

WABEDO TOWNSHIP SAMPLE DEVELOPER'S AGREEMENT 2/17/2008

**CASS COUNTY
WABEDO TOWNSHIP
DEVELOPMENT AGREEMENT
__(development name)_____**

THIS AGREEMENT, entered into this _____ day of _____, 2008 by and between Wabedo Township, a township under the laws of the State of Minnesota, governed by a Board of Supervisors, the "Township", Cass County, a body corporate and politic existing under the law of the State of Minnesota, the "County", _(developer)_____ referred to herein as "Developer";

WITNESSETH:

WHEREAS, _____ is the fee owner and Developer of the real property in attached Exhibit A, which real property is proposed to be subdivided and platted for development, and which subdivision, which is the subject of this Agreement, is intended to bear the name "_____" and shall hereinafter be referred to in its entirety as "Said Plat" or "Subject Property"; and

WHEREAS, Developer intends to subdivide approximately _____ acres into ___ new single-family residential lots and ___ Outlots for future development; and

WHEREAS, the Township and County have given preliminary approval of Developer's plat of _____ contingent upon compliance with certain County and Township requirements including, but not limited to, matters set forth herein; and

WHEREAS, the County and Township require that certain public improvements including, but not limited to gravel streets, right turn and by pass lanes, grading, drainage, berming, street signs, traffic control signs, street cleanup during project development, storm sewer, drainage ponds and other site related improvements (hereafter "Infrastructure Improvements") be installed to serve the Subject Property and be financed by Developer; and

WHEREAS, the County and Township further require that certain improvements be installed by the Developer as a condition of Said Plat approval, which improvements consist of gravel streets, right turn and by pass lanes, top soil and sod, grading control per lot, drainage swales, berming, street signs, street cleanup during project development, erosion control, and other site-related items; and

WHEREAS, this Agreement is entered into for the purpose of setting forth and memorializing for the parties and subsequent owners, the understandings and covenants of the parties concerning the development of the Said Plat and the conditions imposed thereon;

NOW, THEREFORE, IT IS HEREBY AND HEREIN MUTUALLY AGREED, in consideration of each party's promises and considerations herein set forth, as follows:

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100000000. **Construction of Infrastructure Improvements.**

A. The Developer, at its sole expense, shall construct those Infrastructure Improvements located on and off Said Plat as detailed in the Plans and Specifications for _____ as prepared by _____ and on file with the County and Township Clerk (collectively the "Approved Plans"). If the plans vary from the written terms of this Agreement, the written terms shall control. The Approved Plans are:

- a. Exhibit A - Description of real property
- b. Exhibit B - Preliminary Plat of _____.
- c. Exhibit C - Final Project Plan and Grading & Erosion Control Plan and Specifications dated _____, 2008.
- d. Exhibit D - Fees and Surety Requirements
- e. Exhibit E - Dedications
- f. Exhibit F - Insurance Requirements
- g. Exhibit G - Notification Information
- h. Exhibit H - CSTS (or ISTS) plans
- i. Exhibit I - CSTS Install and Maintenance Agreement
- j. Resource Management Plan dated _____, 2008 which is made a part hereof by reference.

Included by reference are the following documents:

- a. Wabedo Township Road Specifications dated 11/13/2002.
- b. Cass County Land Use Ordinance #2005-01.
- c. Cass County Subdivision and Platting Ordinance #2006-04.
- d. Cass County Environmental Definitions Ordinance #2007-04.
- e. Cass County ISTS Ordinance #2007-02.
- f. Cass County Wetland Ordinance 1/1/1998.
- g. Cass County Weed Control Policy

All such improvements shall be constructed according to the Approved Plans, County and Township Ordinances and the standards adopted by the County and Township, along with all items required by the County and Township Engineers. Any revisions to the Approved Plans shall be submitted to the County and Township for prior approval. In addition, the roads within Said Plat shall be built in accordance with the Wabedo Township Road Specifications.

Unless the County and Township Engineers specify a later date, said improvements shall be installed by _____, 2008, with the exception of erosion control, drainage swales and berming, which shall be installed before and during initial grading of Said Plat.

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- B. Developer warrants to the County and Township for a period of two years from the date the County and Township accepts by resolutions their respective improvements, that all such improvements have been constructed to County and Township standards and specifications for the entity requiring the improvement and shall suffer no significant impairments, either to the structure or to the surface or other usable areas due to improper construction, said warranty to apply both to poor materials and faulty workmanship. Developer shall guarantee that all new plantings as shown on the Approved Plans shall survive for two full years from the time the planting has been completed or will be replaced at the expense of the Developer.

