

The space above is reserved for recording purposes



CITY OF SHAKOPEE

SCOTT COUNTY, MINNESOTA

DEVELOPER'S AGREEMENT

THIS AGREEMENT, made and entered into on **MONTH DATE, YEAR**, by and between the City of Shakopee, a municipal corporation organized under the laws of the State of Minnesota ("City") and **DEVELOPER'S NAME** ("Developer").

RECITALS

(1) The Developer has made application to the City Council for approval of a plat of land within the corporate limits of the City described as follows: **SUBDIVISION NAME** ("Subdivision"); and

(2) The City Council, by Resolution No. **NUMBER** adopted on **MONTH DATE, YEAR**, has granted conditional approval to the Subdivision on the condition that the Developer enter into this Agreement to provide for the installation of street, sanitary sewer, storm sewer, water and other public improvements.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions contained in this Agreement, the City and the Developer agree as follows:

1. **DEFINITIONS.** The following terms as used in this agreement have the meanings stated:

(A) "Site Grading Improvements" – the furnishing and the installation of all temporary and permanent erosion control measures, bringing the site up to the proposed finished grade, per City approved plans and general and supplemental conditions received from the City, with materials deemed acceptable by the City Engineer or assigns, providing topsoil per City requirements, applying seed, mulch and/or sod per City/National Pollutant Discharge Elimination System (NPDES) requirements and providing a record "as-built" plan/drawing per the most recent edition of the City of Shakopee Design Criteria (as shown on the approved plans on file in the office of the City Engineer).

(B) "Street Improvements" – subgrade preparation, right-of-way grading and/or berm construction, the furnishing and the installation of all class 5 aggregate base, concrete curb and gutter, permanent surfacing, signage, concrete sidewalks, bituminous trails and all other appurtenant facilities (as shown on the approved plans on file in the office of the City Engineer).

(C) "Sanitary Sewer Improvements" – the furnishing and the installation of all sanitary sewer pipes, manholes, lift stations and all other appurtenant sanitary sewer facilities (as shown on the approved plans on file in the office of the City Engineer).

(D) "Storm Sewer Improvements" – the furnishing and the installation of all storm sewer pipes, catch basins, ponds/basins, inlets and all other appurtenant storm facilities (as shown on the approved plans on file in the office of the City Engineer).

(E) "Water Distribution System Improvements" – the furnishing and the installation of all watermain pipes, valves, fire hydrants and all other appurtenant watermain facilities (as shown on the approved plans on file in the office of Shakopee Public Utilities).

(F) "Signage" – the furnishing and installation of all required street signs and traffic signs, conservation and wetland signage/monumentation, wetland easement signage/monumentation and all required park and open space signage/monumentation.

(G) "Street Lighting Improvements" – the furnishing and the installation of all street lighting including poles, arms, lamps, fixtures, conduit, underground wiring, transformers, pedestals and any other appurtenant street lighting facilities (as shown on the Approved plans on file in the office of the City Engineer).

(H) "Landscaping" – the furnishing and the installation of all required berms, fences, walls, trees, shrubs, seed, sod and other appurtenant items (as shown on the approved plans on file in the office of the City Engineer).

(I) "Park and Trail Amenities" – the furnishing and installation of all required amenities for recreational use per the approved plat, including but not limited to playground and fitness equipment, surfacing, border, signage, accessible routes,

landscaping, site furniture including benches, tables, drinking fountains, fencing and structures such as bridges, picnic shelters and gazebos.

2. OWNERSHIP WARRANTY OF DEVELOPER. The Developer warrants and represents to the City as inducement to the City's entering into this Agreement, that Developer's interest in the Subdivision is:

Fee Owner:

Contract for Deed Purchaser:

Other (Specify):

If developer is a Contract for Deed Purchaser, indicate Fee Owner.

FEE OWNER

FEE OWNER ADDRESS

3. DESIGNATION OF IMPROVEMENTS. Improvements to be installed at Developer's expense by the Developer are referred to as "Plan A Improvements". Improvements that the Developer has petitioned the City to install and finance on a cash and assessment basis are referred to as "Plan B Improvements".

4. PLAN A IMPROVEMENTS. The Developer will construct and install at Developer's expense the following improvements under Plan A according to the following terms and conditions and the General and Special Conditions on file with the City Engineer.

Description of Plan A Improvements

- (A) Site grading improvements;
- (B) Street improvements;
- (C) Sanitary sewer improvements;
- (D) Water distribution system improvements;
- (E) Storm sewer improvements;
- (F) Signage;
- (G) Street lighting Improvements;
- (H) Landscaping;
- (I) Park and Trail Amenities
- (J) **OTHER.**

5. PLAN A IMPROVEMENTS.

(A) Construction Plans and Specifications and Approval Thereof. The Developer will engage, at Developer's expense, a duly licensed professional civil engineer authorized to practice within the State of Minnesota to prepare detailed plans, specifications, and a cost estimate for the complete installation of all Plan A Improvements, in accordance with the most recent editions of the City of Shakopee

Design Criteria and the City of Shakopee General Specifications and Standard Detail Plates For Street & Utility Construction and the Shakopee Public Utilities Commission (SPUC) Water Policy Manual and submit them to the City Engineer and to the SPUC Utilities Manager for written approval prior to commencement of construction.

