

DEVELOPMENT AGREEMENT

(Developer Installed Improvements)

HILLS OF SPRING CREEK 6TH ADDITION

AGREEMENT dated July 8th, 2014, by and between the **CITY OF NORTHFIELD**, a Minnesota municipal corporation (the “City”); and Sumac Properties Inc., a Minnesota corporation (the “Developer”).

RECITALS

WHEREAS, the Developer is the fee owner of a parcel of real property located in the City of Northfield, Rice County, Minnesota, with Parcel Identification (PID) No. 22.07.1.01.002, which is legally described as Outlot Q, Hills of Spring Creek in Exhibit A, which is attached hereto and incorporated herein by reference, (the “Development Property”); and

WHEREAS, the Developer has requested and received approval by the City of a Final Plat for the Hills of Spring Creek 6th Addition (referred to herein as the “plat”); and

WHEREAS, the Developer proposes a project consisting of the creation of nine single-family lots and associated public improvements including street improvements, sanitary sewer, water main, stormwater management facilities, sidewalk and trails, grading and erosion control facilities and other improvements (the “Project”); and

WHEREAS, the Developer and the City, desire to enter into this Agreement in satisfaction of applicable City requirements and to set out the undertakings and obligations of each party from this point forward with respect to the Project and with respect to the City Approval Process, all as required by the City's Code of Ordinances (the "Code").

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each does hereby covenant and agree with the other as follows:

1. REQUEST FOR PLAT APPROVAL. The Developer has sought and received Final Plat approval for the Hills of Spring Creek 6th Addition (referred to in this Agreement as the "plat"). The land is situated in the County of Rice, State of Minnesota. The Developer is seeking to develop a portion of the plat, the Development Property, for the purpose stated above.

2. CONDITIONS OF PLAT APPROVAL. The City has approved the plat on the condition that the Developer enter into this Agreement, furnishes the security required by it, records the plat with the County Recorder or Registrar of Titles within 60 days after the City Council approves the Final Plat, and submits evidence of recording the plat to the City within 60 days.

3. RIGHT TO PROCEED. Unless separate written approval has been given by the City for a grading permit, within the plat or land to be platted, the Developer may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings within the plat or land to be platted until all 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 recorded with the Rice County Recorder's Office; d) the construction plans have been approved and signed by the City Engineer, e) a certificate of public liability and property damage insurance as described in this Agreement has been filed with the City; and f) the City has issued a letter that all conditions have been satisfied and that the Developer may proceed.

4. FURTHER SUBDIVISION. The City may refuse to approve further subdivision within the plat if the Developer has breached this Agreement and the breach has not been remedied. If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached

this Agreement and the breach has not been remedied. Development of subsequent phases may not proceed until Development Agreements for such phases are approved by the City. Sanitary sewer and water area charges referred to in this Agreement are not being imposed on outlots, if any, in the plat that are designated in an approved preliminary plat for future subdivision into lots and blocks. Such charges will be calculated and imposed when the outlots are final platted into lots and blocks.

5. **PRELIMINARY PLAT STATUS.** If the plat is a phase of a multi-phased preliminary plat, the preliminary plat approval for all phases not final platted shall lapse and be void unless final platted into lots and blocks, not outlots, within four (4) years after preliminary plat approval.

6. **CHANGES IN OFFICIAL CONTROLS.** For four (4) 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 that any future development of the Development Property comply with any amendments to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Agreement.

7. **DEVELOPMENT PLANS.** The plat shall be developed in accordance with the following plans where applicable. The plans shall not be attached to this Agreement. If the plans vary from the written terms of this Agreement, the written terms shall control. The plans are:

Plan A - Plat

Plan B - Final Grading, Drainage and Erosion Control Plan

Plan C - Final Construction Plans and Specifications for Public Improvements

Plan D - Traffic Signing and Control Plan (for construction and final development)

Plan E - Stormwater Pollution Prevention Plan

Plan G - Landscape Plan

Plan H - Utility Plan

The foregoing plans and specifications shall be prepared by a competent registered professional engineer engaged by the Developer and shall be subject to the City's review and approval. The required Improvements below

shall be installed in accordance with the City approved plans for such improvements and the policies, rules, regulations, standards and ordinances of the City. No work shall commence on the Project or the required Improvements until the Developer obtains a grading permit for the Project and the Improvements and pays all costs and fees required in connection with the procurement of the grading permit.