No Infrastructure Improvements shall be accepted by the County or Township until such time as a licensed professional engineer, retained by the respective party requiring the improvement, has certified to the County and the Township, as the case may be, that the construction/installation of the Infrastructure Improvement(s) has been done and performed according to Approved Plans.

- C. Developer shall provide the Township and County with lien waivers from all contractors and subcontractors engaged to construct said improvements on Said Plat. Should Developer fail to provide the Township and County with all applicable lien waivers, the Township and County reserves the right to draw upon Developer's surety and pay any contractors who performed work on any Onsite Infrastructure Improvements and whom Developer has failed to fully pay for the performance of said work.
- D. Developer shall, at its own expense, also cause to be installed street signs and traffic control signs of such type and at such locations as required by the County and Township Engineers and in conformance with the Manual on Uniform Traffic Control Devices.
- E. Developer shall require in its purchase agreements with builders that said builders shall remove all rock entrances and silt fencing from each lot after home construction has been completed upon said lot. Builder shall be responsible for maintaining silt fencing and rock entrances until home construction has been completed upon said lot. Failure to comply with these requirements may result in a stop work order being issued until compliance has been determined by the County or Township. If a stop work order is issued by either the County or Township, the issuing authority shall provide notice to the Developer and the non-issuing authority.
- F. An easement over storm water retention/water quality ponds and basins shall be dedicated to the Township. Said dedications shall be in a form and with legal descriptions acceptable to the Township Attorney as shown on attached Exhibit E. A filter strip, at least twenty-five (25) feet in width, shall be maintained adjacent to all wetland boundaries, watercourses, and streams.
- G. The County and Township shall, at their option, have the County and Township Engineers and/or designated representatives present on Said Plat for inspection purposes at all times

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(or such times as the County and Township may deem necessary) during the construction and installation of said Infrastructure Improvements. Developer agrees to pay for all reasonable costs incurred by the County and Township during said inspections.

The Developer hereby grants to the Township, the County, their agents, employees, officers, and contractors a right of entry to enter Said Plat to perform any and all work and inspections necessary or deemed appropriate by the Township or County during the installation of improvements by Developer or the Township, or to make any necessary corrective actions deemed necessary by the Township or County under this Agreement.

It is the intent of the Parties that the Township Engineer will inspect all work done within the road right of way and drainage and utility easements including, but not limited to, cleanouts, road subgrade preparation, storm ponds, infiltration basins, storm sewer and culverts. All other structures or appurtenances located in the road right of way easement will be inspected by the Township Engineer.

To facilitate these inspections, the Developer shall provide the Town Clerk, Township Engineer and County Engineer with a pre-construction schedule at least one week prior to the start of grading and road construction, and shall notify the Township Engineer at least 24 hours prior to any work outlined above being performed within Said Plat so as to coordinate review and inspection of these construction activities. Further, the Developer shall inform it’s contractors in writing of the provisions of this paragraph.

If the Township Engineer is not notified as provided above, the Developer agrees to pay all additional costs for core samples, borings, or other inspections and tests deemed necessary by the Township in its sole discretion. The Developer agrees that upon being billed by the Township, Developer will pay within thirty (30) days of the mailing of said billing.

2.0 **Intended Use of Subdivision Lots.** The County, Township and Developer agree that the numbered lots in Said Plat are intended only for single-family residential use in the number and the configuration as are shown on Said Plat. Developer shall construct only one single family dwelling per numbered lot, unless Said Property is rezoned by the County and/or Township in the future into a classification which would allow additional units to be constructed. Nothing in this section is intended to preclude the use of any lot for home occupation or home extended business, which are allowed by special permit under Chapter 8 of the Cass County Zoning Ordinance.

3. **Surety Requirements.**

A. **Township Surety Requirements.** Prior to the Town Board’s consideration of this developer’s Agreement, the Developer will provide the Township with an irrevocable letter of credit (or other surety as approved by the Township Attorney) as security that the obligations of the Developer under this Agreement shall be performed. Said letter of credit or surety shall be in the amount of \$_____

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representing the sum of 125% of the estimated cost of the Infrastructure Improvements as determined by the Township Engineer. Said letter of credit or surety must meet the approval of the Township Attorney as to form and issuing bank. The letter of credit to the Township shall be renewed prior to December 31, of each calendar year, by the Developer unless cancellation of the letter of credit is approved by the Township.