The Developer must submit the appropriate grading plan, specifications, storm water management plan, erosion and sediment control plan and Storm Water Pollution Prevention Plan (SWPPP) to the City Engineer for approval for each phase of the project. Before any construction is commenced within that phase, the plans and specifications must be approved by the City Engineer and copies of all required permits must be provided to the City Engineer. After the City Engineer has approved the plans, any changes to the plans must be resubmitted to the City Engineer for approval. No changes may be made without written approval from the City Engineer. The Developer must comply with any erosion and sediment control method required by the City for the prevention of damage to adjacent property, for prevention of damage to downstream storm sewer systems and for the control of surface water runoff.

The Developer, the Developer's contractors and subcontractors must submit drawings to the City Engineer outlining all proposed haul routes for the import or export of soil, construction material, construction equipment or construction debris, or any other purpose. All haul routes must be approved in writing by the City Engineer.

The Developer must furnish to the City and to SPUC street and utility plans and specifications for approval for each phase of construction. Before any construction is commenced within that phase, the plans and specifications must be approved by the City Engineer and the SPUC Utilities Manager, and copies of all required permits must be provided to the City Engineer and to SPUC. After the City Engineer and SPUC have approved the plans, no changes may be made without written approval from the appropriate authority.

(B) Developer's Security. Simultaneously with submitting an executed copy of this Agreement to the City, the Developer must submit to the City either cash or a certified letter of credit approved by the City Attorney, made payable to the City upon which the City may draw, in an amount equal to 125% of the total estimated Plan A project costs as approved by the City Engineer. The City may draw against the cash or certified letter of credit as provided in this Agreement.

The Developer must also submit to the City either cash or a certified letter of credit approved by the City Attorney, made payable to the City in an amount equal to 125% of the estimated costs for construction of all erosion control measures and site restoration or \$1,000.00/disturbed acre, whichever is higher as approved by the City Engineer. The City may draw against the said cash or certified letter of credit as provided in this Agreement.

Any cash paid by the Developer to the City will bear interest for each year at a rate equal to one percent (1%) below the average interest rate (rounded to the nearest quarter) on the investments held by the City on December 31st of the respective year. The interest will accrue until the deposit is used by the City to install uncompleted improvements. The deposit plus all accrued interest will be used to pay for the installation of any uncompleted improvements and any excess in the deposit will be returned to the Developer. If the City determines that the improvements need not be installed or upon the Developer installing the improvements, the deposit plus all accrued interest will be returned to the Developer.

(C) Right to Proceed with Construction. Within the Subdivision, the Developer must not construct site grading improvements or otherwise disturb the earth or remove trees until all the following conditions have been satisfied: (1) preliminary plat approval has been obtained from the City Council; (2) the necessary security and applicable fees have been received by the City; (3) all required grading plans, storm water management plans, erosion and sediment control plans, SWPPP's and specifications have been approved by the City Engineer or assigns; and (4) the City Engineer or assigns has issued a grading permit.

Within the Subdivision, the Developer must not construct street improvements, sanitary sewer improvements, storm sewer improvements, water distribution system improvements, public or private improvements, nor any buildings until all the following conditions have been satisfied: (1) this agreement has been fully executed by both parties and filed with the City Clerk; (2) the necessary security and all applicable fees have been received by the City; (3) all required plans and specifications have been approved by the City Engineer and the SPUC Utilities Manager; (4) the plat has been recorded with the County Recorder's Office or Registrar of Title's Office of Scott County.

(D) Timing of Performance. The Developer must complete all site grading improvements required for the Subdivision in one phase prior to MONTH DATE, YEAR.

The Developer must install all Plan A Improvements required for the Subdivision except for the wear course on public streets by MONTH DATE, YEAR. The final wear course on all public streets must be installed between August 1st and September 1st of the first summer after the base course has been in place for one (1) freeze-thaw cycle. The Developer may, however, request an extension of time from the City Engineer. If an extension is granted, it will be conditioned upon updating the security posted by the Developer to reflect cost increases and the extended completion date. Any extension of the date for final wear course placement must have the written approval of the City Engineer.

(E) Completion of Street Lighting Improvements. For purposes of releasing this Agreement and issuing a certificate of occupancy (conditional or permanent), the City will consider the Street Lighting Improvements complete if the developer has entered into an agreement with the utility provider and paid any amount required by them.

(F) Construction Observation. The City will, at the Developer's expense, have one or more construction observers and a soil engineer observe the work on a full or part-time basis. The Developer must also provide a qualified engineer to perform site inspections on a daily basis. The engineer's qualifications must be submitted in writing to the City Engineer. The Developer must instruct its project engineer/inspector to respond to questions from the City observer(s) and to make periodic site visits to verify the construction is being performed to an acceptable level of quality in accordance with the engineer's design. The Developer or his engineer must schedule a preconstruction meeting at a mutually agreeable time with all parties concerned, including City staff, to review the program for the improvements.