8. IMPROVEMENTS. The Developer shall construct and install, at its sole cost and expense and subject to the terms and conditions contained herein, the following public or private improvements in compliance with City approved plans and specifications prepared in accordance all policies, rules, regulations, standards and ordinances of the City and as shown on the final construction plans and summarized below:

- A. Streets
- B. Sanitary Sewer
- C. Watermain
- D. Surface Water Facilities (pipe, ponds, rain gardens, and similar improvements)
- E. Grading, Drainage and Erosion Control
- F. Sidewalks/Trails
- G. Street Lighting
- H. Utilities (gas, electric, cable, etc.)
- I. Street Signs and Traffic Control Signs
- J. Landscaping Required by the Zoning Ordinance
- K. Buffers
- L. Monuments Required by Minnesota Statutes
- M. Miscellaneous Facilities or other elements defined by the guiding documents.

The improvements shall be constructed and installed in accordance with the latest versions in place at the time of this Agreement of the City subdivision ordinance, City standard specifications for utilities and street construction, and the City's engineering guidelines and standard detail plates. The Developer shall submit plans and specifications that have been prepared by a competent registered professional engineer to the City for approval by the City Engineer. The City will provide field inspection and soil testing personnel, at the Developers expense, to assure an acceptable level of quality control for the construction of all public improvements and certify that the construction work meets the City's standards and approved plans. In addition, the Developer's engineer will be required to certify that the

construction work meets the approved City standards as a condition of City acceptance and provide record drawings for all improvements. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's inspectors to the extent applicable to comply with the approved plans, or applicable City Code or statutes for which the City inspectors have jurisdiction. 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. The Developer or its 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.

All labor and work shall be done and performed in the best and most workmanlike manner and in strict conformance with the approved plans and specifications. No deviations from the approved plans and specifications will be permitted unless approved in writing by the City Engineer, which shall not be unreasonably withheld. The Developer agrees to furnish to the City a list of contractors being considered for retention by the Developer for the performance of the work required by this Agreement. The Developer shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this Agreement, for which reimbursement is expected from the City, unless such work is first ordered in writing by the City Engineer as provided in the specifications.

Developer shall replace or repair any damage or destruction to any improvements located on County or City land or in County or City streets, boulevards and rights-of-way caused by Developer, or its contractors and subcontractors, during the construction of the required Improvements and the Project. Any contaminated soils encountered during the construction of the Improvements and development on the property shall be addressed as set forth in a Response Action Plan to be approved by the MPCA.

Developer shall be responsible for the costs of constructing the required Improvements. The costs of constructing the Improvements shall include the actual construction costs, the actual engineering, administration and any legal costs related thereto, and all other costs relating to the construction of the Improvements. The engineering, administration and legal costs shall include the actual outside construction engineering assistance costs and the legal costs.

If this Agreement is terminated for any reason the City shall have no obligation to construct the Improvements.

9. CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION OBSERVATION. The Developer shall pay a fee for in-house engineering administration. City engineering administration will include monitoring of construction observation, consultation with Developer and the Developer's engineer on status or problems regarding the project, coordination for final inspection and acceptance, project monitoring during the warranty period, and processing of requests for reduction in security. Fees for this service shall be:

ESTIMATED COST OF PROPOSED IMPROVEMENTS	CITY ADMINISTRATIVE COST
Up to \$150,000	3.0 percent (Minimum \$500.00)
\$150,000 to \$300,000	2.5 percent
Over \$300,000	2.0 percent

The Developer shall also pay for construction observation performed by the City's in-house engineering staff or consulting engineer. Construction observation shall include part or full time inspection of proposed public utilities and street construction and shall be seven percent (7%) of the estimated construction cost. The Developer shall deposit the full construction observation fees with the City prior to the final plat being recorded. No construction of public improvements will be authorized until the construction observation fees have been paid to the City.