- B. **County Surety Requirements.** Unless otherwise agreed to by the County, the Developer shall also submit an irrevocable letter of credit (or other surety as approved by the County Attorney) to Cass County prior to the Cass County Board's consideration of this developer's agreement. The letter of credit shall act as security that the obligations of the Developer under this contract shall be performed. Said letter of credit or surety shall be in the amount of \$ _____ representing the sum of 125% of the estimated eminent domain costs as determined by Cass County. Said letter of credit or surety must meet the approval of the County attorney as to form and issuing bank. The letter of credit to the County shall be renewed prior to December 31, of each calendar year, by the Developer unless cancellation of the letter of credit is approved by the County.
- C.0 The County and Township may draw on their respective letters of credit or surety to complete work not performed by Developer including, but not limited to, Infrastructure Improvements, described above, erosion control, right of way acquisition and other such measures, to pay liens on property to be dedicated to the County and/or Township, to reimburse themselves for costs incurred in the drafting, execution, administration or enforcement of this Agreement, to repair or correct deficiencies or other problems which occur to the improvements during the warranty period, or to otherwise fulfill the obligations of Developer under this Agreement.
- D. In the event that any cash, irrevocable letter of credit, or other surety referred to herein is ever utilized and found to be deficient in amount to pay or reimburse the County and Township in total as required herein, the Developer agrees that upon being billed by the County and/or Township, Developer will pay within thirty (30) days of the mailing of said billing, the said deficient amount. If there should be an overage in the amount of utilized security, the County and/or Township will, upon making said determination, refund to the Developer any monies which the County and/or Township has in their possession which are in excess of the actual costs of the project as paid by the County and/or Township.
- E. Developer hereby agrees to allow the County and/or Township to specially assess any lots owned by the Developer within Said Plat for any and all costs incurred by the County and/or Township in enforcing any of the terms of this Agreement should Developer's letter of credit or surety prove insufficient or should Developer fail to maintain said letter of credit or surety in the amount required above within thirty (30) days of mailing of written request by the County and/or Township. Should the

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County and/or Township assess Developer's property in Said Plat for said costs, Developer agrees not to contest or appeal such assessment and waives all statutory rights of appeal under Minnesota Statutes, including Minnesota Statutes 429.081 and 429.091, to the extent of the costs identified in this Agreement. Said Assessment shall be spread proportionally among all of the lots and outlots within Said Plat that are specifically owned by the Developer at the time of such assessment.

- F. In the event any surety referred to herein is in the form of an irrevocable letter of credit, which by its terms may become null and void prior to the time at which all monetary or other obligations of the Developer are paid or satisfied, it is agreed that the Developer shall provide the County and Township with a new letter of credit or other surety, acceptable to the County and Township, at least forty-five (45) days prior to the expiration of the original letter of credit. If a new letter of credit is not received as required above, the County and Township may without notice to Developer declare a default in the terms of this Agreement and thence draw in part or in total, at the County and Township's discretion, upon the expiring letter of credit to avoid the loss of surety for the continued obligations. The form of any irrevocable letter of credit or other surety must be approved by the County and Township Attorney prior to its issuance.
- G. Notwithstanding the requirements of paragraph 1A above, the Developer shall install to the County and Township's satisfaction said Infrastructure Improvements for each lot or parcel prior to the date that a certificate of occupancy (temporary or permanent) is issued by the County for a building located on the lot.

4. Surety Release.

- A. Periodically, as payments are made by the Developer for the completion of portions of the Infrastructure Improvements and when it is reasonably prudent, the Developer may request of the County and Township that the surety be proportionately reduced for that portion of the Infrastructure Improvements and other requirements under this Agreement which have been fully completed and payment made therefore. All such decisions shall be at the discretion of the County and Township.
- B. The Developer may request of the County and Township a reduction or release of any surety as follows:
 - 1. When another acceptable letter of credit or surety is furnished to the County and Township to replace a prior letter of credit or surety.
 - 2. When all or a portion of the Infrastructure Improvements have been installed, the letter of credit or surety may be reduced by the dollar amount

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attributable to that portion of Infrastructure Improvements so installed at such time as a licensed professional engineer, retained by the Developer, has certified to the County or the Township, as the case may be, that the construction/installation of the Infrastructure Improvement(s) has been done and performed according to Approved Plans.