(G) Administrative and Technical Costs. The Developer agrees to pay the City engineering fees, landscape architect fees and construction observation fees for the project. These fees are set forth in the City's annual fee schedule. All engineering and landscape architect administration and construction observation fees must be paid to the City prior to recording the final plat.

(H) Trunk Charges and Lateral Charges. The Developer agrees to pay the City the applicable City trunk charges and lateral charges. Those charges are set forth in the City's annual fee schedule. All trunk charges and lateral charges must be paid to the City prior to recording the final plat.

(I) Sealcoating Charge. The Developer agrees to pay the City for costs associated with the first bituminous seal coat on all bituminous paved streets as set forth in the City's annual fee schedule. All sealcoating charges must be paid to the City prior to recording the final plat.

(J) Construction of Plan A Improvements.

(1) Construction. The Developer must furnish materials and equipment, construct and install all proposed improvements and conduct all operations in accordance with the most recent editions of the City's General Specifications and Standard Detail Plates for Street and Utility Construction, the City's Design Criteria, the City's Comprehensive Water Resource Management Plan, the City's SWPPP, SPUC's Water Policy Manual, City standards, City Policies, City ordinances, all general and supplemental conditions received from the City, the approved plans and specifications. For street lighting improvements, the Developer must furnish materials and equipment and construct and install the proposed improvements in accordance with the Street Lighting Agreement adopted jointly by the City and SPUC.

(2) Easements. The Developer must grant or cause to be granted to the City, at no cost to the City, all permanent or temporary easements necessary for the installation and maintenance of the Plan A Improvements.

(3) Insurance. The Developer will provide or the Developer will cause each person with whom the Developer contracts for the construction of any Plan A Improvement to furnish to the City the Contractor's Insurance Certificates as specified in Article S.G.C.5 of the Supplementary General Conditions of the General Specifications and Standard Detail Plates for Street & Utility Construction. No construction must commence until the City Clerk receives the insurance certificates with the City listed as additional insured, including a cancellation clause providing the City with thirty (30) days written notice, and the certificates are approved by the City Attorney.

(4) Grading and Erosion and Sediment Control. The grading required for the Subdivision must be in compliance with the approved Tree Management Plan, as required per Section 11.60, Subdivision 9 of the City Code.

Prior to any grading operations commencing and before any utility construction commencing or building permits being issued, the Developer must identify, in writing to the City Engineer, a responsible party and schedule for erosion and sediment control inspection and maintenance, street cleaning, and weekly street sweeping.

Prior to grading operations commencing and before any street and utility construction commencing or building permits being issued, all erosion and sediment control measures must be installed, inspected, and approved by the City Engineer or assigns. The City Engineer or assigns may impose additional erosion and sediment control requirements if they would be beneficial.

All areas disturbed by the excavation and backfilling operations must be reseeded forthwith after the completion of the work in that area. Except as otherwise provided in the City approved plans, seed must be certified seed to provide temporary ground cover as rapidly as possible. All seeded areas must be fertilized, mulched, and disc anchored as necessary for seed retention.

The parties recognize that time is of the essence in erosion and sediment control. If the Developer does not comply with the requirements set forth in this Agreement, the City may take such action as it deems appropriate to control erosion and sediment transport at the Developer's expense. The City Engineer or assigns will endeavor to notify the Developer in advance of any proposed action, but failure to do so will not affect the Developer's and City's rights or obligations. No development will be allowed and no building permits will be issued unless the Subdivision is in full compliance with all erosion and sediment control requirements.

Erosion and sediment control measures must be maintained until turf is established on all areas disturbed as a result of development/construction. After the site has been stabilized to where, in the opinion of the City Engineer or assigns, there is no longer a need for erosion and sediment control, they will authorize the removal of the erosion and sediment control measures, i.e. hay bales and silt fence. The Developer must properly remove and dispose of the erosion and sediment control measures. The Developer is responsible for ensuring that all contractors, homebuilders, home

purchasers and other parties involved in the development/construction of the Subdivision are notified of this responsibility.

The Developer is responsible for regular erosion and sediment control inspection and maintenance or work as deemed necessary by the City Engineer or assigns until turf is established on all areas disturbed as a result of development/construction. If the Developer fails to perform the required clean up within twenty-four (24) hours of receiving instructions and notice from the City Engineer or assigns, the City, without further notice, can perform the work and charge the associated cost to the Developer. If the Developer does not reimburse the City for any cost the City incurred for such work within ten (10) days of receipt of the invoice, the City may draw down, without further notice, the security provided to pay any costs incurred by the City.

The Developer is responsible for weekly street sweeping of all streets within the subdivision and all streets adjacent to the Subdivision if sediment is tracked off site. All street sweeping must be performed utilizing a pick-up sweeper. If the Developer fails to perform the required street sweeping within twenty-four (24) hours of receiving instructions and notice from the City Engineer and/or the Building Official or their assigns, they, without further notice, can perform the work and charge the associated cost to the Developer. If the Developer does not reimburse the City for any cost the City incurred for such work within ten (10) days of receipt of the invoice, the City may draw down, without further notice, the security provided to pay any costs incurred by the City. The Developer shall be responsible for weekly street sweeping until final acceptance by the City.

