.

- A. The Developer shall pay all costs incurred by it or the City in conjunction with the development of the plat, including but not limited to, Soil and Water Conservation District charges, legal, planning, administrative, construction costs, engineering, easements, inspection and utility testing expenses incurred in connection with approval, acceptance and development of the plat, the preparation of this Agreement, and all reasonable costs and expenses incurred by the City in monitoring and inspecting the construction for the development of the plat.
 - B. The Developer, except for City's willful misconduct, shall hold the City and its officers and employees harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from plat approval and development. The Developer shall indemnify the City and its officers and employees for all costs, damages or expenses which the City may pay or incur in consequence of such claims, including attorney's fees.
 - C. The Developer shall reimburse the City for costs incurred in the enforcement of this Agreement, including engineering and attorney's fees. In the event that the City receives claims from labor, materialmen, or others that have performed work required by this Contract, that the sums due 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 letters of credit in an amount up to 125% 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 letters of credit deposited with the District Court, except that the Court shall retain jurisdiction to determine attorneys' fees pursuant to this Contract.
 - D. The Developer shall pay in full all bills submitted to it by the City within thirty (30) days after receipt. If the bills are not paid on time, the City may halt all plat development work until the bills are paid in full. Bills not paid within thirty (30) days shall accrue interest at the rate of five percent (5%) per annum. If the bills are not paid within sixty (60) days, the City has the right to draw from the Developers security to pay the bills.
- 29. Trash Enclosures.** The Developer is responsible to require each builder to provide on site trash enclosures to contain all construction debris, thereby preventing it from being blown off site, except as otherwise approved by the City Engineer.
- 30. Portable Toilets.** The Developer is responsible to require each builder to provide an on site portable toilet, except as otherwise approved by the City Engineer.
- 31. Wetland Buffer and Natural Area Signs.** The Developer is responsible for installing Wetland Buffer signs around all wetlands and wetland buffers, and City Natural Areas signs around all ponding areas, in accordance with the City's Engineering Guidelines and City detail plate GEN-13. Conservation Area signs will be installed as directed by the City Engineer. Wetland Buffer line limits; and Wetland Buffer, Natural Area, and Conservation Area sign locations must be indicated on individual lot surveys prior to the issuance of a building permit for that lot.
- 32. Existing Tree Preservation.** The Developer will walk the site with the City Forester and identify all significant trees, which will be removed by on site grading. A dialogue between the Developer and City Forester regarding alternative grading options will take place before any disputed tree is removed. All trees, stumps, brush and other debris removed during clearing and grubbing operations shall be disposed of off site.
- 33. Developer's Default.** In the event of default by the Developer as to any of the work to be performed by it hereunder, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by

the City, provided the Developer, except in an emergency as determined by the City or as otherwise provided for in this agreement, is first given written notice of the work in default, not less than 72 hours in advance. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek a Court order for permission to enter the land. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part.

34. Miscellaneous.

- A. This Agreement shall be binding upon the parties, their heirs, successors or assigns, as the case may be. The Developer may not assign this Contract without the written permission of the City Council. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of it. Third parties shall have no recourse against the City under this Agreement.
- B. Breach of the terms of this Agreement by the Developer shall be grounds for denial of building permits, including lots sold to third parties.
- C. 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.
- D. Building permits shall not be issued prior to completion of site grading, submittal of as-built grading plan, public and private utility installation, curb and gutter, installation of erosion control devices, installation of permanent street signs and wetland buffer and natural area signs, paving with a bituminous surface, retaining walls if any, site seeding, mulching, disk anchoring and submittal of a surveyor's certificate denoting all appropriate monuments have been installed. Only construction of noncombustible materials shall be allowed until the water system is operational. If permits are issued prior to the completion and acceptance of public improvements, the Developer assumes all liability and costs resulting in delays in completion of public improvements and damage to public improvements caused by the City, Developer, its contractors, subcontractors, materialmen, employees, agents or third parties. Normal procedure requires that streets needed for access to approved uses shall be paved with a bituminous surface before building permits may be issued. However, the City Engineer is authorized to waive this requirement when weather related circumstances prevent completion of street projects before the end of the construction season. The Developer is responsible for maintaining said streets in a condition that will assure the access of emergency vehicles at all times when such a waiver is granted.
- E. 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. 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.
- F. The Developer represents to the City, to the best of its knowledge, that the plat is not of "metropolitan significance" and that an environmental impact statement is not required. However, if the City or another governmental entity or agency determines that such a review is needed, the Developer shall prepare it in compliance with legal requirements so issued from said agency. The Developer shall reimburse the City for all expenses, including staff time and attorney fees that the City incurs in assisting in the preparation of the review.
- G. Compliance with Laws and Regulations. The Developer represents to the City that the plat complies 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 plat does not comply, the City may, at its option, refuse to allow any construction or development work in the plat until the Developer does comply. Upon the City's demand, the Developer shall cease work until there is compliance.
- H. This Agreement shall run with the land and may be recorded against the title to the property. The Developer covenants with the City, its successors and assigns, that the Developer is well seized in fee title of the property being final platted and/or has obtained Consents to this Contract, in the form attached hereto, from all parties who have an interest in the property; 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 of the foregoing covenants. After the Developer has completed the work

required of it under this Agreement, at the Developer's request the City will execute and deliver a release to the Developer.