However, notwithstanding any approved release of any portion of the letters of credit, Developer is advised that the County and Township will each retain within their respective letters of credit or surety an amount deemed appropriate in their sole discretion during the two year warranty period.

However, the Township, at a minimum, shall retain their letter of credit or surety in the amount of at least 10% of the estimated construction cost of the Infrastructure Improvements and landscaping costs during the two year warranty period.

3. As to all requests brought under this paragraph B, the County and Township shall have complete discretion whether to reduce or not to reduce said letter of credit or surety.
- C. The costs incurred by the County and/or Township in processing any reduction request shall be billed to the Developer and paid to the County and/or Township within thirty (30) days of billing.
5. **Abandonment of Project - Costs and Expenses.** In the event Developer should abandon the proposed development of the Subject Property, the County and Township's costs and expenses related to attorney's fees, engineering fees, professional review, drafting of this Agreement, preparation of the feasibility report, plans and specifications, costs for completion and any other expenses undertaken in reliance upon Developer's various representations shall be paid by said Developer within thirty (30) days after receipt of a bill for such costs from the County and Township. In addition, in the event the Developer abandons the project, in whole or in part, ceases substantial field work for more than nine (9) months, fails to provide sufficient ground-cover to prevent continuing soil erosion from the Said Plat, or fails to leave the abandoned property in a condition which can be mowed using conventional lawn mowing equipment, Developer agrees to pay all costs the County and Township may incur in taking whatever action is reasonably necessary to provide ground-cover and otherwise restore or replace and repair any structures damaged by frost in Said Plat to the point where undeveloped grounds are level and covered with permanent vegetation sufficient to prevent continuing soil erosion from Said Plat and to facilitate mowing of Said Plat. In the event that said costs are not paid, the County and Township may specially assess such costs against the lots within Said Plat and/or take necessary legal action to recover such costs, including attorney's fees. Developer knowingly and voluntarily waives all rights to appeal said special assessments under Minnesota Statutes section 429.081, to the extent of the costs actually incurred by the County or Township as identified

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in this Agreement. Developer has the right to request hourly time sheets or work records to verify said billing prior to payment.

6. **Developer to Pay County, Township Costs and Expenses.** It is understood and agreed that the Developer will reimburse the County and Township for all reasonable administrative, legal, planning, engineering and other professional costs incurred in the creation, administration, enforcement or execution of this Agreement, and the approval of Said Plat, as well as all reasonable engineering expenses incurred by the County and Township in designing, approving, constructing, installing, and inspecting said Improvements described above. Specifically, the Developer shall pay a reasonable hourly fee for consulting engineering administration which shall include monitoring of construction, observation, consultation with the Developer and its engineers on status or problems regarding the project, monitoring during the warranty period and processing of requests for reduction in security. The Developer shall pay a reasonable hourly fee for construction observation performed by the Township's consulting engineers. Construction observation shall include full or part time observation at the sole discretion of the Township. Developer agrees to pay all such costs within thirty (30) days of billing by the County and Township. Bills not paid within thirty (30) days of billing by the County and/or Township shall accrue interest at the rate of 12% per year. Further, if Developer fails to pay said amounts, then the County and Township may specially assess such costs against the lots within Said Plat. Developer knowingly and voluntarily waives all rights to appeal said special assessments under Minnesota Statutes section 429.081 to the extent of the costs actually incurred by the County or Township as identified in this Agreement. Developer has the right to request hourly time sheets or work records to verify said billing prior to payment.

All administrative, engineering and legal fees related to plan review, drafting of this Agreement and any other necessary items shall be payable to the Township prior to any work commencing unless otherwise agreed to by the Township.

