

**DEVELOPMENT AGREEMENT  
BETWEEN \_\_\_\_\_ AND  
THE CITY OF EAST GRAND FORKS**

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 202\_, by and between the City of East Grand Forks, a municipal corporation under the laws of Minnesota (the “City”), and \_\_\_\_\_, dated \_\_\_\_\_ (the “Developer”).

WITNESSETH:

WHEREAS, Developer is the fee owner of land located at ADDRESS and identified by (PARCEL NUMBER), which land is legally described on Exhibit A attached hereto (the “Property”), and;

WHEREAS, Developer has obtained certain approvals for development of the Property as a NO OF LOT lot subdivision to be platted as NAME, and;

WHEREAS, the City Council conditionally approved the preliminary and final plat of NAME (the “Subdivision”) on DATE by Resolution NUMBER, and;

WHEREAS, the Property has been (re)zoned ZONING DISTRICT DESIGNATION, and:

WHEREAS, the foregoing City approvals are referred to hereinafter as the “City Approvals,” and;

WHEREAS, approval of the plat was conditioned upon the Developer entering into a developer agreement addressing, among other matters, construction of a road to City street standards.

NOW, THEREFORE, based on the mutual covenants and obligations contained herein, the parties agree as follows:

1. Right to Proceed. The Developer may not construct public or private improvements within the Subdivision until all the following conditions precedent have been satisfied:

- a) the final plat has been filed with Polk County;
- b) this Agreement has been executed and filed with Polk County;
- c) the required Improvement Deposit and escrow amount (as hereinafter defined) have been received by the City from the Developer;

- d) final engineering and construction plans in digital form have been submitted by the Developer and approved by the city engineer;
- e) the Developer has paid the City for all legal, engineering and administrative expenses incurred by the City regarding the City Approvals;
- f) the Developer has obtained written approval from (any necessary boards and commissions);
- g) the Developer has paid the park dedication fee as per City Code, and;
- h) the Developer has attended a preconstruction meeting with the City engineer and staff.

Upon completion or satisfaction of the foregoing conditions precedent, the Developer shall notify the City and thereafter the City shall provide written notice that the Developer may proceed.

2. Plans; Subdivision Improvements. a) The Developer agrees to develop the Property in accordance with the City Approvals, and to construct all improvements (“Subdivision Improvements”) in accordance with the approved engineering and construction plans (the “Plans”). All terms and conditions of the City Approvals are hereby incorporated by reference into this Agreement. The Plans may not be modified by the Developer without the prior written approval of the City.

b) In developing the Subdivision in accordance with the Plans, the Developer shall make or install at its sole expense Subdivision Improvements including the upgrade and reconstruction of STREET(S) to the City’s public road standards.

c) All work performed by or on behalf of the Developer related to construction of the Subdivision Improvements shall be restricted to the hours of \_\_\_\_ a.m. through \_\_\_\_ p.m., Monday through Friday, and \_\_\_\_ a.m. through \_\_\_\_ p.m. on Saturday. Construction on homes shall be restricted to the hours of \_\_\_\_ a.m. through \_\_\_\_ p.m., Monday through Friday and \_\_\_\_ a.m. through \_\_\_\_ p.m. on Saturday and Sunday.

3. Erosion Control. All construction shall be conducted in a manner designed to control erosion and in compliance with all City ordinances and other requirements, including the City’s permit with the Minnesota Pollution Control Agency regarding municipal separate storm sewer system program dated \_\_\_\_\_. Before any portion of the Subdivision is rough graded, an erosion control plan shall be implemented by the Developer as approved by the City. The City may impose reasonable, additional erosion control requirements after the City’s initial approval, if the City deems such necessary due to a change in conditions. All areas disturbed by the excavation shall be reseeded promptly after the completion of the work in that area unless construction of streets or utilities, buildings or other improvements is anticipated immediately thereafter. Except as otherwise provided in the erosion control plan, seed shall provide a temporary ground cover as rapidly as possible. All seeded areas shall be mulched, and disc anchored as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion.

b) 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

reasonably appropriate to control erosion based on the urgency of the situation. The City agrees to provide reasonable notice to the Developer in advance of any proposed action, including notice by telephone or email in the case of emergencies, but limited notice by the City when conditions so dictate will not affect the Developer's obligations or the City's rights hereunder.

c) The Developer agrees to reimburse the City for all expenses it incurs in connection with any action it takes to control erosion. No grading or construction of the Subdivision Improvements will be allowed and no building permits will be issued within the Subdivision unless the Developer is in full compliance with the erosion control requirements. The erosion control measures specified in the Plans or otherwise required within the Subdivision shall be binding on the Developer and its successors and assigns.

