

City of Eyota, Minnesota

## STONE GARDEN ESTATES

### DEVELOPMENT AGREEMENT

**THIS AGREEMENT**, hereinafter referred to as **Contract** made and entered into this 3<sup>rd</sup> day of August, in the year 2016 by and between the **City of Eyota**, a Minnesota corporation located in Olmsted County, hereinafter referred to as **City** and John Keefe, hereinafter referred to as **Developer**;

**WHEREAS**, the Developer has applied to the City for approval of the plat or Subdivision known as **STONE GARDEN ESTATES** located within the City of Eyota in the County of Olmsted.

**WHEREAS**, this Development Agreement is limited to **STONE GARDEN ESTATES**; and the portion of Whetstone Place NW, outside the plat, adjacent to Lot 1, Block 2 of Stone Ridge Second Addition.

**WHEREAS**, The City approved the plat on condition that the Developer enter into this contract and furnish the security required by it:

**NOW THEREFORE**, The City and Developer agree as follows:

#### **SECTION I DEFINITIONS**

**1.1 Definitions:** The following terms, when used with initial capital letters have the following respective meanings unless the context hereof clearly requires otherwise.

|              |   |
|--------------|---|
| AIA -        | American Institute of Architects  |
| Architect -  | Registered professional Architect licensed to practice in the State of Minnesota.   |
| Contract -   | This Development Agreement and the terms and conditions contained herein.   |
| Contractor - | Individual or company hired by the Developer to provide materials, equipment and labor to construct the infrastructure per the plans created for the project. |

<sup>1</sup>  
"Exhibit A"

|                      |  |
|----------------------|--|
| City -               | The City of Eyota, Minnesota a corporation located in Olmsted County that is solely represented by an elected City Council who are supported by official City Clerks.  |
| City Attorney -      | Attorney licensed in the State of Minnesota hired by the City to represent the City during this Agreement.   |
| City Code -          | The codification of the ordinances of the City of Eyota as of the date of this Agreement.  |
| City Engineer -      | A registered Professional Engineer (PE) licensed to practice in the State of Minnesota.  |
| Consultant -         | An outside agency or individual contracted by the City to render specific consulting services to City departments.   |
| Developer -          | Developer John Keefe who has entered into this Development Agreement with the City.  |
| Development -        | The plat or subdivision of the Property. The installation and construction of all Improvements required in order to make the Property suitable for the Developer's intended use, as approved by the City.  |
| Development Rep.     | Individual or company authorized by the Developer to act as its authorized representative in regard to Development and is also designated by the Developer to receive and all notices, transcripts, official or otherwise, from the City as required by this Contract.   |
| EDD                  | City of Eyota, Economic Development Director (EDD)   |
| EIP                  | Environmental Impact Plan. Study of environmental impact to land and surrounding area before development is approved by City or any construction commences on said property.   |
| Financial Guaranty - | U.S. currency collateral (cash) and/or letter of credit as approved by the City of Eyota to guarantee compliance with the terms of this Contract including payment of real estate taxes, interest and penalties, payment of Special Assessments, construction of all improvements and payment of the cost of all improvements.   |
| Improvements -       | Improvements required to make the Property suitable for the Developer's intended purposes, to be done according to the plans submitted to and approved by the City Engineer, Economic Development Director (EDD) and the City. Such Improvements to include but not limited to: grading, drainage, sanitary sewer system, water system, public wells, storm sewer, storm water retention ponds, streets, concrete curb and gutter, street signs, street lights, utilities and all related appurtenances; wetland declination, landscaping, tree preservation, tree loss, mitigation, |

- surveying, staking, setting of lot and/or block monuments and parkland boundaries, trails and sidewalks where applicable.
- Insurance - Public liability and property damage insurance adequately covering personal injury up to and including death and claims for property damage which may arise out of the Developer's work or the work of Developer's subcontractors or by one directly or indirectly employed by any of the aforementioned.
- Landscape Architect - A registered professional Landscape Architect licensed to practice in the State of Minnesota.
- Ordinances - City of Eyota Subdivision Ordinances and/or other Ordinances.
- Outlot - A platted lot to be developed for a use which will not involve a permanent building or be reserved for future replatting before development.
- Owner - Is the fee owner of the property, any contract for deed holder, or any other person or entity having a legal and/or equitable interest in the fee ownership of the property. For purposes of this Contract, the term, "Developer" shall be the owner.
- Plans - The entirety of individual plans identified in this Contract and in Section(s) and/or Exhibit(s) attached by reference.
- Planning Commission - Commission within the City of Eyota who work in conjunction with the Mayor's Office, City Council, City Engineer, Economic Development Director and City Attorney to oversee Eyota community planning and expansion.
- Plat - The subdivision of the property into lots and blocks, easements, streets and public rights-of-way as shown on the following attachment(s) STONE GARDEN ESTATES DEVELOPMENT AGREEMENT EXHIBIT.
- Permit to Proceed - A written letter issued by the City Engineer and Planning Commission setting forth that all conditions precedent to Development have been satisfied and that the Developer may proceed with the construction of the Improvements.
- Property - Land located within the boundaries of the City of Eyota and Eyota corporate limits, County of Olmsted, State of Minnesota, which is subject to being subdivided by the Developer into the Plat as shown on Exhibit(s) attached hereto by reference.
- Public Improvements - Any type of improvement as defined by Minnesota Statute which will be maintained and owned by the City and public improvement projects deemed necessary by the City.

- Special Assessments - All costs for improvements installed by the City of Eyota under Public Improvements which are to be or have been levied against the Property.
- Standards - Requisite guidelines adopted by the City of Eyota as of the date of this Contract, including but not limited to Master Sanitary Sewer and Water Plans, Storm Sewer Plans, Transportation Plans, Soil Erosion Control Plans, Groundwater Contamination Prevention Plans, Environmental Protection Agency (EPA) guidelines and statutes Landscaping Plans and Engineering Standards' et al.; Water Quality Management Plans obtainable through Eyota at City Hall.
- Subdivision - The separation of the property into the lots and blocks as approved by the City Council, upon compliance with (i) all conditions and requirements of applicable regulations effective as of the date of this Development Agreement (Contract), and (ii) conditions and requirements upon which preliminary approval is expressly conditioned.
- Surveyor - A registered land, geological and/or topographical surveyor licensed to practice in the State of Minnesota.
- SWPPP - Storm Water Pollution Prevention Plan means a plan for storm water discharge that includes all required content under the National Pollutant Discharge Elimination System (NPDES) permit and which describes the erosion prevention best management practices, sediment control best management practices, and permanent storm water management system that, when implemented, will decrease soil erosion on a parcel of land and decrease off-site nonpoint pollution.