Further, Developer shall provide to the Township, in cash or certified check, for deposit in an escrow fund, amounts for estimated future administrative and legal fees as well as township engineering and construction observation costs. Developer, if it has not already done so, shall establish an escrow account of \$_____ with the Township as partial payment of these costs prior to executing the Developer's Agreement. If the escrow amount is depleted, the Developer agrees to furnish additional monies as requested by the Township. The Township and/or County may withhold building permits or stop lot sales if the escrow account is not promptly rectified by the Developer. Any amounts not utilized from this escrow fund shall be returned to the Developer, without interest, when all improvements have been completed, all financial obligations to the Township have been satisfied, and the required "as built" plans for road construction and any other work along with any other inventory that comes with the above project have been received by the Township. If additional escrow is required or bills incurred beyond the escrow amount, Developer shall be billed directly for such costs and there will be no acceptance of streets until all

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obligations have been fully paid. If the Developer fails to pay said bill within thirty (30) days, then the County and Township may specially assess such costs against the lots within Said Plat and/or take necessary legal action to recover such costs and the Developer agrees that the County and Township shall be entitled to attorneys fees incurred by the County and Township as a result of such legal action. Developer knowingly and voluntarily waives all rights to appeal said special assessments under Minnesota Statutes section 429.081.

- 7. **Erosion and Siltation Control.** Before any grading is started on any site, all erosion control measures as shown on the Approved Plans shall be strictly complied with as well as all requirements of the NPDES permit and any other permit requirements issued by the Township, County, State or Federal government. Developer, its successors and assigns, shall also install and maintain all erosion control measures deemed necessary by the County and Township Engineer should the erosion control plan prove inadequate in any respect. All temporary erosion and sediment control measures shall be properly disposed of within thirty (30) days after final site stabilization is achieved or after the temporary measures are no longer needed, unless otherwise authorized by the County and Township.

The Developer, its successors and assigns, shall be responsible for maintaining all erosion and sediment control measures in accordance with all Township, County and State regulations until the responsibilities have been transferred to the Builder for individual lots. Upon transfer of responsibilities, the Builder shall become responsible for maintaining all erosion and sediment control measures on the lot in accordance with the Approved Plans until the completion of final stabilization.

- 8. **Drainage Requirements.** Developer shall comply with all requirements for drainage into any county ditch or other ditch through which water from Subject Property may drain, and shall make any necessary improvements or go through any necessary procedures to ensure compliance with any Federal, State, County or Township requirements, all at Developer's expense. In addition, Developer shall fully comply with all recommendations made by the County or Township Engineer relative to required drainage improvements.

Developer shall not damage or interfere with the use of, or otherwise diminish the functionality of any existing field tiles without the permission of the Township and County Engineers. Any damage to existing field tile shall be repaired or replaced or rerouted at the sole expense of Developer. Developer shall notify the Township and the County of any field tile located on the Subject Property that has not been identified on the Approved Plans.

- 9. **Maintain Public Property Damaged or Cluttered During Construction.**

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Developer agrees to assume full financial responsibility for any damage which may occur to public property including but not limited to streets, street sub-base, base, bituminous surface, curb, utility system including but not limited to water mains, sewer mains, air release valves, shut-off valves, septic, well, sanitary sewer or storm sewer when said

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damage occurs as a result of the activity which takes place during the development of Said Plat including, but not limited to, construction of improvements and home construction. The Developer further agrees to pay all costs required to repair the streets, utility systems and other public property damaged or cluttered with debris when occurring as a direct or indirect result of the construction that takes place in Said Plat.

Developer agrees that any damage to public property occurring as a result of construction activity including, but not limited to home construction, on Said Plat will be repaired within three (3) business days of being notified by the County and/or Township of the deficiency. Developer further agrees that any damage to public property as a result of construction activity on Said Plat will be repaired immediately if deemed to be an emergency by the County or Township.

If Developer fails to timely repair or maintain said public property after being notified by the County and/or Township, the County or Township may undertake making or causing it to be repaired or maintained. When the County or Township undertakes such activity, the Developer shall reimburse the County or Township for all of their expenses within thirty (30) days of a billing to the Developer. If the Developer fails to pay said bill within thirty (30) days, then the County and Township may specially assess such costs against the lots within Said Plat and/or take necessary legal action to recover such costs and the Developer agrees that the County and Township shall be entitled to attorneys fees incurred by the County and Township as a result of such legal action. Developer knowingly and voluntarily waives all rights to appeal said special assessments under Minnesota Statutes section 429.081 to the extent of the costs actually incurred by the County or Township as identified in this Agreement. Developer has the right to request hourly time sheets or work records to verify said billing prior to payment.

10. **Temporary Easement Rights.** Developer shall provide access to the Subject Property at all reasonable times to the County and Township or their representatives for purposes of inspection and/or to accomplish any necessary work pursuant to this Agreement.
11. **Miscellaneous.**
 - A. Developer agrees that all construction items required under this Agreement are items for which Developer is responsible for completing and all work shall be done at Developer's sole expense.
 - B. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason held invalid by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Agreement.
 - C. The action or inaction of the County and Township 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 County

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and Township. The County and Township's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.