The Developer is responsible for soil correction work required for the Subdivision. The City makes no representation to the Developer concerning either the nature of suitability of soils or the cost of correcting any unsuitable soil conditions which may exist. On lots that have no fill material a soils report from a qualified soils engineer is not required unless the Building Official or assigns determines from observation that there may be a soils problem. On lots with fill material that have been mass graded as part of a multi-lot grading project, a satisfactory soils report from a qualified soils engineer must be provided before the City issues a building permit for the lot. On lots with fill material that have been custom graded, a satisfactory soils report from a qualified soils engineer must be provided before the Building Official or assigns inspects the foundation for a building on the lot.

(5) Signage Requirements. All street signs and traffic signs required for the Subdivision by the City as part of the plat approval or the street and utility plan approval must be furnished and installed by the City at the expense of the Developer. All conservation and wetland easement boundary marking posts required for the Subdivision must be furnished and installed by the Developer at the expense of the Developer. All conservation and wetland easement boundary marking signage required for the Subdivision must be furnished and installed by the City at the expense of the Developer. All park and open space boundary marking posts and signage required for the Subdivision must be furnished and installed by the City at the expense of the

Developer. All conservation easement, wetland easement and park and open space posts and signage required for the Subdivision by the City must be installed within one (1) year from the date of recording the plat, or the posts and signage must be installed on a per lot basis at the time the building permit for the subject lot is issued, whichever occurs first. These fees are set forth in the City's annual fee schedule.

(6) Landscaping Requirements. Trees must be planted according to the Tree, Shrub and Bush Planting and Placement Policy and Standards and may not be planted within the right-of-way or within drainage and utility easements adjacent to public right-of-way, unless approved with a tree planting permit from the City of Shakopee. Landscaping is not allowed within any easements containing an emergency overflow nor is it allowed within any easements as outlined in the City's most recent edition of its Easement Fencing and Landscaping Policy. In addition to any sod required as a part of the grading, drainage and erosion control plan or the SWPPP, the Developer must sod the full easement width of all drainage ways/swales leading to drainage structures on each lot utilizing a minimum of six (6) inches of topsoil. The Developer must also install silt fence behind the sod in the drainage ways/swales leading to drainage structures. Seed or sod must also be placed on all disturbed areas of the lot. These requirements supplement, but do not replace, specific landscaping conditions that may have been required by the City Council for plat approval.

(7) Plat Monuments. Before the security for the completion of the public improvements is released, all plat monuments must be correctly placed in the ground in accordance with Minnesota Statutes, Chapter 505. The Developer's surveyor shall submit a written notice to the City Engineer certifying that the iron monuments have been installed.

(8) Project Testing Requirements. The Developer is responsible, at the Developer's sole cost, to provide testing to certify that Developer installed improvements have been completed in compliance with approved plans and specifications. The personnel performing the testing must be certified by the Minnesota Department of Transportation. The City Engineer has the sole discretion to determine if additional testing is necessary. The cost of additional testing is to be paid by the Developer.

(9) Street, Sanitary Sewer, Storm Sewer and Water Distribution System Maintenance. The Developer is responsible for all street maintenance, with the exception of snow plowing, until all streets within the Subdivision are accepted by the City. Warning signs must be placed by the Developer when hazards develop in streets to prevent the public from traveling on them and directing attention to detours. If streets become impassable, the City may order that such streets must be barricaded and closed. The Developer must maintain a smooth roadway surface and provide proper surface drainage. The City will not be responsible for reshaping or damage to the street base, the street surfacing, the curb and gutter or utilities because of snow plowing operations. The provision of City snow plowing service does not constitute final acceptance of the streets by the City.

The Developer is responsible for cleaning and maintenance of the sanitary sewer system (including, but not limited to, pipes, manholes and lift stations) within the Subdivision and the adjacent off-site sanitary sewer system that receives sewage from the plat. The Developer must follow all instructions received from the City Engineer or assigns concerning the cleaning and maintenance of the sanitary sewer system. The Developer's obligations under this paragraph end on the date of final acceptance by the City.

The Developer is responsible for cleaning and maintenance of the storm sewer system (including, but not limited to, ponds, pipes, catch basins, culverts and swales) within the Subdivision and the adjacent off-site storm sewer system that receives storm water from the plat. The Developer must follow all instructions it receives from the City Engineer or assigns concerning the cleaning and maintenance of the storm sewer system. The Developer's obligations under this paragraph end on the date of final acceptance by the City.

The Developer is responsible for cleaning and maintenance of the water distribution system within the plat and the adjacent off-site water distribution systems. The Developer must follow all instructions it receives from SPUC or assigns concerning the cleaning and maintenance of the water distribution system. The Developer's obligations under this paragraph end on the date of final acceptance by the City and SPUC.