**SECTION II  
PLAT APPROVAL**

**2.1 Commencement of Improvements:** Within the Plat, the Developer may not commence Improvements until all the following conditions have been satisfied in their fullest.

- A ) The Financial Guaranty has been received and accepted by the City.
- B ) The Plat has been filed and registered by Olmsted County.
- C ) The City Engineer, EDD and City Clerk have issued a Permit to Proceed.

**2.2 Insurance:** The Developer shall take out or cause to take out and maintain, until six (6) months after the City has accepted the Public Improvements, a policy of Insurance with limits for bodily injury and death of not less than \$1,000,000. (one million U.S. dollars) per person and \$2,000,000. (two million U.S. dollars) for each occurrence. Limits for property damage shall not be less than \$1,000,000. (one million U.S. dollars) for each occurrence; or a combination single limit policy of at least \$2,000,000. (two million U.S. dollars) or more. The Developer shall file with the City a certificate evidencing coverage and naming the City and its

officers and agents as additional insured. The aforementioned is required prior to the City signing the Plat. The certificate shall provide that the City must be given (30) days advance written notice of modification, amendment or cancellation of the insurance and must be mailed by certified mailed through the U.S. Postal Service to the City.

**2.3 Phased Development:** If the Plat is a phase of a multi-phased preliminary Plat, the City may refuse to approve final Plats of subsequent phases of the Developer has breached this Contract and the breach has not been remedied. Development of subsequent phases may not proceed until the development contracts for such phases are approved by the City.

**2.4 Effect of Subdivision Approval:** Provided that the Improvements shall have been constructed by the Developer and accepted by the City within two years from the date of this Contract, no amendments to the City's Engineering Standards shall apply to or affect the use, development density, lot size, lot layout or dedications of the Plat, unless required by state or federal law or agreed to in writing by the City and Developer. Thereafter, to the full extent permitted by Minnesota state law, the City may require compliance with any amendments to the City's Engineering Standards, official controls, platting or dedication requirements enacted after the date of this Contract.

### **SECTION III DEVELOPMENT PLAN**

**3.1 Plans Required for Developer:** The Plat shall be developed in accordance with the following designated Plans, which Plans have been approved by the City and form a part of this Contract; however, the Plans are not attached to this Contract. The following individual plans must have been prepared by Developer's Engineer, Architect, Landscape Architect and/or Surveyor with duly noted certification thereon, and shall have been submitted and approved by the City. If the Plans vary from the written terms of this Contract, the written terms of this Contract shall control. The Plans submitted for this Plat shall include but not limited to the following:

**Plan I** - Plat dated: 10-02-2015 and prepared by Massey Land Surveying & Engineering and attached as the STONE GARDEN ESTATES plat. Pre-Final Plat for the current phase shall be prepared and submitted to the City for approval concurrent with Construction Plans and Specifications (Plan IV) and Grading and Drainage Plan (Plan V).

**Plan II** - Soil Erosion Sediment Control and Restoration Plan: to be provided with Grading and Drainage Plan and updated as required.

**Plan III** - Primary Domestic Water, Water Fire Suppression and Back-Flow Valve Plan:

Watermain alignment and looping is depicted on the exhibit STONE GARDEN ESTATES SUBDIVISION DEVELOPMENT AGREEMENT EXHIBIT. Hydrant spacing will be verified as part of the approval of Construction Plans. Subdrain Back-

Flow Valve Plan is not enforced by the City so connection and maintenance requirements will be addressed in the Covenants.

**Plan IV** – Construction Plans and Specifications for Improvements: to be submitted for approval prior to construction of public improvements. Sanitary Sewer alignment is depicted on the exhibit STONE GARDEN ESTATES SUBDIVISION DEVELOPMENT AGREEMENT EXHIBIT.

**Plan V** - Grading and Drainage Plan: To be submitted for approval prior to construction of public improvements. The proposed storm sewer alignment is depicted on the exhibit STONE GARDEN ESTATES SUBDIVISION DEVELOPMENT AGREEMENT EXHIBIT.

**Plan VI** - Wetland Delineation and Mitigation: No plans, delineation or mitigation is required.

**Plan VII** - Landscaping and Grounds Plan: No additional plans are required. Individual lots are subject to landscaping terms defined in the City Ordinance.

**Plan VIII** - Pad Elevations and Building Type: To be provided with Grading and Drainage Plan and updated as required.

**Plan IX** - Tree Preservation Plan: Not applicable as property was barren of trees prior to purchase by the developer.

**Plan X** - Streetscape / Driveway Plan: Proposed Pedestrian Facilities are depicted on the exhibit STONE GARDEN ESTATES SUBDIVISION AGREEMENT EXHIBIT.

Requirements of controlled access shall be reviewed during the Final Plat review process.

Driveway locations to be determined by individual lot developers and subject to City Ordinance.

**Plan XI** - Traffic Impact Statement: Not Applicable as not required by MnDOT.

**Plan XII** - Environmental Impact Statement: Not Applicable as minimums requiring environmental coverage are not met.

**Plan XIII** – Parkland Dedication: No parkland is required for this development.

Negotiations in a prior phase of development satisfy the parkland dedication requirements for this subdivision.

**3.2 Plan Requirements & Codes:** Each plan referred to above as prepared by and approved the Developer's Engineer, Architect, Landscape Architect and/or Surveyor, must be in conformance with the Standards and Ordinances adopted by the City and in place on the date of this Contract. Furthermore, the Developer shall adhere to all relevant codes and statutes as of the date of this Contract and/or the Permit to Proceed is issued from the City; of which, the date closest to the development start date shall be in force. example; Uniform Building Code (UFC), National Electrical Code (NEC), Uniform Fire Code (UFC), Uniform Plumbing Code (UPC), American with Disabilities Act (ADA), etc. Submission of the required Plans by the Developer shall act as a representation by the Developer and that the Plans are designed properly and the Improvements will function properly as designed.