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

11. PERMITS. The Developer shall obtain or require its contractors and subcontractors to obtain all necessary and required permits for the project from the Minnesota Pollution Control Agency (MPCA), Minnesota Department of Health (MDOH), and all other agencies and governmental authorities with jurisdiction over the Project and the Improvements before proceeding with construction of the Project and the Improvements. Copies of these permits shall be provided to the City Engineer, and may include but are not limited to the following:

- Minnesota Department of Health for Watermains

- MN/DOT for State Highway Access
- County Road Access and Work in County Road Right-of-Way
- NPDES Permit for Stormwater Management
- MPCA for Sanitary Sewer Extensions/Connections and Hazardous Material Removal and Disposal
- Wetlands permits as applicable
- DNR for Dewatering
- City of Northfield for Building Permits

Developer or its engineer shall schedule a pre-construction meeting for the required Improvements with all the parties concerned, including City staff, to review the program for the construction work.

12. TIME OF PERFORMANCE. The Developer shall install all required public improvements by July 8, 2016, with the exception of the final wear course of asphalt on streets. The final wear course on streets shall be installed between May 15th and October 1st the first summer after the base layer of asphalt has been in place one freeze thaw cycle. Any deficiencies in the base, asphalt, curb or other improvements in the judgment of the City Engineer must be repaired by the Developer at its own cost prior to final paving. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.

13. LICENSE. The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with plat development. The license shall expire upon the acceptance by the City of the Project Improvements. The City shall thereafter have the right to enter the Property to perform inspections as authorized by City Code.

14. CONSTRUCTION ACCESS. Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the subdivision via Jefferson Parkway. No construction traffic is permitted on the adjacent local streets other than identified herein.

15. GRADING PLAN. The plat shall be graded in accordance with the approved grading development and erosion control plan. The plan shall conform to City of Northfield requirements and specifications. Within thirty (30) days after completion of the grading, the Developer shall provide the City with a certificate of survey/"record"

grading plan certified by a registered land surveyor or engineer that all ponds, swales, and ditches have been constructed on public easements or land owned by the City. The certificate of survey/"record" plan shall include field verified elevations of the following: a) cross sections of ponds; b) location and elevations along all swales, wetlands, wetland mitigation areas if any, ditches, locations and dimensions of borrow areas/stockpiles; c) lot corner elevations and building/house pads, and d) all lots with house footings placed on fill have been monitored and constructed to meet or exceed FHA/HUD 79G specifications.

Developer shall furnish the City Engineer satisfactory proof of payment for the site grading work and shall submit a certificate of survey (as constructed survey) of the Property after site grading is complete. Final lot grades shall be shown on the as constructed survey. Final grading shall substantially comply with the approved grading plan.

16. EROSION AND SEDIMENT CONTROL. Prior to initiating site grading, the erosion and sediment control plan shall be implemented by the Developer and inspected and approved by the City Engineer. The Erosion Control Plan and Storm Water Pollution Prevention Plan (SWPPP) shall be implemented by the Developer and inspected and approved by the City. Erosion and sediment control practices must comply with the Minnesota Pollution Control Agency's (MPCA) Best Management Practices and applicable MPCA NPDES permit requirements for construction activities and the Developer's SWPPP. The City may impose additional erosion and sediment control requirements if they would be beneficial in the City's judgment. All areas disturbed by the excavation and backfilling operations shall be reseeded within 48 hours after the completion of the work or in an area that is inactive for more than fourteen (14) days unless authorized and approved by the City Engineer. Except as otherwise provided in the erosion and sediment control plan, seed shall be in accordance with the City's current seeding specification, which may include certified oat seed to provide a temporary ground cover as rapidly as possible. All seeded areas shall be fertilized, mulched, and disc anchored, and watered 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, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the

City for any cost the City incurred for such work, the City may draw down from the escrow account to pay any costs. No development, utility or street construction will be allowed and no building permits will be issued unless the plat is in full compliance with the approved erosion control plan.