(10) Record Plans/Drawings. Upon completion of the site grading improvements, the Developer must provide to the City Engineer a Record "As-Built" grading and erosion and sediment control plan/drawing in hard copy (mylar and paper) and electronic form as outlined in the most recent edition of the City Design Criteria. Prior to issuance of building permits in addition to the model building permit, the Developer must provide to the City Engineer and to SPUC an Operations Record Plan in hard copy form (paper) as outlined in the most recent edition of the City of Shakopee Design Criteria and the SPUC Water Policy Manual. Upon completion of the street and utility construction, the Developer must provide to the City and to SPUC a Record "As-Built" street and utility plan/drawing in hard copy (mylar and paper) and electronic form as outlined in the most recent edition of the City of Shakopee Design Criteria and the SPUC Water Policy Manual.

The Record "As-Built" plans/drawings referenced above must, at a minimum, include all items referenced in the most recent edition of the City Design Criteria and must also include any additional features as directed by the City Engineer.

The Record "As-Built" plans/drawings referenced above must be approved by the City and SPUC prior to final acceptance of the Plan A improvements.

(11) Faithful Performance of Construction Contracts and Bond. The Developer will fully and faithfully comply with all terms of any and all contracts entered

into by the Developer for the installation and construction of all Plan A Improvements and the Developer guarantees the workmanship and materials for a period of one (1) year following the City's final acceptance of the Plan A Improvements. The Developer must also provide the Maintenance Bond required in this Agreement.

6. BUILDING PERMITS.

(A) Model Building Permit. Prior to recording of a final plat, the Developer may receive one (1) model permit per Subdivision. The request for a model permit must be in writing and must be accompanied by a detailed drawing showing the specific location of for which the model permit is requested. The model permit must be located in an area with adequate street surfacing and access for emergency personnel, as determined by the City Engineer and the Building Official, and within reasonable proximity to an operational fire hydrant, as determined by the Fire Chief and SPUC.

(B) Additional Building Permit Issuance. The City may issue building permits in addition to the model building permit after the plat has been recorded, the site grading improvements have been completed and accepted, the record "as-built" grading and erosion and sediment control plan/drawing has been approved by the City, the street and utility improvements are substantially complete, as defined by City resolution and the Operations Record Plan has been approved by the City and by SPUC; however, no permanent certificate of occupancy will be issued until all of the required street and utility improvements are completed and approved by the City Engineer or assigns, or until this agreement is replaced with a letter of understanding and a letter of credit in the amount of 125% of the City Engineer's estimate of the cost of work remaining to be constructed as provided in this Agreement, which replacement shall be approved by the City Council. Default of any provisions of this Agreement will be grounds for the denial of building permits.

(C) Grading and Erosion and Sediment Control. No building permit will be issued until the Developer has installed silt fence or other City approved erosion and sediment control measure(s) behind the curb and gutters of all lots. It is expressly understood that once the silt fence or other City approved erosion and sediment control measure(s) have been installed it becomes the builders' responsibility to maintain, unless they are damaged by the Developer or by forces under contract to the Developer.

No building permit will be issued for construction of a dwelling or other building on a lot until an erosion and sediment control escrow in the amount of \$1,000.00 per lot is furnished to the City to guarantee compliance with City erosion and sediment control requirements.

All basement and/or foundation excavation spoil piles must be kept completely out of City right-of-way and must be completely surrounded with silt fence or other City approved erosion and sediment control measure(s). Silt fence or other approved erosion and sediment control measure(s) must be installed around the

perimeter of each lot or at City approved locations at the time of building permit issuance and remain in place until the lot is seeded and/or sodded. One (1) opening twenty (20) feet in width will be allowed on each lot for construction purposes.

No certificate of occupancy will be granted for any home in the Subdivision until all grading and erosion and sediment control measure installation has been performed per the approved plans and specifications and all utilities are in and approved, including streets, curb and gutters and bituminous base/concrete surfacing.

7. PLAN B IMPROVEMENTS. The Developer has petitioned the City for the installation of Plan B. Improvements as listed.

Description of Improvement

- A] IF APPLICABLE:
- B] IF APPLICABLE.

8. PLAN B IMPROVEMENTS. Plan B Improvements will be instituted, constructed and financed pursuant to M.S.A. 429 Improvement Projects as follows:

(A) Construction Plan and Approval Thereof. The City will engage a duly licensed professional civil engineer authorized to practice within the State of Minnesota to prepare detailed plans, specifications, and a cost estimate for complete installation of all Plan B Improvements, in accordance with the most recent editions of the City Design Criteria and the City General Specifications and Standard Detail Plates For Street & Utility Construction and the SPUC Water Policy Manual and submit them to the City Engineer and to the SPUC Utilities Manager, when required.

(B) Initiation. The Developer has submitted a Petition, a copy of which is attached as Exhibit 1 to this agreement, as provided for by DEVELOPER'S NAME.

or

Prior to execution of this Agreement, the Developer must submit to the City Council a Petition as provided for by M.S.A. 429.031 subdivision 3, requesting that Plan B Improvements be made and assessed against the benefited properties, and that the Developer agrees to the provisions of Paragraphs 8 (E) (1) and 8 (E) (2) of this Agreement.