- I. Developer shall take out and maintain until six months after the City has accepted the public improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of the Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury or death shall not be less than \$500,000.00 for one person and \$1,000,000.00 for each occurrence; limits for property damage shall not be less than \$200,000.00 for each occurrence. The City shall be named as an additional named insured on said policy, the insurance certificate shall provide that the City must be given 10 days advance written notice of the cancellation of the insurance and the Developer shall file a copy of the insurance coverage with the City prior to the City signing the plat.
- J. The Developer shall obtain a Wetlands Compliance Certificate from the City.
- K. Upon breach of the terms of this Agreement, the City may, without notice to the Developer, draw down the Developer's cash escrow or irrevocable letter of credit as provided in paragraph 27 of this Agreement. The City may draw down this security in the amount of \$500.00 per day that the Developer is in violation. The City, in its sole discretion, shall determine whether the Developer is in violation of the Agreement. Subject to the provisions of paragraph 33 hereof, this determination may be made without notice to the Developer. It is stipulated that the violation of any term will result in damages to the City in an amount, which will be impractical and extremely difficult to ascertain. It is agreed that the per day sum stipulated is a reasonable amount to compensate the City for its damages.
- L. The Developer will be required to conduct all major activities to construct Plans A-F during the following hours of operation:

Monday - Friday	7:00 A.M. until 7:00 P.M.
Saturday	8:00 A.M. until 5:00 P.M.
Sunday and Holidays	Not Allowed

This does not apply to activities that are required on a 24-hour basis such as dewatering, etc. Any deviations from the above hours are subject to approval of the City Engineer. Violations of the working hours will result in a \$500 fine per occurrence in accordance with paragraph K of this section.

- M. The Developer is responsible to require each builder within the development to provide a Class 5 aggregate entrance for every house that is to be constructed in the development. This entrance is required to be installed upon initial construction of the home. See City Standard Plate ERO-09 for construction requirements.
- N. The Developer shall be responsible for the control of weeds in excess of twelve inches (12") on vacant lots or boulevards within their development as per City Code 6-7-2. Failure to control weeds will be considered a Developer's Default as outlined in Paragraph 33 of this Agreement and the Developer will reimburse the City as defined in said Paragraph 33.
- O. Third parties have no recourse against the City under this contract.
- 35. **Notices.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified or registered mail at the following addresses:

<DEVELOPER>

Notices to the City shall be in writing and shall be either and delivered to the City Administrator, or mailed to the City by certified mail or registered mail in care of the City Administrator at the following address:

Peter J. Herlofsky, City Administrator - City of Farmington
430 Third Street - Farmington, MN 55024

SIGNATURE PAGE

CITY OF FARMINGTON

By: _____ Kevan A. Soderberg, Mayor

By: _____ Peter J. Herlofsky, City Administrator

DEVELOPER:

<DEVELOPER>

By: _____ Its: _____

Drafted by:

City of Farmington
430 Third Street
Farmington, Minnesota 55024

(651) 463-7111

STATE OF MINNESOTA)
(ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by Kevan A. Soderberg, Mayor, and by David M. Urbia, City Administrator, of the City of Farmington, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by the City Council.

Notary Public

STATE OF MINNESOTA)
(ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by

_____, the _____ of <DEVELOPER>,

a corporation under the laws of Minnesota, on behalf of the corporation.

Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION

DRAFT

EXHIBIT "B"



City of Farmington
430 Third Street, Farmington, MN 55024
(651) 463-7111 Fax (651) 463-2591
www.ci.farmington.mn.us

**LETTER OF EXEMPTION
DAKOTA COUNTY PROPERTY RECORDS
1590 HIGHWAY 55
HASTINGS MN 55033-2392**

To Whom It May Concern:

Please find enclosed, deed(s) on the parcel(s) listed below. We are requesting the parcels be classified as Exempt Properties.

<u>PARCEL ID#</u>	<u>LEGAL DESCRIPTION</u>	<u>USE</u> (wetland, storm water facility, park or well site)

**Please sign letter below and return to me at the address above verifying the exemption status.
Thank you.**

Sincerely,

**Tracy Geise
Accounting Technician/Special Assessments**

Enclosure(s)

Signature

Date

EXHIBIT "C"

IRREVOCABLE LETTER OF CREDIT

No. _____
Date: _____

TO: City of Farmington
430 Third Street
Farmington, MN 55024

Dear Sir or Madam:

We hereby issue, for the account of _____, 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 Farmington.
- c) Be presented for payment at _____ (Address of Bank) _____.

This Letter of Credit shall automatically renew for successive one-year terms from the date indicated above unless, at least forty-five (45) days prior to the next annual renewal date, the Bank delivers written notice to the Farmington 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: Farmington City Administrator, 325 Oak Street, Farmington, MN 55024, 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. 400.

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

[NAME OF BANK]

By: _____
[name]
Its: [identify official]