17. STREET MAINTENANCE DURING CONSTRUCTION AND SIDEWALKS. The Developer shall be responsible for all street maintenance until the streets are accepted by the City. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and directing attention to detours. If and when streets become impassable, such streets shall be barricaded and closed. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage. The Developer shall be responsible for keeping streets within and without the subdivision swept clean of dirt and debris that may spill or wash onto the street from Developer's operation. The Developer may request, in writing, that the City keep the streets open during the winter months by plowing snow from the streets prior to final acceptance of said streets. The City shall not be responsible for repairing the streets because of snow plowing operations. Providing snow plowing service does not constitute final acceptance of the streets by the City. The Developer shall contract for street cleaning within and immediately adjacent to the development. The streets shall include Michigan Drive. A copy of this contract shall be approved by the City before grading is started, and shall remain in full force and effect until all construction within the project is completed. When directed to do so by the City, the Developer shall have all streets cleaned of accumulated debris, dirt, and mud.

A concrete sidewalk shall be constructed along Michigan Drive at the time the buildings/housing is constructed upon the lots adjacent to this sidewalk, as part of the site plan improvements that are adjacent to this street. Certificate of Occupancy for these lots will not be issued until the sidewalk is constructed, accepted by the City and a sidewalk easement agreement has been recorded. Type III Barricades shall be placed at the east end of the sidewalk on Michigan Drive. Any sidewalk damaged (severely cracked, broken or spalled) shall be replaced by the Developer at no cost to the City. City staff shall identify those sections of sidewalk to be replaced.

18. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction required by this Agreement and acceptance of Improvements by the City, the Improvements lying within public easements and

public rights-of-way shall become City property without further notice or action upon completion and City acceptance thereof. Prior to acceptance of the improvements by the City, the Developer must furnish the following affidavits:

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

certifying that all construction has been completed in accordance with the terms of this Agreement. All necessary forms will be furnished by the City of Northfield. Upon receipt of affidavits, the City Engineer will accept the completed public improvements. Within thirty (30) days after the completion of the improvements, the Developer shall supply the City with a complete set of reproducible "record" plans, an electronic file of the "record" plans in an AutoCAD format (DWG) file or a .DXF file, and two complete sets of hard copy "record" plans, all prepared in accordance with City standards. Upon receipt of these documents, and the warranty documents specified in this Agreement, the City Engineer will certify acceptance of the completed public improvements.

19. PARK DEDICATION. All park dedication requirements have been previously fulfilled for this plat.

20. SANITARY SEWER AND WATER TRUNK UTILITY CHARGES. The Developer is subject to a sanitary sewer and water access area charges, as follows:

Sanitary Sewer Availability Charge: 9 units x \$1,545/unit = ~~=\$~~ \$13,905

Water Availability Charge: 9 units x \$675/unit = \$6,075

The Developer shall pay the above sanitary sewer and water availability charges at the time of final plat approval.

21. SANITARY SEWER, STORM SEWER AND WATERMAIN. The Developer shall install or contract for the installation of all public improvements in the Project related to sanitary sewer, storm sewer and watermains, as required by the City in accordance with those plans approved by the City Engineer.

22. TRAFFIC CONTROL AND STREET NAME SIGNS. Any street name signs, stop signs, or other directional and safety signs required by the City shall be purchased and installed by the City. The Developer

shall reimburse the City for all costs associated with the purchase and installation of such signs within 30 days of receipt of an invoice from the City.

23. WETLAND MITIGATION.

No wetland mitigation is planned for the site. The Developer is responsible for any undisclosed mitigation on the land, and will be required to submit any necessary security should subsequent wetlands be identified.

24. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

A. Grading, curb and gutter, sidewalk and one lift of asphalt shall be installed on all public and private streets and drives prior to issuance of any building permits, adjacent to these lots. No Certificate of Occupancy will be issued for Michigan Drive until the grading, curbing, sidewalk and one lift of asphalt is installed in accordance with approved plans on all public streets and private drives. In addition, no Certificates of Occupancy shall be issued for any buildings until the sewer and water has been installed and tested to the satisfaction of the City Engineer, which shall not constitute final acceptance of the sewer and water utilities.