(C) Construction. Upon the City Council adopting a resolution determining the sufficiency of each petition, the Plan B Improvements will be administered and constructed, in all respects, as other City improvements made pursuant to the provisions of M.S.A. Chapter 429 and other applicable statutes. That is: (1) The City will have sole responsibility for administration of the project; (2) The City will not be responsible for meeting any completion dates scheduled by the Developer and will not be responsible for

any damages as a result of delays in the project; (3) The project administered by the City must allow for any increase in project cost as permitted by M.S.A. 429; and (4) The Developer and his engineer acknowledge that any changes or any additional work required must be approved by the City.

(D) M.S.A. 429 Special Assessment Procedures. The Developer will be required to execute a Petition for the installation of all Plan B Improvements.

If the City Council orders installation of the petition for Plan B Improvements with the cost to be assessed against the benefited properties, the Developer agrees to pay such assessments on the following terms and conditions:

(1) Waiver of Objections To and Right of Appeal from Assessment.

The Developer agrees to, and does, waive and release (a) any and all objections of every kind to any assessment levied by the City pursuant to this Agreement, including, without limitation, objections to procedures and hearings before the City Council in connection with the Improvements and assessment therefore, objections resulting from failure to fully comply with any applicable statute, and objections to the amount of any assessment levied against the Subdivision or any other benefited property of Developer due to the Improvements stated; and (b) the right to appeal, pursuant to applicable Minnesota Statutes, from any assessment levied pursuant to this Agreement. It is understood by the developer that the City is doing this Chapter 429 Public Improvements at the developer's request and for the developer's convenience, and the City would not be installing the improvements in question without this waiver. This waiver is valid up to \$AMOUNT, which is the estimated amount of the assessments as determined by the City Engineer.

(2) Construction. After approval of preliminary plans and estimates by the City Engineer and the SPUC Utilities Manager, an improvement hearing will be called by the City Council for the purpose of ordering the Plan B Improvements. After approval of final plans and specifications by the City Engineer and the SPUC Utilities Manager, bids will be taken by the City and contracts awarded for the installation of the improvements under the City's and SPUC's complete supervision.

(3) Levy of Special Assessments and Required Prepayments. The entire cost of the installation of Plan B Improvements, including any reasonable engineering, legal and administrative costs incurred by the City, must be paid by the Developer to the City as special assessments levied against the benefited land. Reference herein to special assessments must be deemed to include, and must include, all interest due thereon in accordance with M.S.A. 429.

(4) Acceleration Upon Default. If the Developer fails to pay any installment of any special assessment levied pursuant to this Agreement, or any interest thereon, when it is to be paid, the City at its option, in addition to its other rights and remedies under this Agreement, by written notice given to Developer, may declare all of the unpaid special assessments that are then estimated or levied due and payable in full,

with interest. The City, at its option, may demand immediate payment. The City may immediately commence legal action against Developer to collect the entire unpaid balance of the special assessments with interest, including reasonable attorney's fees. The Developer is jointly and severally liable for the entire unpaid balance.

(E) Financial Security for Payments of Special Assessments. The financial security for payment of the special assessments associated with the Plan B Improvements must be provided to the City in accordance with one of the following two methods. The Developer will indicate the preferred option, but the City will make the final selection of the appropriate option.

(1) Developer Payment Method One (1): One-Hundred (100) Percent Cash Deposit. Upon such execution of this Agreement, the Developer will pay to the City in cash a deposit in the amount of 100% of the City Engineer's estimated total assessment for all Plan B Improvements. The cash so paid by the Developer to the City will bear interest for each year at a rate equal to one percent (1%) below the average interest rate (rounded to the nearest quarter) on the investments held by the City on December 31st of the respective year until the deposit equals all remaining assessments levied against the benefited property then the deposit plus all accrued interest must be used to pay the remainder of the assessments due. Any excess in deposits will be returned to the developer. If the Developer fails to pay any assessments, interest or penalty as they come due, the City may draw on the deposit for any such amounts not paid. Those assessments as levied must be paid by the Developer to the City as special assessments levied against the benefited land.

On or before an occupancy permit (conditional or permanent) will be granted for any of the lots, pieces or parcels, the Developer agrees to pay to the City the remaining principal balance, plus any unpaid interest and penalties, or all assessments assessed or to be assessed under this agreement (including assessments made prior to this agreement) against the lot, piece or parcel, the amount to be determined as of the date the occupancy permit (conditional or permanent) is granted. If the assessments governed by this paragraph have not been assessed, the developer agrees to pay the estimated assessment to be levied against the benefited land. The developer must be liable to the City for any deficiency which must become due and payable at the time assessments are levied and the City must pay to the developer any overplus arising from payment based on an estimate plus interest for each year at a rate equal to one percent (1%) below the average interest rate (rounded to the nearest quarter) on the investments held by the City on December 31st of the respective year from date of payment to date of reimbursement. It is further agreed and understood that the payments required by obtaining an occupancy permit (conditional or permanent) must in no way limit or be used to offset the Developer's obligation to pay assessments as they come due for those lots for which obligation must continue until such time as all assessments authorized herein have been paid in full.