**3.3 Plans Provided by City:** The City shall provide street lighting plans. The Developer shall pay the actual cost for the materials and installation of the street lights. The Developer shall install street lights at intersections and additional lights, per the determination of the City Engineer and Peoples' Energy Cooperative. The City shall provide the civil defense siren plan; the area currently has a working siren. The City shall provide street signage plans consistent with reasonable practices and other City areas. The City shall pay for creating these plans and the actual cost for installation of the signs up to \$700.00.

**3.4 Permits:** Developer shall obtain, prior to the issuance of the Permit to Proceed any required approvals, permits and licenses from the City of Eyota, Minnesota Department of Transportation (MNDOT), County Highway Department; appropriate watershed district; Board of Soil and Water Resources, railroads, utility companies, Minnesota Department of Natural Resources, Army Corps of Engineers, Minnesota Pollution Control Agency; Minnesota Department of Health (MNDOH), local, county and state Fire Department Agencies, Environmental Protection Agency (EPA), American with Disabilities Act (ADA) and any other regulatory or jurisdictional agency affected or having jurisdiction over the Improvements required for the Development. Any design requirements of such agencies not currently incorporated into the Plans shall be so incorporated prior to issuance of the Permit to Proceed. All costs incurred to obtain said approvals, permits and licenses and also all fines or penalties levied by any agency due to the failure of the Developer (and/or its authorized reps.) to obtain or comply with the conditions of such approvals, permits and licenses shall be the sole responsibility of the Developer. The Developer further agrees to defend and hold the City harmless from any action initiated by a regulatory agency resulting from any failure of the Developer to obtain the appropriate approvals, permits, insurances, bonds and licenses.

**3.5 City Granted - Right of Entry and Waiver of Trespass:**

A ) The Developer hereby grants to the City, its agents, employees, representatives and consultants, the privilege and license to enter upon the land which is the subject of the proposed Plat and this Contract. The purpose of inspecting and conducting any test necessary to insure compliance with this agreement and any other obligations of the Developer under the Subdivision Ordinance and other Ordinances of the City.

B ) The Developer hereby waives all claims and cause of action against the City, its agents, employees, representatives and consultants for any alleged trespass upon the subject land.

C ) The right of re-entry and waiver of trespass shall expire and terminate upon the final completion of the Improvements described herein and their acceptance by the city and providing that a final Certificate of Occupancy (COO) has been approved and granted by the City and/or County of Olmsted.

**3.6. Ownership by Developer:** The undersigned Developer hereby covenants, represents and warrants to the City that he/she is the owner in fee of the land described on Exhibit(s) and has good rights and clear title to grant to the City the rights and privileges stated in this Contract.

**3.7 Obtain Consent of Mortgagee of Land:** The Developer further represents that he/she will obtain the consent of the mortgagee of the land herein to this Contract; the Plat and any other reasonably required documents in connection herewith.

#### **SECTION IV FINANCIAL GUARANTY**

**4.1 The Amount:** No further work beyond the placement of the curb and gutter and lot grading shall take place under this Contract until the Developer has deposited with the City a Financial Guaranty in U.S. Currency, the total deposit amount of Ninety Thousand Six Hundred and no / 100 Dollars \$90,600, securing the Developer's full performance of this Contract. The Developer shall furnish the City with the Financial Guaranty from a recognized bank or lending institution (with a local business office for presentation within the Minneapolis/ St. Paul or Rochester, Minnesota metropolitan or surrounding areas), and in a form, acceptable to the City. The City may draw down the Financial Guaranty to pay for all costs and expenses incurred by the City pursuant to this Contract or to enforce this Contract, including costs incurred by the City in connection with the collection or enforcement of the Financial Guaranty. If the Financial Guaranty is drawn down, the proceeds shall be used to remedy the default and to the extent possible, reimburse the City its costs and expenses.

**4.2 Terms:** The Financial Guaranty may be for a stated term provided it is automatically renewable. The City may draw down on the Financial Guaranty; without notice, after an Event of Default has occurred under this Contract which has not been remedied within any applicable remedy period or upon receiving notice that the Financial Security will be allowed to lapse prior to final inspection and acceptance of the Improvements. If the required Improvements are not completed within at least thirty (30) calendar days prior to the expiration of the Financial Security, the City may also draw down the Financial Security.

**4.3 Claims:** In the event that the City receives claims from the Developer's subcontractors or material suppliers seeking over-due payment out of the Financial Guaranty posted with the City, the Developer hereby authorizes the City, at the City's discretion, to commence an Interpleader action pursuant to Rule 22 of the Minnesota Rules of Civil Procedure for the District courts at the Developer's expense, to include court costs and attorney fees. The Developer further authorizes the City to draw upon the Financial Guaranty in the amount of one hundred and five percent (105%) of the claim together with attorney's fees and court costs, and to deposit the funds in compliance with the Rule. Upon such deposit, the developer shall release,

discharge and dismiss the City from any further proceedings as it pertains to the funds deposited with the district Court, except that the Court shall retain jurisdiction to determine the final amount of attorney's fees, costs and expenses owed to the City pursuant to this Contract.

**4.4 Continuing Lien:** The City hereby reserves the right and the Developer hereby grants to the City the right to place a lien upon any of the property within the plat of STONE GARDEN ESTATES, for the cost of completing any Improvements described herein which have not been adequately or timely completed by the Developer under the terms of this Contract. This waiver of all objections to such a lien shall apply to the Developer and shall be available notwithstanding the availability of other remedies to the City. The anticipated date of completion of the Improvements is June 15, 2017.

**4.5 City Engineer and Inspection Costs:** Developer shall pay up to \$ 11,500.00 of City's engineering, inspection fees and costs attributed to the Development within 60 days of the City's invoice date.