- D. The Developer represents to the County and Township that Said Plat complies with all County, State, Township and Federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances, building codes and environmental regulations. Developer agrees to obtain all required Federal, State, County, Township and other local permits. If the County or Township determines that work in Said Plat does not comply, the County or Township may, at its option, refuse to allow construction or development work in Said Plat until the Developer so complies. Upon the County or Township's demand, the Developer shall cease work until there is compliance as determined by the County and Township.
- E. Prior to the execution of this Agreement and prior to the start of any construction on the Subject Property, Developer shall provide the County and Township with evidence of good and marketable title to all of Subject Property. Evidence of good and marketable title shall consist of a Title Insurance Policy or Commitment from a national title insurance company, or a title opinion and an abstract of title updated by an abstract company registered under the laws of the State of Minnesota.
- F. Developer shall comply with and receive all required permits relating to storm water, wetland reconstruction activities, ponding and wetland related restrictions, if any, required by the County, Township and/or any applicable provisions of State and Federal law including, but not limited to, the Wetland Conservation Act of 1991 and any amendments thereto.
- G. Within thirty (30) days after completion of grading and prior to any improvements being accepted, the Developer shall provide the Township with CAD formatted "as built" or "record drawings" for all improvements within the Said Plat and grading plan including certification by a registered land surveyor or engineer that all ponds, swales, and ditches have been constructed on public easements or land owned by the Township or County.
- H. Developer, its successors or assigns, shall strictly comply with all weed control ordinances as well as any additional requirements required by the Township Engineer.

Should the Developer, its successors or assigns fail to promptly comply with the provisions of this paragraph, the Developer, its successor or assigns, hereby agrees to allow the Township to enter onto the lot located within Said Plat that has failed to comply with said weed control ordinances, to bring the lot into compliance with the weed control ordinances in addition to any requirements of the Township Engineer, and to be responsible for the Township's maintenance and administrative costs to remove said weeds.

Said Developer, its successor or assigns, hereby agrees to allow the Township to specially assess Developer's property in Said Plat for any and all costs incurred by the Township in

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maintaining said offending lots and/or enforcing any of the terms of this Agreement. Should the Township assess Developer's property for said maintenance and administrative costs, Developer, its successor or assigns, agrees not to contest or appeal such assessment and waives all statutory rights of appeal under Minnesota Statutes, including Minnesota Statutes 429.081 and 429.091 to the extent of the costs incurred by the Township under the terms of this Agreement. Developer, its successor or assigns, shall promptly notify in writing all potential builders and homeowners of this requirements. Said notice shall be submitted to the Township for review and approval by the Township.

- I. If required by the Township, the Developer shall enter into a maintenance agreement with the Township to snowplow the streets within Said Plat until such time as the streets located within Said Plat are accepted by the Township. The maintenance agreement shall be in a form acceptable to the Township Attorney.
- J. Each right, power or remedy herein conferred upon the Township and County is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to Township or County, 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 Township or County and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.
- K. Developer shall establish a homeowner's association via a recorded covenant for this Development. The Developer shall file the homeowner's association covenants against all Lots and Outlots in Said Plat not dedicated to the County or Township. Said Homeowner's Association covenants and agreements are to be submitted to the Township and County for review and approval by their respective attorneys. Developer shall provide to the Township and County a copy of the covenants recorded with the Office of the County Recorder for Said Plat.
- L. Developer shall provide to the Township with a completed signed paper copy of the mylar of the Final Plat as recorded with the Office of the County Recorder.
- M. The Developer hereby grants to the Township, the County, their agents, employees, officers, and contractors a right of entry to enter Said Plat to perform any and all work and inspections necessary or deemed appropriate by the Township or County during the installation of improvements by Developer or the Township, or to make any necessary corrective actions deemed necessary by the Township or County under this Agreement.
- N. The subdivision monument sign, if any, shall be conveyed to the homeowner's association which shall maintain said subdivision monument sign in perpetuity.
- O. Should the Outlot, any drainage ponds or any common areas be forfeited to the State or other governmental entity for non-payment of taxes, the Developer, its successor or assigns,

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agrees that each lot located within Said Plat shall be responsible for an equal share of the Township's costs to maintain and administer said Outlot, ponds and common areas. Said Developer, its successor or assigns, hereby agrees to allow the County or Township to specially assess Developer's property in Said Plat for any and all costs incurred by the County and/or Township in maintaining said Outlot and/or enforcing any of the terms of this Agreement. Should the County and/or Township assess Developer's property for said maintenance and administrative costs, Developer, its successor or assigns, agrees not to contest or appeal such assessment and waives all statutory rights of appeal under Minnesota Statutes, including Minnesota Statutes 429.081 and 429.091 to the extent of the costs incurred by the Township under the terms of this Agreement.