Upon the payment of the assessment on any lot, piece or parcel, the City will issue a release in recordable form so as to remove the recording of this

agreement against that particular lot, piece or parcel on which such payment has been made, provided all other conditions of this agreement have been met.

(2) Payment Method Two (2): one-hundred (100) Percent Letter of Credit. The Developer must submit to the City a certified letter of credit approved by the City Attorney made payable to the City of Shakopee upon which the City may draw, in the amount of 100% of the City Engineer's estimated total assessment for all such Plan B Improvements, the letter of credit to be submitted upon execution of this agreement. If the Developer fails to pay any assessments, interest or penalty as they become due, the City may draw on the letter of credit for any such amounts not paid. Those assessments as levied must be paid by the Developer of a future lot, piece or parcel owner to the City as special assessments levied against the benefited land. The letter of credit must be renewed annually. If not renewed, the City must draw on all of the money in the existing letter of credit before it expires. The letter of credit must be terminated upon payment of all assessments due on developer owned lots and may be reduced to equal the actual amount of assessments due. Reductions are limited to one (1) per year.

(F) Payment Method Selected. City approved payment method No. **NUMBER**.

(G) Easements. The Developer must grant or cause to be granted to the City, at no cost to the City, all permanent or temporary easements necessary for the installation and maintenance of the Plan B Improvements.

(H) Building Permits. The City may issue building permits in addition to the model building permit addressed previously in this agreement after the plat has been recorded, the site grading improvements have been completed and accepted, the record "as-built" grading and erosion and sediment control plan/drawing has been approved by the City, the street and utility improvements are substantially complete, as defined by resolution and the Operations Record Plan has been approved by the City and by SPUC; however, no permanent certificate of occupancy will be issued until all of the required street and utility improvements are completed and approved by the City Engineer or their assigns.

9. GENERAL.

(A) Violation of Provisions of Agreement. If the developer violates any of the covenants in this Agreement to be performed by the Developer, the City has the option to commence an action for specific performance requiring the Developer to comply with the covenants in this Agreement. The developer agrees that the City will be entitled to its administrative costs, legal costs, and reasonable attorney's fees in connection with the action.

(B) Hold Harmless. The Developer will defend, indemnify and hold harmless the City and its agents, officers and employees against any and all claims, damages, losses, and expenses, including attorney fees, arising out of or resulting from the Agreement or the enforcement of it, or in the construction of the Development, except as

might arise as a result of the negligence of the City, its agents, officers or its employees in connection with the handling of any escrowed funds or the Letter of Credit pursuant to the terms of this Agreement.

(C) Binding Effect. The terms and provisions hereof are binding upon and insure to the benefit of the representatives, successors and assigns of the parties and are binding upon all future owners of all or any part of the Subdivision and are deemed to be covenants running with the land. This Agreement will be placed on record so as to give notice to subsequent purchasers and encumbrances of all or any part of the Subdivision and all recording fees must be paid by the Developer. Upon the filing of a release from the City, this Agreement will not be applicable to any property covered by the release.

(D) Notices. Any notices permitted or required to be given or made pursuant to this Agreement must be delivered personally or mailed by United States Mail to the addresses set forth below by certified or registered mail. Notices, demand or payment must be deemed timely given or made when delivered personally or when deposited in the United States Mail in accordance with the above. Addresses of the parties are as follows:

If to the City: City Administrator
City Hall
129 Holmes Street South
Shakopee, MN 55379

If to the Developer: DEVELOPER'S NAME
DEVELOPER'S ADDRESS

(E) Reductions/Release of Financial Security. Upon completion or partial completion of Plan A Improvements and upon written request by the Developer to the City Engineer, the City may release all or a portion of the cash or letter of credit deposited as required in this Agreement. In no event must such security be reduced below the full amount of any unpaid inspection and administration costs plus 100% of the amount that the City Engineer deems necessary to complete all remaining Plan A Improvements. In addition to those amounts, the City will also withhold 25% of the original security amount unless the City Engineer determines that a lesser percentage will be sufficient to ensure satisfactory completion of the Plan A Improvements. Upon written request by the Developer, the security may be fully released when: (1) the City Engineer determines that all required improvements have been satisfactorily completed in accordance with approved construction plans and specifications and the approved SWPPP; (2) the City Engineer determines that all required improvements have been satisfactorily completed in accordance with the City Design Criteria and the City General Specifications and Standard Detail Plates For Street & Utility Construction at the time the plans were approved; (3) SPUC determines that all required improvements have been satisfactorily completed in accordance with the SPUC Water Policy Manual at the time the plans were approved; (4) the Developer submits to the City Engineer a detailed reproducible drawing, including an electronic form outlined in the City Design Criteria, of the

improvements showing the details as required by the City Design Criteria and the City's subdivision ordinance at the time the plans were approved; (5) the Developer submits sanitary sewer televising videos for all sanitary sewer improvements associated with the project; and (6) the Developer submits a maintenance bond as provided in this Agreement. Should the Developer fail or refuse to submit to a maintenance bond, the City may retain some or all of the cash or letter of credit as security for the one (1) year written guarantee as provided in this Agreement. Should the certified letter of credit be for such a period of time so as to preclude its use under this paragraph, the City is authorized to draw against such letter of credit at any time to complete said improvements or to make such repairs or additions as would be provided under the one (1) year written guarantee when, in the judgment of the City, the City determines that the Developer is not going to complete the improvements or make such repairs.