## SECTION V UTILITIES & STREETS

**5.1 Curbs, Gutters & Street Surface:** The Developer shall be responsible for the cost of design and installation of curbs and gutters to boarder all streets & intersections within the Plat and/or subdivision including street surfacing for all streets shown on the Plat. The City Engineer will additionally ascertain that sufficient settling of the ground has occurred to allow permanent surfacing and to mitigate future settling of curbs and gutters. With the approval of the City, the cost of curb, gutter and street surfacing may be partially assessed to owners of adjacent land per City ordinance on local Improvements. Streets shall be graded with one lift of bituminous surfacing installed the first year and final layer of bituminous surfacing installed the following year. Whereas heavy commercial trucks frequent turn-arounds, driveways, parking lots, streets, alleys and loading docks, the City may require additional testing to determine if Type SP mix asphalt or concrete surfacing should be installed. Appropriate street surface paint signage shall meet all applicable current codes and installed at Developer's expense; crosswalks, parking lot vehicle lines, surface traffic directional signage, stop sign lines, blue handicap-disability lines & symbols, red fire lanes, red curbs by fire hydrants and yellow loading & unloading.

As was approved by the City, the Developer is not required to complete the curb & gutter and street construction of Sandstone Drive NW east of the Whetstone Place NW intersection, adjacent to Block 2 Lot 9 in Stone Garden Estates Subdivision. The Developer, or future developer, is responsible for the construction of the curb & gutter and street when future development occurs within the subdivision. The City is not obligated to pay for the future construction of Sandstone Drive NW within the development; or any municipal utilities and sidewalks to complete the subdivision.

**5.2 Sidewalks:** The Developer shall grade for the sidewalks within the development. The developer shall require lot owners along the west side of Whetstone Place NW to place a five foot (5') concrete sidewalk within their driveway to accommodate a future sidewalk within the boulevard. The sidewalk cross slope shall be no greater than two percent (2%). The future sidewalk shall be located one (1) ft from the property line within the platted right-of-way. The sidewalk shall be 5' (feet) wide and 4" (inches) thick and 6" (inches) thick through any driveway. The City may require the Developer to install sidewalk concrete depth up to 10" (inches) thick where heavy commercial trucks frequent driveway egress.

**5.3 Maintenance Bond:** The Developer shall guarantee and/or warranty the construction materials and workmanship of the curbs, gutters and street surface for a period of one year following the placement of the final lift of bituminous pavement. The City may waive the requirement of a maintenance bond but reserves the right to proceed under Section 4.1 and Section 9.3 of this Contract if necessary.

**5.4 Utilities:** The Developer agrees to complete and pay in a timely manner all costs associated directly or indirectly for the design, permit process and construction of domestic water, fire suppression, sanitary sewer and storm water drainage utilities to serve the area as depicted in the STONE GARDEN ESTATES SUBDIVISION AGREEMENT EXHIBIT; including all mains, trunks, laterals, manholes and lift stations, if applicable. Construction shall be subject to inspection and approval by the City and/or County officials. Sufficient notice shall be scheduled by Developer to allow connection to the system by individual homes or lots without disturbing other Improvements herein. Developer agrees to comply with all Minnesota Pollution Control Agency (MPCA) Rule requirements related to storm water and to fully comply with all specifications in the City Subdivision Ordinance as required by the City Engineer. The Developer agrees to perform or provide services for locating and marking all utilities before any demolition, site excavation, site testing or construction commences. The Developers SAC/WAC fees (\$2,000 per parcel) have been waived under this contract. The Dover Eyota St. Charles Area Sanitary District has its own fee structure.

**5.5 Street Base:** The Developer shall bring all streets up to grade, apply and compact gravel to specifications of the City code and to applicable County and MNDOT specifications, whichever is greater.

**5.6 Street Lighting:** The Developer shall install street lighting sufficient to provide safe intersections at the appropriate lumen rating per street light bulb and reasonably lighted neighborhood traffic and pedestrian crosswalk areas. The aforementioned shall be reviewed and approved by the City Engineer.

**5.7 Site Grading:** Plans for all site grading necessary for development of the Plat, subdivision of lots with reference to street elevations and drainage requirements, must be established and available to the City, EDD and City Engineer prior to development approval.

**5.8 Ownership of Necessary Easements:** The Developer must supply documented proof of self-ownership of all drainage and utility access easements and facilities for electric, natural gas, propane, cable, telecommunications, fuel, fuel oil, solar and other uses if not already dedicated to the City for public utilities on the Plat, subdivision or lot.

**5.9 Water Delineation Program:** The Developer shall develop a Water Delineation Program which will address collection, conveyance and outletting of groundwater from sumps and subdrains installed during individual lot development. The program shall include provisions for backflow preventers on subdrain service stubs and identification of subdrains so that groundwater is not plumbed into the sanitary sewer system. Backflow preventers on the subdrain service to be furnished and installed by lot owners. Covenants shall incorporate the Water Delineation Program and shall be binding to future lot owners. It shall be noted that the City does not review, inspect, or enforce this provision of these plans and accepts no liability regarding connection of individual sumps and subdrains connected to the public drainage system.

**SECTION VI  
NOTICE TO PROSPECTIVE PURCHASERS**

**6.1 Developer Notification to Buyers and City:** The Developer agrees to notify the City EDD, City Attorney and prospective purchasers prior to executing any purchase agreements of the following:

A) Regardless of the cost of installation by the Developer of any of the required improvements, nothing herein shall invalidate or otherwise prevent the imposition by the City of hook-up charges and user fees for sanitary sewer, water or storm water drainage Improvements and maintenance.

B) If final installations are not complete and that there is no escrow or inadequate funds by the Developer to cover the cost of construction of street surfacing, curbs, gutters and/or sidewalks that are in Development and such improvements may be constructed and accessed against adjoining landowners at the time of street surfacing or at the City's discretion.

C) The Developer agrees that he/she will notify the City, City Engineer and City Attorney at least 30 (thirty) days prior to the closing of escrow on any proposed sale of land that will further initiate commercial development on the Plat, subdivision or lot. Notice shall be submitted in writing and submitted by certified mail through the U.S. Postal Services.

D) The City of Eyota has waived all City assigned SAC and WAC fees for this development. The City cannot waive any sewer district fees collected by the Dover Eyota St. Charles Sanitary District.

**6.2 Sale of Individual Lots:** Individual lots shall adhere to Covenants which will be recorded prior to any individual lot sales. Covenants shall address the need for individual lot owners to abide to the Water Delineation Program as well as prohibition of grading, installation of fences or construction of structures within drainage and utility easements. It shall be noted that the City does not review, inspect, or enforce this provision of these plans and accepts no liability regarding connection of individual sumps and subdrains connected to the public drainage system.