4. Site Grading; Haul Routes. a) In order to construct the Subdivision Improvements and otherwise prepare the Property for development, it will be necessary for the Developer to grade the Property. All grading must be done in compliance with this Agreement, the Plans and with all requirements of the Minnesota Pollution Control Agency regarding contaminated soils. The City may withhold issuance of a building permit for the Subdivision until the approved certified grading plan is on file with the City and all erosion control measures are in place as determined by the City. Within 30 days after completion of the grading, the Developer shall provide the City with an "as constructed" grading plan and a certification by a registered land surveyor or engineer.

b) The Developer agrees that any fill material which must be brought to or removed from the Subdivision while grading the site or during construction of the Subdivision Improvements or any buildings located within the Subdivision will be transported using the haul routes established by the City.

5. Construction of Subdivision Improvements. a) All Subdivision Improvements shall be installed in accordance with the Plans, the City Approvals, the City's subdivision regulations, the City's engineering standards and the requirements of the City engineer. The Developer shall submit plans and specifications for the Subdivision Improvements. The Developer shall obtain any necessary permits from any other agency having jurisdiction before proceeding with construction. The City shall inspect the Subdivision Improvements at the Developer's expense. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's inspectors. Within 45 days after the completion of the Subdivision Improvements, the Developer shall supply the City with a complete set of reproducible "as constructed" plans and three complete sets of paper "as constructed" plans, each prepared in accordance with City standards and also electronic versions of said plans in AutoCADD and shapefile formats based on Polk County coordinates. Iron monuments must be installed in accordance with state law. The Developer's surveyor shall submit a written notice to the City certifying that the monuments have been installed. All Subdivision Improvements required by this Agreement shall be completed by no later than DATE, except as specifically noted otherwise in this Agreement.

b) The Developer agrees to require its contractor to provide to the City a warranty bond against defects in labor and materials for all elements of the Subdivision Improvements for

a period of two years from the date of their acceptance by the City. During such period, the Developer agrees to repair or replace any Subdivision Improvement, or any portion or element thereof, which shows signs of failure, normal wear and tear excepted. A decision regarding whether a Subdivision Improvement shows signs of failure shall be made by the City in the exercise of its reasonable judgment. If the Developer fails to repair or replace a defective Subdivision Improvement during the warranty period, the City may repair or replace the defective portion and may use the Improvement Deposit (as hereinafter defined) to reimburse itself for such costs. The Developer agrees to reimburse the City fully for the cost of all Subdivision Improvement repair or replacement if the cost thereof exceeds the remaining amount of the Improvement Deposit. Such reimbursement must be made within 45 days of the date upon which the City notifies the Developer of the cost due under this paragraph. The Developer hereby agrees to permit the City to specially assess any unreimbursed costs against any lots in the Subdivision which have not been sold to home buyers if the Developer fails to make required payments to the City. The Developer, on behalf of itself and its successors and assigns, acknowledges the benefit to the lots within the Subdivision of the repair or replacement of the Subdivision Improvements and hereby consents to such assessment and waives the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.

c) If building permits are issued prior to the completion and acceptance of all Subdivision Improvements serving any lot, the Developer assumes all liability and costs resulting in delays in completion of the Subdivision Improvements and damage to the Subdivision Improvements caused by the City, the Developer, its contractors, subcontractors, materialmen, employees, agents, or third parties.

6. Stormwater Improvements. The Developer agrees to complete all Subdivision Improvements in accordance with the Plans, all City requirements, and the requirements of the East Grand Forks Public Works Department.