(F) Maintenance Bond. The Developer is responsible to provide the City with a one (1) year security in the amount of sixty (60) percent of the City approved total public improvement costs which may include but are not limited to the total street, utility and park improvement costs. The security must run from the date of final acceptance of all public improvements. At the time of final acceptance, if the City determines the approved plans and specifications were not strictly adhered to or that the work was performed without adequate City inspections, the Developer agrees to increase the length of the security up to a maximum of five (5) years as determined by the City Engineer. The security may be any security listed as an option in the City Code except that a maintenance bond must be provided in place of a performance bond.

(G) Incorporation by Reference. The City of Shakopee General Specifications and Standard Detail Plates for Street and Utility Construction (including bonding provisions, the approved plans, addenda, change orders, special provisions, proposals, specifications and contract for the Improvements furnished and let pursuant to this Agreement), the City of Shakopee Design Criteria, the City of Shakopee Comprehensive Water Resource Management Plan, the SPUC Water Policy Manual, City standards, City Policies, City ordinances, all general and supplemental conditions, City and SPUC approved plans and specifications and the Street Lighting Policy adopted jointly by the City of Shakopee and SPUC are made part of this Agreement by reference.

(H) Changes from Plan A Improvements to Plan B Improvements and from Plan B Improvements to Plan A Improvements. It is agreed and understood that the Developer, at its option, is authorized to enter into this Agreement providing for some Plan A Improvements and some Plan B Improvements. At such time as the Developer may choose after the execution of this Agreement, the Developer may, in writing, request that some or all of the improvements originally designated as Plan A Improvements be changed to Plan B Improvements. The City in its sole and absolute discretion may enter into a 'Plan A to Plan B Change Agreement' which must be recorded. It is specifically agreed and understood, however, that no changes made in accordance with this paragraph will in any way reduce, lessen, obviate or cancel in any way, manner or form the provisions or requirements of this Agreement respecting improvements under Plan A made prior to such change. In the event the Developer wishes to change some or all of

Plan B Improvements to Plan A Improvements, then it must apply in writing to the City for such changes and the City in its sole and absolute discretion may enter into a 'Plan B to Plan A Change Agreement' which must be recorded.

(I) Assignment. The Developer may not assign this Agreement without the written permission of the City, which permission must not be unreasonably denied or delayed. No assignment will be effective unless the assignee assumes in writing all obligations of the Developer under this Agreement and the documents related to it. The assumption must be in a form reasonably acceptable to the City.

(J) Severability. If any provision of this Agreement is held invalid, illegal or unenforceable by any court of competent jurisdiction, such holding must pertain only to such section and will not invalidate or render unenforceable any other section or provision of this Agreement.

(K) Non-Waiver. Each right, power or remedy conferred upon the City or the Developer by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or later arising, or available to the City or the Developer at law or in equity, or under any other agreement. Each and every right, power or remedy contained in this Agreement 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 or the Developer and does not constitute a waiver of the right to exercise at any time any other right, power or remedy. If either party waives in writing any default or nonperformance by the other party, the waiver is deemed to apply only to that event and does not waive any other prior or subsequent default.

(L) Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which must be an original and must constitute one and the same Agreement.

10. PAYMENTS TO THE PARK FUND IN LIEU OF LAND DEDICATION. In accordance with the authority provided by the Shakopee City Code, Section 12.34, Parks and Dedications, the Developer and the City acknowledge the Developer has paid the sum and amount consistent with the current City of Shakopee Fee Schedule (\$AMOUNT).

IN WITNESS WHEREOF, The City and Developer have caused this Agreement to be duly executed on the day and year first above written.

DEVELOPER

CITY OF SHAKOPEE

DEVELOPER'S NAME

By _____
Mayor

By _____

By _____
City Administrator

Its _____

By _____
City Clerk

STATE OF MINNESOTA
COUNTY OF SCOTT

The foregoing instrument was acknowledged before me MONTH DATE, YEAR by MAYOR'S NAME, Mayor; CITY ADMINISTRATOR'S NAME, City Administrator and CITY CLERK'S NAME, City Clerk of the City of Shakopee, Minnesota, on behalf of the City.

Notary Public

My Commission Expires

STATE OF MINNESOTA
COUNTY OF SCOTT

The foregoing instrument was acknowledged before me MONTH DATE, YEAR, by PRESIDENT'S NAME, President of DEVELOPER'S NAME, a Minnesota corporation, on behalf of the corporation.

Notary Public

My Commission Expires

This instrument was drafted by
City of Shakopee
129 Holmes Street South
Shakopee, MN 55379

Latest Revision: 03/19/08
i:\judy\deveagre\deveagre.rev