**SECTION VII  
OTHER PROVISIONS**

**7.1 Validity:** If any portion, section, subsection, sentence, clause, paragraph or phrase of this Contract is for any reason held to be invalid by law, such decision shall not affect the validity of the remaining portion(s) of this Contract.

**7.2 Binding Agreement:** The parties mentioned herein, recognize and agree that all terms, conditions and definitions of this Contract shall run with the land herein described and shall be binding upon the heirs, successors, administrators and assigns of the Developer.

7.3 **Contract Assignment:** The Developer may not assign this Contract or any portions thereof, without the written permission of the Mayor and/or City Council. The Developer is obligated hereunder and shall continue in full force and effect.

7.4 **Bankruptcy:** In the event the Developer intends to file for bankruptcy, the Developer must give the City 60 (sixty) days notice in writing of such intent. Writing must be performed by certified Mail through U.S. Postal Services. Furthermore, the Developer may not dispose of, sell, barter, trade or return materials to suppliers that are inclusive of this Contract.

7.5 **No Third Party Recourse:** Third parties shall have no recourse against the City or any of its officials under this Contract.

7.6 **Governing Law:** This Contract shall be governed by and construed in accordance with the laws of the State of Minnesota.

7.7 **Interpretation:** This Contract document shall be deemed to have been jointly drafted by said parties herein for purposes of interpreting the meaning of any terms and definitions of this Contract.

7.8 **Contract:** The provisions, terms and definitions of this Development Agreement (“Contract”) are contractual and not a mere recital.

**SECTION VIII  
PERFORMANCE OF IMPROVEMENTS**

8.1 **General:** All Improvements to the property, Plat, subdivision or lot; by or on behalf of the Developer shall be done in conformity with the Plans, with the City of Eyota Code, Standards & Ordinances, all applicable County of Olmsted Statutes, Regulations & Codes, State of Minnesota Statutes, Regulations & Codes and any additional applicable Federal Codes & Regulations. It is understood and mutually agreed that the failure of the City to promptly take action to enforce this Contract including the before-mentioned as listed herein (Section VIII, 8.1) shall not act as a waiver or release of any rights of the City.

8.2 **Completion Dates:** The following schedule with target completion dates shall be submitted to the City at the time of submittal for approval of a phased Final Plat, Construction Plan and Specifications and Grading and Erosion Control Plan. Improvements, subject to approval by the City and City Engineer, shall be completed no later than the schedule submitted.

| ITEM   | TARGET COMPLETION DATE |
|--|------------------------|
| a) Restoration and Soil Stabilization  | 9/31/16                |
| b) Site Grading  | 9/31/16                |
| c) Right-of-Way Site Survey Pins   | 10/30/16               |
| d) Subdivision Lot(s) Corner Pins  | 10/30/16               |
| e) Landscaping & Ground Cover  | 9/31/16                |
| f) Utilities (sanitary, water, storm water drainage)                             | 9/31/16                |
| g) Streets (concrete curb & gutter, gravel base, first lift of asphalt/concrete) | 9/31/16                |
| h) Street Lights   | 11/15/16               |
| i) Sidewalk and Trails   | NA                     |
| j) Street Signage and Street Surface Signage                                     | TBD by City            |
| k) Street (MnDOT 2360 Wear Course) 1 year after 1 <sup>st</sup> lift             | 6/15/17                |

|    |  |                |
|----|--|----------------|
| l) | Wetland Delineation Signs                                  | <u>NA</u>      |
| m) | Certificate-Of-Occupancy-COO (per dwelling)                | <u>TBD</u>     |
| n) | 100% of all Subcontractors, "Release of Lien" to Developer | <u>7/30/17</u> |

**8.3 Failure of Developer to Meet Completion Dates:** Should the Developer fail to finish each designated item by the designated dates listed above in (8.2) and (3.1) as listed above and herein, the Developer shall pay and reimburse the City for all additional costs incurred by the City as a result of such failure(s). The City will notify the Developer in writing of such failures 30 (thirty) days prior to any demand for reimbursement that is initiated by the City. The written demand for reimbursement shall be delivered to the Developer by Certified Mail through the U.S. Postal Services. Any delay by the Developer to meet the completion dates not caused by weather, Acts of God, or other unavoidable and unforeseen causes must be approved by the Mayor and City Council in chambers. Any delay which would prompt the date of substantial completion to occur beyond the date set for expiration of the Financial Guaranty shall be conditioned upon the Developer updating the Financial Guaranty posted by the Developer. The aforementioned shall reflect any additional extension of time.

**8.4 Pre-Construction Meetings:** Upon the securing of all Permits required in Section(s) of this Contract, the payment of all escrows required pursuant to this Contract and the Developer's delivery of the Financial Guaranty, the Developer shall coordinate a preconstruction meeting with the Mayor, City Clerk, City Engineer, EDD, City Attorney and general contractor representatives at the City Hall to review the full scope of said project and grant scheduling charts of the Improvements and to assure that all required Standards have been identified and satisfied.

**8.5 Erosion Control:** Before the Property is disturbed, any utility is disrupted or construction commences, the Storm Water Pollution Prevention Plan (SWPPP) shall be implemented by the Developer and reviewed and inspected by the City Engineer, City authorized outside consultants (where applicable) and by the City EDD. The City may exercise reasonable discretion after work has begun by imposing additional reasonable erosion control requirements (temporary or permanent) for maintenance purposes as identified in the Standards. All areas disturbed by demolition, grading, excavating and backfilling operations shall be restored in accordance with the SWPPP. The parties recognize that time is of the essence in controlling erosion. If the Developer does not full comply with the SWPPP or with additional reasonable requirements imposed by the City in conformance with its Standards, the City may take immediate reasonable action deemed appropriate to control erosion. Except in cases of emergency, the City will notify the Developer 3 (three) days in advance (Sundays excluded) of any proposed action to control erosion. The Developer shall reimburse the City for all related costs the City has incurred for such preventive and/or emergency response actions to control erosion. Reimbursement shall be made to the City from the Developer within 10 (ten) days of written notice by the City. Reimbursement will be actual costs incurred by the City. The City may draw on the Financial Guaranty to pay all such related costs. The City shall have the right to suspend all Development and withhold issuance of building permits if the Development is not conducted in accordance and compliance with the erosion control requirements referenced throughout this Contract.