7. Improvement Deposit. a) In order to ensure completion of the Subdivision Improvements required under this Agreement, repair of any roads damaged by the Developer or its contractors or subcontractors and satisfaction of all fees due to the City, the Developer agrees to deliver to the City prior to beginning any construction or work within the Subdivision, MONETARY AMOUNT (the "Improvement Deposit"), which represents 150 percent of the estimated cost of the Subdivision Improvements as specified in the Plans. The Improvement Deposit amount represents the maximum risk exposure for the City, based on the anticipated sequence of construction and the estimate of cost of each element of the Subdivision Improvements, rather than the aggregate cost of all required Subdivision Improvements. The City shall deposit the Improvement Deposit in a City account with a bank of its choosing. The City shall be the sole accountholder and have sole rights to access and control the funds within the account. The estimated cost of the work covered by the Improvement Deposit is itemized on Exhibit B attached hereto. Upon 10 days' written notice to Developer, the City may draw upon the Improvement Deposit, in whole or part, in order to complete construction of any or all of the Subdivision Improvements and other specified work within the Subdivision, to repair any damaged roads and to pay any fees or costs due to the City by the Developer.

b) The City agrees to return a portion of the Improvement Deposit, in an amount to

be determined solely by the City, upon substantial completion of any significant portion of the covered Subdivision Improvements, delivery of the required warranty bond to the City, and satisfaction of all of the Developer's financial obligations to the City. The Improvement Deposit may also be used as security for additional elements of the Subdivision Improvements. Prior to releasing any portion of the Improvement Deposit, the City shall first be satisfied regarding the quality and completeness of the work and that the Developer has taken such steps as may be necessary to ensure that no liens will attach to the land within the Subdivision. The remaining balance of the Improvement Deposit shall be released in full and returned to the Developer following installation of the final wear course of bituminous on the streets and after satisfaction of all the Developer's financial obligations to the City under this Agreement.

c) It is the intention of the parties that the City at all times have available to it an Improvement Deposit in an amount adequate to ensure completion of all elements of the Subdivision Improvements and other obligations of the Developer under this Agreement, including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of the Improvement Deposit shall be evaluated by the City in light of that principle.

8. Park Dedication Requirements. The Developer shall pay a cash-in-lieu park dedication fee of MONETARY AMOUNT for the Subdivision.

9. Sewer Connection Fee. The Developer shall pay MONETARY AMOUNT for the connection of two to the municipal sanitary sewer system.

10. Responsibility for Costs; Deposit. In addition to any payments or deposits made, the Developer shall pay to the City a deposit in the amount of (\$10,000.00) to reimburse the City for its reasonable costs and expenses in reviewing the final plat, rezoning and for drafting and negotiation of this Agreement. The Developer further agrees to reimburse the City in full for any additional costs within 45 days after notice in writing by the City including the reasonable cost incurred in the enforcement of any provision of this Agreement, and including reasonable engineering and attorneys' fees, and construction observation and administration relating to construction of the Subdivision Improvements. The City shall reimburse itself for expenses from the deposit and will provide the Developer with a copy of any invoice for costs or expenses prior to deducting such funds from the deposit. If any funds held exceed the amount necessary to reimburse the City for its costs under this paragraph, such funds shall be returned to Developer without interest. If it appears that the actual costs incurred will exceed the estimate, Developer and City shall review the costs required to complete the project and the Developer shall deposit additional sums with the City.

11. Developer's Default. In the event of default by the Developer as to construction or repair of any of the Subdivision Improvements or any other work or undertaking required by this Agreement, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek an order from any court for permission to enter the Subdivision for such purposes. If the City does any such work, the City may, in addition to its other remedies, levy special assessments against the land within the

Subdivision to recover the costs thereof. For this purpose, the Developer, for itself and its successors and assigns, expressly waives any and all procedural and substantive objections to the special assessments, including but not limited to, hearing requirements and any claim that the assessments exceed the benefit to the land so assessed. The Developer, for itself and its successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes, section 429.081.

12. Insurance. The Developer agrees to take out and maintain or cause to be taken out and maintained until six months after the City has accepted the Subdivision 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 contractors or subcontractors. Liability limits shall not be less than \$500,000 when the claim is one for death by wrongful act or omission or for any other claim and \$1,500,000 for any number of claims arising out of a single occurrence. The City shall be named as an additional insured on the policy. The certificate of insurance shall provide that the City must be given the same advance written notice of the cancellation of the insurance as is afforded to the Developer.

13. Floodplain Regulations. No structures, including fences and accessory structures, may be constructed within the Subdivision below the regulatory flood protection elevation. The Developer must comply with the requirements of the City with regard to flood protection.