- P. All drainage ponds shall be conveyed to the homeowner's association which shall maintain said drainage ponds and infiltration basins in perpetuity. Should the homeowner's association fail to maintain said drainage ponds as required by this Agreement, the Developer, its successor or assigns, agrees that each lot located within Said Plat shall be responsible for an equal share of the Township's costs to maintain and administer said drainage ponds. Said Developer, its successor or assigns, hereby agrees to allow the Township to specially assess Developer's property in Said Plat for any and all costs incurred by the Township in maintaining said drainage ponds and/or enforcing any of the terms of this Agreement. Should the Township assess Developer's property for said maintenance and administrative costs, Developer, its successor or assigns, agrees not to contest or appeal such assessment and waives all statutory rights of appeal under Minnesota Statutes, including Minnesota Statutes 429.081 and 429.091 to the extent of the costs incurred by the Township under the terms of this Agreement.

12. Violation of Agreement.

- A. Except as otherwise provided in this Agreement, upon any default by Developer, its successors or assigns, of any of the covenants and agreements herein contained, the County and Township shall give the defaulting party thirty (30) days mailed notice thereof (via certified mail), and if such default is not cured within said thirty (30) day period, the County and Township are hereby granted the right and the privilege to declare any deficiencies governed by this Agreement due and payable to the County and Township in full. The thirty (30) day notice period shall be deemed to run from the date of deposit in the United States Mail. Upon failure to cure by Developer, the County and Township may thence immediately and without notice or consent of the Developer draw on the Letter of Credit, complete the Developer's obligations under this Agreement, specially assess the costs thereof against Developer's lots within Said Plat and/or bring legal action against the Developer to collect any sums due to the County and Township pursuant to this Agreement, plus all costs and attorney's fees incurred in enforcing this agreement. Developer knowingly and voluntarily waives all statutory rights to appeal said special assessment under Minnesota Statutes section 429.081.

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- B. Notwithstanding the 30-day notice period provided for in paragraph 12A above, in the event that a default by Developer will reasonably result in irreparable harm to the environment or to public property, or result in an imminent and serious public safety hazard, the County and Township may immediately exercise all remedies available to it under this Agreement in an effort to prevent, reduce or otherwise mitigate such irreparable harm or safety hazard, provided that the County and Township makes good-faith, reasonable efforts to notify the Developer as soon as is practicable of the default, the projected irreparable harm or safety hazard, and the intended actions of the County and Township to remedy said harm.
- C. Paragraph 12A of this section shall not apply to any acts or rights of the County and Township under paragraph 4 (Surety Requirements), and no notice need be given to the Developer as a condition precedent to the County and Township declaring a default or drawing upon the expiring irrevocable letter of credit as therein authorized. The County and Township may elect to give notice to Developer of the County's and Township's intent to draw upon the surety without waiving the County's and Township's right to draw upon the surety at a future time without notice to the Developer.
- D. Breach of any of the terms of this Agreement by the Developer shall be grounds for denial of building permits.

13. Fees to the County and Township.

In addition to the expenses already identified in this Agreement, the Developer shall also be responsible for paying the following costs as outlined on attached Exhibit D.

14. Dedications to the County and Township.

A. **Improvement Dedications to Township:** The Developer, upon presentation to the Township, evidence of good and marketable title to Subject Property, and upon completion of all construction work and certification of completion by the Township Engineer, shall make the following dedications to the Township:

- a. Developer shall dedicate access and drainage easements to the Township over, under and across all drainage ponds located in Said Plat in a form and with legal descriptions acceptable to the Township Attorney.
- b. Developer shall dedicate to the Township all roads and road right-of-ways located within Said Plat. Prior to the Township's acceptance of said dedications the Developer shall provide the Township with CAD formatted "as built" or "record drawings" for all improvements done in the construction of the roads as well as any modified designs that show the changes to the originally submitted plans and specifications. Acceptance by the Township of any dedication shall occur upon passage of a resolution to such effect by the Town Board. All dedications shall be in a form and with legal descriptions acceptable to the Township Attorney.