All Storm Water Pollution Prevention Plans shall be subject to the terms and requirements of the current and future NPDES permit which is administered by the MnPCA. Plan approvals prior to implementation of the updated NPDES permit (proposed to be updated in 2013) does not exempt the plan from implementing required new erosion control measures

**8.6 Subdivision Lot Corners:** Within 1 (one) year from the date of this Contract, the Developer shall verify in writing to the City that all Subdivision lot corner pins have been installed.

**8.7 Performance:** The Developers Consulting Engineer shall provide construction staking and project coordination while the City Engineer shall provide adequate field personnel to document conformance with the contract documents. The City Engineer will review the installed improvements and note deficiencies that need to be corrected before recommending acceptance to the City Council. The Developer shall follow all instructions received by the City as a result of such City inspections. The Project shall require maintenance by the Developer for one (1) year from the date of approval. Date of approval may commence once: the final wear course of bituminous is in place, as-built records have been submitted to the City, and the City has accepted the public infrastructure.

**8.8 Building Permits:** No building permits in the Plat shall be issued except as noted under section 8.8A until all public and private utilities and public access with the first lift of black top, curb and gutter have been installed, inspected and deemed available for use by the City and/or County of Olmsted. The Developer shall be responsible to continuously maintain reasonable and emergency access to lots, drives, fire hydrants, primary back-flow valves and main water shut-offs including street maintenance such as street patching, snow removal and ice control prior to City acceptance of ownership pursuant to section 9.3 of this Contract.

A) Building permits for STONE GARDEN ESTATES SUBDIVISION may be issued under the following conditions:

1. The final plat creating the individual lot has been recorded.
2. All utilities serving the individual lot have been installed, tested and approved and a gravel base acceptable to the City and City Engineer must be in place for all traffic to and from the individual lot to be developed.
3. No Certificates-Of-Occupancy (COO) will be issued for a structure built until the concrete curb and gutter and hard surfaced roadway is acceptable to the City and City Engineer.

## SECTION IX INSPECTIONS AND COMPLETIONS

**9.1 Inspection:** The City, City Engineer and City authorized outside consultants may periodically inspect the Improvements installed by the Developer. Any inspections made pursuant hereto shall be done for the sole benefit of the City; however, a copy of such inspection reports shall be made available to the Development Rep. if requested. The Developer, Developer Rep., its contractors and sub-contractors shall follow all reasonable instructions received from the City as a consequence of the discovery of any defective work, upon such inspection.

A) The Developer shall notify the City at least 2 (two) full working days prior to the commencement of the site grading operation, laying of utility lines, sub-grade preparation, laying of gravel base or bituminous surfacing for street construction or any other Improvement work which shall be substantially buried or covered.

B) The City Engineer shall observe the watermain loading, pressure testing, conductivity testing, bacteria testing, and visual inspection of the valves and hydrants at the Developer's expense. The City Engineer shall observe sanitary sewer mains; storm sewer mains and sewer structures and connections at the Developer's expense. The City Engineer shall observe and approve sub-grade roll tests and aggregate base roll tests at the Developer's expense. The Developer's expense is defined in Section 4.5.

C) Should the Developer or his Contractor fail to timely notify the City and City Engineer to allow the City adequate time to inspect the work, the City may at the City's discretion require the Developer and/or his Contractor to uncover, unearth, partially disassemble and/or replace or reconstruct any of the before-mentioned work in such a manner so as to provide the City with an opportunity for proper and reasonable inspection.

**9.2 Completion:** Within 30 (thirty) days after completion of the Improvements, the Developer shall supply the City and City Engineer with a complete set of reproducible and digital files in AutoCAD format with As-Built plans in accordance with City Standards.

A) Likewise, the Developer shall give written notice within 30 (thirty) days of the completion of Improvements and that the improvements have been completed in accordance with the Plans.

B) The Mayor, the City, City Engineer, City EDD and/or City authorized outside consultants shall promptly conduct a final inspection of the Improvements and notify the Developer of any Improvements that do not appear to conform to the approved Plans. If the Developer's Improvements do not conform to the Plans, or are later discovered to not conform to the Plans, the City shall immediately notify the Developer or Developer Rep. of the need for repair or replacement. The City may, in cases of emergencies, proceed to remedy the noted default by Developer and in such case of emergencies; the Developer hereby waives any and all rights to prior notice of default. Any related cost incurred by the City to remedy the default shall be the financial obligation of the Developer and shall be reimbursed or paid to the City within 10 (ten) days of receipt of a bill for such costs. Such billing shall include a detailed and itemized list of all costs incurred by the City.

**9.3 Ownership and Acceptance of Public Improvements:** After satisfactory completion of the Improvements and upon the City's final inspection and verification that the Improvements fully comply with the approved Plans, the Mayor and City Council shall in chambers by resolution accept the Improvements and thereafter, the Public Improvements lying within public easements and right-of-ways shall become City property.

**9.4 Clean-Up:** The Developer shall clean all dirt and debris from Contract related streets, curbs, sidewalks, walkways, drives, storm sewer lines and inlets, storm water drainage routes and inlets, storm water conveyance ponds, wetlands and adjoining properties that resulted from demolition, construction and installation of the Improvements.