14. No Building Permits Approved; Certificates of Occupancy. a) The City Approvals do not include approval of a building permit for any structures within the Subdivision. The Developer must submit and the City must approve building plans prior to an application for a building permit for a structure on any lot within the Subdivision. The Developer or the parties applying for the building permits shall be responsible for payment of the customary fees associated with the building permits and other deferred fees as specified in this Agreement.

b) No certificate of occupancy shall be issued for any home constructed in the Subdivision unless prior thereto the lot has been graded, the driveway has been installed, the home is connected to the municipal sanitary sewer system and such connection has been approved by the City, and an as built survey of the lot has been submitted and approved by the City. In cases in which seasonal weather conditions make compliance with these conditions impossible, the City may accept an escrow of sufficient amount to ensure completion of the work during the following construction season.

15. Clean up and Dust Control. The Developer shall daily clean dirt and debris from streets adjoining the Subdivision resulting from construction work by the Developer, its contractors, agents or assigns. The Developer shall provide dust control to the satisfaction of the City's engineer throughout construction within the Subdivision.

16. Compliance with Laws. The Developer agrees to comply with all laws, ordinances, regulations and directives of the state of Minnesota and the City applicable to the Subdivision. This Agreement shall be construed according to the laws of Minnesota. Breach of the terms of this Agreement by the Developer shall be grounds for denial of building permits for the Subdivision.

17. Agreement Runs with the Land. This Agreement shall run with the Property and shall be recorded against the title thereto and shall bind and inure to the benefit of the City and the Developer and their successors and assigns. The Developer's successor in title may be responsible for obligations under this Agreement as required by the City. The Developer warrants that there are no unrecorded encumbrances or interests relating to the Property. The Developer agrees to indemnify and hold the City harmless for any breach of the foregoing covenants.

18. Indemnification. The Developer hereby agrees to indemnify and hold the City and its officers, employees, and agents harmless from claims made by it and third parties for damages sustained or costs incurred resulting from approval of the final plat of SUBDIVISION and the other City Approvals. The Developer hereby agrees to indemnify and hold the City and its officers, employees, and agents harmless for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees, except matters involving acts of gross negligence by the City.

19. Assignment. The Developer may not assign this Agreement or its rights or obligations hereunder without the prior written permission of the City, which consent shall not be unreasonably withheld, conditioned or denied.

20. Notices. Any notice or correspondence to be given under this Agreement shall be deemed to be given if delivered personally or sent by United States certified or registered mail, postage prepaid, return receipt requested:

a) as to Developer:



b) as to City:

City of East Grand Forks  
600 Demers Ave NW  
East Grand Forks MN 56721  
Attn: City Administrator

with a copy to:

Bob Vose  
Kennedy & Graven  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402

Ron Galstad  
Galstad Jensen and McCann  
411 2<sup>nd</sup> St NW Suite D  
East Grand Forks MN 56721

or at such other address as any party may from time to time notify the others in writing in accordance with this paragraph. The Developer shall notify the City if there is any change in its name or address.

21. Severability. In the event that any provision of this Agreement shall be held invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other provision of this Agreement.

22. Non-waiver. Each right, power or remedy conferred upon the City by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the City at law or in equity, or under any other agreement. Each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

23. Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

**[Signature pages to follow]**

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed on the day and year first above written.

**CITY OF EAST GRAND FORKS**

By: \_\_\_\_\_  
Mark Olstad, Mayor

By: \_\_\_\_\_  
Reid Huttunen, City Administrator

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF POLK        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 202\_, by Mark Olstad and Reid Huttunen, the Mayor and City Administrator, respectively, of the city of Independence, a Minnesota municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public

**DEVELOPER:**

**NAME**

\_\_\_\_\_  
Developer

**NAME 2**

\_\_\_\_\_  
Developer

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF POLK        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 202\_,  
by DEVELOPERS dated \_\_\_\_\_, on behalf of said trust.

\_\_\_\_\_  
Notary Public

This instrument drafted by:

Kennedy & Graven, Chartered  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300

**EXHIBIT A TO  
DEVELOPMENT AGREEMENT**

Legal Description of the Property

The land subject to this Development Agreement is legally described as follows:

To be platted as:

Current address:

**EXHIBIT B**  
**ENGINEER'S ESTIMATE**