In lieu of the foregoing provision, if the proposed public improvements are under construction but not yet completed and accepted by the City, the Developer shall provide a cross section depicting the entire right-of-way of Michigan Drive extending through the first floor elevation of the building for which a building permit is requested. This first floor elevation shall be considered official for building construction purposes. Any deviation from this elevation shall first be reviewed and approved by the Building Official and the City Engineer prior to commencing construction of applied building permit. In addition, the provisions of Paragraph ~~24.C.~~24.C., provided below, shall apply.

B. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City within 30 days of the date of an invoice from the City to the Developer, shall be grounds for denial of building permits, including lots sold to third parties, and the halting of all work in the plat.

C. If building permits are issued prior to the 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, their contractors, subcontractors, materialmen, employees, agents, or

third parties. No certificates of occupancy and no sewer and water connection permits may be issued and no one may occupy a building for which a building permit is issued on either a temporary or permanent basis until the streets and sidewalks needed for access have been paved with a bituminous surface and the utilities are accepted by the City Engineer.

25. UNDERGROUND UTILITIES – PRIVATE. This section covers those smaller private utilities such as gas, electric, phone, cable, etc.

A. The Developer is responsible for the cost of installing all private utilities.

B. The Developer shall contact the utility companies to coordinate the installation of the utilities. Private utilities shall not be installed until the curb and gutter are completed and backfilled. All utilities shall be installed underground.

C. The City must approve of the final location for all private utilities. Joint trenching of the utilities is strongly encouraged. All utilities must be located in public right of way or within drainage and utility easements.

D. If any conditions set forth in this development agreement conflict with the City's utility franchise agreements, the franchise agreements shall in all cases prevail.

26. RESPONSIBILITY FOR COSTS.

A. Except as otherwise specified herein, the Developer shall pay all costs incurred by it and the City in conjunction with this Agreement, the approval of the Plat, the grading and development of the Property and the construction of the Improvements required by this Agreement, including but not limited to, all costs of persons and entities doing work or furnishing skills, tools, machinery, equipment and materials; insurance premiums; legal, planning and engineering fees; the preparation and recording of this Agreement and all easements and other documents relating to the Plat and the Property; all Response Action Plans, traffic studies, environmental assessments and/or engineering and other studies and reports; all permits and approvals; and all City's costs incurred pertaining to the inspection and monitoring of the work performed in connection with approval and acceptance of the plat and the construction of the Improvements and the other work done and improvements constructed on the Property.

B. The City shall not be obligated to pay Developer or any of its agents or contractors for any costs incurred in connection with the construction of the Improvements or the development of the Property. Developer agrees to defend, indemnify, and hold the City and its mayor, council members, employees, agents and contractors harmless from any and all claims of whatever kind or nature and for all costs, damages or expenses which the City may pay or incur in consequence of such claims, including reasonable attorneys' fees, which may arise as a result of Plat approval, this Agreement, the construction of the Improvements (except for the negligence or intentional misconduct of the City with respect to the construction of the Improvements), the development of the Property or the acts of Developer, and its employees, agents, contractors or subcontractors, in relationship thereto.

C. The Developer hereby covenants and agrees that Developer will not permit or allow any mechanic's or materialman's liens to be placed on the City's interest in any property that is the subject of the Project or this Agreement during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the City's interest, the Developer shall take all steps necessary to see that it is removed within thirty (30) business days of its being filed; provided, however, that the Developer may contest any such lien provided the Developer first posts a surety bond, in favor of and insuring the City, in an amount equal to 125% of the amount of any such lien.

D. The Developer shall reimburse the City for reasonable costs incurred in the enforcement of this Agreement, including 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 plat, or any part of it.

F. Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within 30 days of the date of the City's invoice to Developer. If Developer fails to pay a required bill, then after providing the Developer with at least fifteen (15) days prior written notice, the City may draw on the Security.