*Following page is signature page*

**Dated this 3<sup>rd</sup> Day of August in the Year 2016.**

**Developer / Contractor**

\_\_\_\_\_  
John F. Keefe

\_\_\_\_\_  
Date Signed

**Notary Public**

\_\_\_\_\_  
Date Notarized or Signed

\_\_\_\_\_  
**City of Eyota**

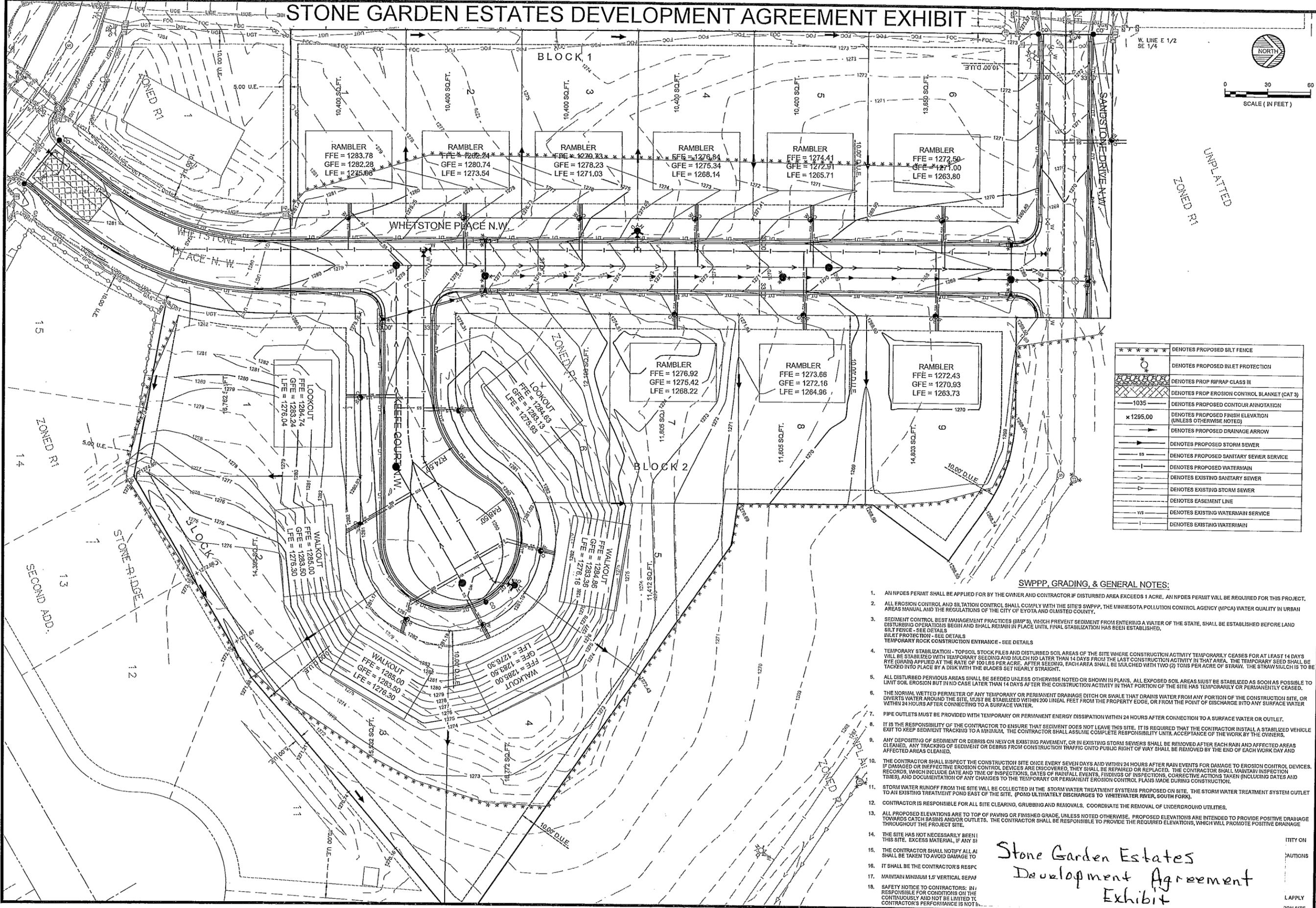
\_\_\_\_\_  
Tyrel Clark, Mayor

\_\_\_\_\_  
Date Signed

**Notary Public**

\_\_\_\_\_  
Date Notarized or Signed

# STONE GARDEN ESTATES DEVELOPMENT AGREEMENT EXHIBIT



|           |  |
|-----------|--|
| *****     | DENOTES PROPOSED SILT FENCE                                |
| ○         | DENOTES PROPOSED INLET PROTECTION                          |
| ▨         | DENOTES PROP RIPRAP CLASS III                              |
| ▨         | DENOTES PROP EROSION CONTROL BLANKET (CAT 3)               |
| 1035      | DENOTES PROPOSED CONTOUR ANNOTATION                        |
| x 1295.00 | DENOTES PROPOSED FINISH ELEVATION (UNLESS OTHERWISE NOTED) |
| →         | DENOTES PROPOSED DRAINAGE ARROW                            |
| —         | DENOTES PROPOSED STORM SEWER                               |
| —         | DENOTES PROPOSED SANITARY SEWER SERVICE                    |
| —         | DENOTES PROPOSED WATERMAIN                                 |
| —         | DENOTES EXISTING SANITARY SEWER                            |
| —         | DENOTES EXISTING STORM SEWER                               |
| —         | DENOTES EXISTING WATERMAIN SERVICE                         |
| —         | DENOTES EXISTING WATERMAIN                                 |