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- c. Developer shall dedicate to the Township drainage and utility and slope easements located within Said Plat. Said dedications shall be in a form and with legal descriptions acceptable to the Township Attorney.

B. Improvement Dedications to County: The Developer, upon presentation to the County of evidence of good and marketable title to Subject Property, and upon completion of all construction work and certification of completion by the County Engineer, shall make the following dedications to the County:

(none)

Said dedication and conveyance shall be in a form and with legal descriptions acceptable to the County Attorney.

- 15.0 **Phased Development.** If the plat is a phase of a multi-phased preliminary plat, the County and Township may refuse to approve final plats of subsequent phases until public improvements for all prior phases have been satisfactorily completed. Development of subsequent phases may not proceed until Development Contracts for such phases are approved by the County and Township. Approval of this phase of the Development shall not be construed as approval of future phases nor shall approval of this phase bind the County and Township to approve future Development phases. All future Development phases shall be governed by the County and Township's Comprehensive Plan, Zoning Ordinance, Subdivision Ordinance, Building Codes and other Ordinances in effect at the time such future Development phases are approved by the County and Township.
16. **Claim Waiver and Indemnity.** The Developer agrees to waive any and all claims whatsoever against the Township and the County and its respective governing boards, agents, employees, contractors, and representatives as a result of this subdivision development. Further, the Developer shall hold the County and Township, its respective governing boards, its agents, employees, contractors, and representatives harmless from any and all claims made by itself and third parties for damages sustained or costs incurred as a result of Said Plat approval and development. The Developer shall indemnify the County and Township and its officers and employees for all costs, damages or expenses which the County and Township may pay or incur in consequence of such claims, including attorney's fees. Third parties shall have no recourse against the County and Township under this contract.
17. **Assignment of Contract.** The obligations of the Developer under this Contract cannot be assigned without the express written consent of the County and Township through resolution.
18. **Limited Approval.** Approval of this Agreement by the County and Township in no way constitutes approval of anything other than that which is explicitly specified in this Agreement.

WABEDO TOWNSHIP SAMPLE DEVELOPER'S AGREEMENT 2/17/2008

- 19. **Professional Fees.** The Developer will pay all reasonable professional fees incurred by the County and Township as a result of County and Township efforts to enforce the terms of this Agreement against Developer. Said fees include attorney's fees, engineer's fees, planner's fees, and any other professional fees incurred by the County and Township in attempting to enforce the terms of this Agreement. The Developer will also pay all reasonable attorneys and professional fees incurred by the County and Township in the event an action is brought upon a letter of credit or other surety furnished by the Developer as provided herein.

- 20. **Plans Attached as Exhibits.** All plans attached to this Agreement as Exhibits are incorporated into this Agreement by reference as they appear. Unless otherwise specified in this Agreement, Developer is bound by said plans and responsible for implementation of said plans as herein incorporated.

- 21. **Contractor Insurance Requirements.** Developer shall require any Contractor selected by the Developer and approved by the Township Engineer under the direction of the Town Board, to purchase and maintain such insurance as is indicated in Exhibit F.

- 22. **Integration Clause, Modification by Written Agreement Only.** This Agreement represents the full and complete understanding of the parties and neither party is relying on any prior agreement or statement(s), whether oral or written. Modification of this Agreement may occur only if in writing and signed by a duly authorized agent of both parties.

- 23. **Notification Information.** Any notices to the parties herein shall be in writing, delivered by hand to Township Clerk or registered mail addressed as indicated in Exhibit G.

- 25. **Agreement Effect.** This Agreement shall run with the land and be binding upon and extend to the representatives, heirs, successors and assigns of the parties hereto and shall be recorded against the title to the property.

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

WABEDO TOWNSHIP

Chairman

Clerk

WABEDO TOWNSHIP SAMPLE DEVELOPER'S AGREEMENT 2/17/2008

NOTARY PUBLIC

DRAFTED BY:

Couri, MacArthur & Ruppe, P.L.L.P.
705 Central Avenue East
P.O. Box 369
St. Michael, MN 55376
(763) 497-1930

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