G. In addition to the charges and special assessments referred to herein, other charges and special assessments may be imposed such as but not limited to sewer availability charges ("SAC"), City water connection ("WAC") charges, City sewer connection charges, City storm water connection charges, building permit fees and plat review fees, which shall be paid by Developer.

27. SPECIAL PROVISIONS. The following special provisions shall apply to plat development:

A. Implementation of any other recommendations listed by the City Council or City Engineer as follows:

a. Developer shall have all required MPCA stormwater permits approved prior to beginning any installation of public improvements.

B. The Developer shall post a \$1,800 security for the final placement of interior subdivision iron monuments at property corners. The security was calculated as follows: 9 lots at \$200.00 per lot. The security will be held by the City until the Developer's land surveyor certifies that all irons have been set following site grading and utility and street construction. In addition, the certificate of survey must also include a certification that all irons for a specific lot have either been found or set prior to the issuance of a building permit for that lot.

C. The Developer shall be responsible for the cost of street light installation consistent with a street lighting plan approved by the City Engineer. All costs associated with such installation shall be the responsibility of the Developer. The cost of operating and maintaining the street lighting shall be the responsibility of the City of Northfield.

D. The Developer must obtain a sign permit from the City Community Development Director prior to installation of any subdivision identification signs.

28. MISCELLANEOUS.

A. The Developer may not assign this Agreement 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.

B. Retaining walls that require a building permit 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 identified on the development plans or by special conditions referred to in this Agreement shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.

C. Developer shall take out and maintain or cause to be taken out and maintained until six (6) 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 Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$500,000 for one person and \$2,000,000 for each occurrence; limits for property damage shall be not less than \$300,000 for each occurrence; or a combination single limit policy of \$1,500,000 or more, or the extent of all the foregoing coverages as provided in the Developer's insurance certificate, whichever is greater. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate evidencing coverage prior to the City authorizing the commencement of work on the public and private improvements specified in this Agreement. The certificate shall provide that the City must be given ten (10) days advance written notice of the cancellation of the insurance.

D. Third parties shall have no recourse against the City or Developer under this Agreement.

E. 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.

F. 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.

G. Until the expiration of this Agreement, this Agreement shall run with the land and shall be binding upon Developer and its successors and assigns. This Agreement will 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 Agreement, 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 foregoing covenants.

H. 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.

I. The Developer agrees to comply with all local, state and federal laws, ordinances and regulations applicable to the development of the property.

J. The City's approval of the final plat does not include approval of building permits for any structures to be constructed within the development. The Developer must submit and the City approve building plans prior to the issuance of building permits for structures within the development.

29. DEVELOPER'S DEFAULT. In the event of default by the Developer as to any of the work to be performed by it hereunder or the failure to comply with all terms and conditions of this Agreement, the City may, at its option, take one or more of the following actions:

A. 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, is first given notice of the work in default, not less than forty-eight (48) hours in advance. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part;

B. Obtain an order from a court of competent jurisdiction requiring Developer to perform its obligations pursuant to the terms and provisions of this Agreement;

- C. Obtain an order from a court of competent jurisdiction enjoining the continuation of an event of default;
- D. Halt all development work and construction of improvements until such time as the event of default is cured;
- E. Withhold the issuance of a building permit or permits and/or prohibit the occupancy of any structure(s) for which permits have been issued until the event of default has been cured;
- F. Draw upon and utilize the Security to cover the City's costs to correct the default, the costs to complete any unfinished Project Improvements and/or the costs to enforce this Agreement; or
- G. Exercise any other remedies which may be available to it at law or in equity.

In addition to the remedies and amounts payable set forth or permitted above, upon the occurrence of an event of default by Developer, the Developer shall pay to the City all fees and expenses, including reasonable attorneys fees, incurred by the City as a result of the event of default, whether or not a lawsuit or other action is formally taken.