### SWPPP, GRADING, & GENERAL NOTES:

1. AN NPDES PERMIT SHALL BE APPLIED FOR BY THE OWNER AND CONTRACTOR IF DISTURBED AREA EXCEEDS 1 ACRE. AN NPDES PERMIT WILL BE REQUIRED FOR THIS PROJECT.
2. ALL EROSION CONTROL AND SILTATION CONTROL SHALL COMPLY WITH THE SITE'S SWPPP, THE MINNESOTA POLLUTION CONTROL AGENCY (MPCA) WATER QUALITY IN URBAN AREAS MANUAL AND THE REGULATIONS OF THE CITY OF EYOTA AND CLMSTED COUNTY.
3. SEDIMENT CONTROL BEST MANAGEMENT PRACTICES (BMP'S), WHICH PREVENT SEDIMENT FROM ENTERING A WATER OF THE STATE, SHALL BE ESTABLISHED BEFORE LAND DISTURBING OPERATIONS BEGIN AND SHALL REMAIN IN PLACE UNTIL FINAL STABILIZATION HAS BEEN ESTABLISHED.
4. TEMPORARY STABILIZATION - TOPSOIL STOCK PILES AND DISTURBED SOIL AREAS OF THE SITE WHERE CONSTRUCTION ACTIVITY TEMPORARILY CEASES FOR AT LEAST 14 DAYS WILL BE STABILIZED WITH TEMPORARY SEEDING AND MULCH NO LATER THAN 14 DAYS FROM THE LAST CONSTRUCTION ACTIVITY IN THAT AREA. THE TEMPORARY SEED SHALL BE RYE (GRAIN) APPLIED AT THE RATE OF 100 LBS PER ACRE. AFTER SEEDING, EACH AREA SHALL BE MULCHED WITH TWO (2) TONS PER ACRE OF STRAW. THE STRAW MULCH IS TO BE TACKED INTO PLACE BY A DISK WITH THE BLADES SET NEARLY STRAIGHT.
5. ALL DISTURBED PERVIOUS AREAS SHALL BE SEEDDED UNLESS OTHERWISE NOTED OR SHOWN IN PLANS. ALL EXPOSED SOIL AREAS MUST BE STABILIZED AS SOON AS POSSIBLE TO LIMIT SOIL EROSION BUT IN NO CASE LATER THAN 14 DAYS AFTER THE CONSTRUCTION ACTIVITY IN THAT PORTION OF THE SITE HAS TEMPORARILY OR PERMANENTLY CEASED.
6. THE NORMAL WETTED PERIMETER OF ANY TEMPORARY OR PERMANENT DRAINAGE DITCH OR SWALE THAT DRAINS WATER FROM ANY PORTION OF THE CONSTRUCTION SITE, OR DIVERTS WATER AROUND THE SITE, MUST BE STABILIZED WITHIN 200 LINEAL FEET FROM THE PROPERTY EDGE, OR FROM THE POINT OF DISCHARGE INTO ANY SURFACE WATER.
7. PIPE OUTLETS MUST BE PROVIDED WITH TEMPORARY OR PERMANENT ENERGY DISSIPATION WITHIN 24 HOURS AFTER CONNECTION TO A SURFACE WATER OR OUTLET.
8. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO ENSURE THAT SEDIMENT DOES NOT LEAVE THIS SITE. IT IS REQUIRED THAT THE CONTRACTOR INSTALL A STABILIZED VEHICLE EXIT TO KEEP SEDIMENT TRACKING TO A MINIMUM. THE CONTRACTOR SHALL ASSUME COMPLETE RESPONSIBILITY UNTIL ACCEPTANCE OF THE WORK BY THE OWNERS.
9. ANY DEPOSITING OF SEDIMENT OR DEBRIS ON NEW OR EXISTING PAVEMENT, OR IN EXISTING STORM SEWERS SHALL BE REMOVED AFTER EACH RAIN AND AFFECTED AREAS CLEARED. ANY TRACKING OF SEDIMENT OR DEBRIS FROM CONSTRUCTION TRAFFIC ONTO PUBLIC RIGHT OF WAY SHALL BE REMOVED BY THE END OF EACH WORK DAY AND AFFECTED AREAS CLEARED.
10. THE CONTRACTOR SHALL INSPECT THE CONSTRUCTION SITE ONCE EVERY SEVEN DAYS AND WITHIN 24 HOURS AFTER RAIN EVENTS FOR DAMAGE TO EROSION CONTROL DEVICES. IF DAMAGED OR INEFFECTIVE EROSION CONTROL DEVICES ARE DISCOVERED, THEY SHALL BE REPAIRED OR REPLACED. THE CONTRACTOR SHALL MAINTAIN INSPECTION RECORDS, WHICH INCLUDE DATE AND TIME OF INSPECTIONS, DATES OF RAINFALL EVENTS, FINDINGS OF INSPECTIONS, CORRECTIVE ACTIONS TAKEN INCLUDING DATES AND TIMES, AND DOCUMENTATION OF ANY CHANGES TO THE TEMPORARY OR PERMANENT EROSION CONTROL PLANS MADE DURING CONSTRUCTION.
11. STORM WATER RUNOFF FROM THE SITE WILL BE COLLECTED IN THE STORM WATER TREATMENT SYSTEMS PROPOSED ON SITE. THE STORM WATER TREATMENT SYSTEM OUTLET TO AN EXISTING TREATMENT POND EAST OF THE SITE. (POND ULTIMATELY DISCHARGES TO WHITEWATER RIVER, SOUTH FORK).
12. CONTRACTOR IS RESPONSIBLE FOR ALL SITE CLEARING, GRUBBING AND REMOVALS. COORDINATE THE REMOVAL OF UNDERGROUND UTILITIES.
13. ALL PROPOSED ELEVATIONS ARE TO TOP OF PAVING OR FINISHED GRADE, UNLESS NOTED OTHERWISE. PROPOSED ELEVATIONS ARE INTENDED TO PROVIDE POSITIVE DRAINAGE TOWARDS CATCH BASINS AND/OR OUTLETS. THE CONTRACTOR SHALL BE RESPONSIBLE TO PROVIDE THE REQUIRED ELEVATIONS, WHICH WILL PROMOTE POSITIVE DRAINAGE THROUGHOUT THE PROJECT SITE.
14. THE SITE HAS NOT NECESSARILY BEEN I TO AN EXISTING TREATMENT POND EAST OF THE SITE. (POND ULTIMATELY DISCHARGES TO WHITEWATER RIVER, SOUTH FORK).
15. THE CONTRACTOR SHALL NOTIFY ALL AI SHALL BE TAKEN TO AVOID DAMAGE TO
16. IT SHALL BE THE CONTRACTOR'S RESP
17. MAINTAIN MINIMUM 1.5' VERTICAL SEPAF
18. SAFETY NOTICE TO CONTRACTORS: IN RESPONSIBLE FOR CONDITIONS ON THE CONTINUOUSLY AND NOT BE LIMITED TO CONTRACTOR'S PERFORMANCE IS NOT

Stone Garden Estates  
Development Agreement  
Exhibit

**WIDSETH SMITH NOLTING**  
Engineering | Architecture | Surveying | Environmental

DATE: OCTOBER 2015  
SCALE: AS SHOWN  
DRAWN BY: B.A.S.  
CHECKED BY: C.N.L.  
JOB NUMBER: 1070R0066

STONE GARDEN ESTATES SUBDIVISION  
JOHN KEEFE  
EYOTA, MINNESOTA  
GRADING PLAN

ITITY ON  
AUTIONS  
LAPPLY  
ION SITE.

SHEET NO. 8  
SHEET 8 of 8