30. WARRANTY. The Developer warrants all improvements required to be constructed by it pursuant to this Agreement against poor material and faulty workmanship. The warranty period for utilities is two years and shall commence following completion and acceptance of all improvements by the City Engineer. The warranty period for all work relating to street construction, including concrete curb and gutter, sidewalks and trails, materials and equipment shall be subject to one year from the date of final written acceptance, unless the wearing course is placed during the same construction season as the bituminous base course. In those instances, the Developer shall guarantee all work, including street construction, concrete curb and gutter, sidewalks and trails, material and equipment for a period of two years from the date of final written city acceptance of the work. The required warranty period for trees and landscaping is one growing season following installation. The required warranty period for erosion control will be one year from the date of final written city acceptance of the work. The Developer shall post a security in the form of a letter of credit or cash escrow in the amounts listed below as warranty for the improvements prior to the City authorizing the commencement of work on the public and private improvements specified in this Agreement.

The Developer shall require in the Developer's contract with the Developer's contractor for performing the Work or installing or constructing the improvements required by this Agreement that, upon acceptance of the required improvements by the City, the Developer's contractor shall provide security in the form of a maintenance or warranty bond, which shall remain in full force and effect through the two-year warranty period, securing and guaranteeing that the improvements required in this Agreement installed and constructed by the Developer's Contractor shall be free from all defects due to poor or faulty materials or workmanship. The Developer shall require that the Developer's contractor promptly make such corrections as may be necessary by reason of such defects during the warranty period, as requested by the Developer or City, in the City's judgment and discretion, including the repairs of any damage to other property resulting from such defects. In the event that the Developer's Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the City may do so, and the bond required hereby shall be written to allow the City to draw upon the bond for such purposes as provided under the draw down procedure in Paragraph 31. If the Developer does not provide the bond/security required hereby in a form and in an amount acceptable to the City, then the retainage from the project securities identified in Paragraph 31 will be used to pay for warranty work. The City standard specifications for utilities and street construction identify the procedures for final acceptance of streets and utilities.

31. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public improvements, and construction of all public improvements, the Developer shall furnish the City, at the time of final plat approval, with a cash escrow for \$305,625. The amount of the security was calculated as follows:

CONSTRUCTION COSTS:

Streets and Sidewalks	\$76,200
Sanitary Sewer	\$29,600
Watermain	\$40,300
Surface Water Facilities (pipe, ponds, rain gardens, etc.)	0
Storm Sewer	\$68,000

Grading, Wetland Construction and Erosion Control	\$20,000
Street Signs and Traffic Control Signs	\$400
Landscaping	\$5,000
Monuments and Survey	\$5,000
Dewatering, Etc.	0
CONSTRUCTION SUB-TOTAL	\$244,500
SECURITY ADD-ON	x 25%
TOTAL PROJECT SECURITIES REQUIRED:	\$305,625

This breakdown is for historical reference; it is not a restriction on the use of the security. Individual security instruments may be for shorter terms provided they are replaced at least thirty (30) days prior to their expiration. The City may draw down the security, with at least fifteen (15) days prior written 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 security is drawn down, the proceeds shall be used to cure the default. Upon receipt of proof satisfactory to the City Engineer that work has been completed and financial obligations to the City have been satisfied, with City Engineer approval the security may be reduced 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, iron monuments for lot corners have been installed, all financial obligations to the City satisfied, the required "record" plans have been received by the City, a warranty security is provided, and the public improvements are accepted by the City Engineer. The City standard specifications for utilities and street construction outline procedures for security reductions shall be considered only after underground utilities are tested and found to be satisfactory and again after the base bituminous layer has been placed.

32. SUMMARY OF CASH REQUIREMENTS. The following is a summary of the cash requirements under this Agreement which must be furnished to the time of final plat approval. The Developer shall not proceed with any improvements until these cash requirements have been paid to the City:

Park Dedication	\$ _____
Bituminous Trail	\$ _____

Traffic Control and Street Name Signs	\$400
Street Light Operating Fee	\$ ___
City Base Map Upgrading	\$ ___
City Construction Observation (7%)	\$15,000
City Engineering Administration (2.5%)	\$6,112
City Legal Expenses (0.5%)	\$1,230
Sanitary Sewer Availability Charge	\$13,905
Water Availability Charge	\$6,075
Any Special Assessment Due	\$ ___
TOTAL CASH REQUIREMENTS	\$42,722

33. 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: 1325 Armstrong Road, Northfield, MN, 55057. 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: Northfield City Hall, 801 Washington Street, Northfield, MN 55057.

34. CONSTRUCTION MANAGEMENT. During construction of the Improvements and the Project, the Developer and its contractors and subcontractors shall minimize impacts from construction on the surrounding neighborhood as follows:

A. Definition of Construction Area. The limits of the Project Area shall be as shown in the City approved Grading, Drainage and Erosion Control Plan and shall be demarcated with construction fencing approved by the City Engineer. Any grading, construction or other work outside this area requires approval by the City Engineer and the affected property owner.

B. Parking and Storage of Materials. Adequate on-site parking for construction vehicles and workers must be provided or provisions must be made to have workers park off site and be shuttled to the Project Area. No fill, excavating material or construction materials shall be stored in the public right-of-way.

C. Hours of Construction. Hours of construction, including moving of equipment shall be limited to the hours between 7 a.m. and 9 p.m. on weekdays and 9 a.m. and 9 p.m. on weekends.

D. Site Maintenance. Developer shall ensure that its contractor maintains a clean work site. Measures shall be taken to prevent debris, refuse or other materials from leaving the site. Construction debris and other

refuse generated from the Project shall be removed from the site in a timely fashion and/or upon the request by the City Engineer. After Developer has received at least forty-eight (48) hour verbal notice, the City may complete or contract to complete the site maintenance work at Developer's expense.

E. Project Identification Signage. Project identification signs shall comply with City Code.

35. EXPIRATION OF AGREEMENT. This Agreement shall remain in effect until such time as the Developer shall have fully performed all of its duties and obligations under this Agreement. Upon the written request of the Developer and upon the adoption of a resolution by the City Council finding that the Developer has fully complied with all the terms of this Agreement and finding that the Developer has completed performance of all Developer's duties mandated by this Agreement, the City shall issue to the Developer on behalf of the City an appropriate certificate of compliance. Upon issuance of the Certificate of Compliance by the City, this Agreement shall terminate.

36. TERMINATION; CONDITIONS PRECEDENT.

A. If Developer fails to: a) acquire fee simple title to all of the Property, and b) record this Agreement and the Plat in the office of the Rice County Recorder as provided herein, within one (1) year after approval of the final Plat by the City Council, this Agreement shall terminate and the approval of the Plat shall be null and void, subject to the following:

(a) All costs, fees and other amounts previously paid to the City in connection with the Plat, the Project Improvements, this Agreement and the Project shall belong to and be retained by the City;

(b) The obligations of the Developer for costs incurred shall survive such termination and continue with respect to unpaid costs, fees and expenses incurred prior to such termination;

(c) The indemnifications of Developer shall survive and continue after such termination;

(d) The parties shall be released from all other obligations and liabilities under this Agreement not specified above.

B. The City shall have no obligation to construct the Improvements and Developer shall have no right to construct the Improvements or construct the Project on the Property unless Developer acquires fee simple title

to the Property and records this Agreement and the Plat in the office of the Rice County Recorder as required herein within one (1) year after approval of the final Plat by the City Council.

C. In the event of the termination of this Agreement, the parties agree, if requested by the other party, to execute and deliver to the other party a written termination acknowledgment in a form reasonably satisfactory to both parties.

D. Developer's right to construct the Improvements is contingent upon its obtaining a building permit from the City following submission of a complete and valid application for same. Nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, for Developer to close on its purchase of the Property, commence the development of the Property as set forth herein, or lease townhomes constructed and located on the Property.

36. ADOPTED BY REFERENCE. The provisions of the City's Land Development Code Chapter 34 are hereby adopted by reference in their entirety, unless specifically excepted, modified, or varied by the terms of this Agreement, or by the final plat as approved by the City.

**EXHIBIT A
TO
DEVELOPMENT AGREEMENT**

Legal Description of Property Being Final Platted as