

**CITY OF RAMSEY
DEVELOPMENT CONTRACT
FOR STONEY RIVER**

This CONTRACT dated this ____ day of _____, 2011, and is by and between the **CITY OF RAMSEY**, a Minnesota municipal corporation (the "**CITY**"), and First Pheonix Ramsey, LLC, a Minnesota limited liability company ("**PERMITTEE**").

WHEREAS, PERMITTEE is platting land owned by Lord of Life Church and situated within the city limits of the City, Anoka County, Minnesota, legally described as follows (the "Property"):

That part of the Southeast Quarter of the Northwest Quarter of Section 25, Township 32, Range 25, lying westerly of the center line of Trunk Highway No. 47, except part platted as Birch Hill Lodges, also except part platted as CIC No. 129 Birch Hill Lodges, together with that part of the Northeast Quarter of Southwest Quarter of said section lying westerly of center line of Trunk Highway No. 47 and lying north and northeast, Anoka County, Minnesota.

-or upon recording of the Plat contemplated herein-

Lots 1 & 2, Block 1, Stoney River, Anoka County, Minnesota (the "Plat").

(the "Property"). Subsequent to platting PERMITTEE shall have fee title ownership of Lot 2, Block 1, Stoney River, Anoka County, Minnesota ("Lot 2"); and

WHEREAS, PERMITTEE desires to construct an assisted living and memory care facility on Lot 2 (the "Lot 2 Improvements"). PERMITTEE and CITY shall enter into a separate contract regarding the construction of the Lot 2 Improvements; and

WHEREAS, on July 26, 2011, pursuant to Resolution No. 11-08-___, the CITY approved the final plat of the Property, which plat is known as **STONEY RIVER** (the "**Plat**"), which approval is contingent on certain requirements, including PERMITTEE and the CITY entering into this Contract; and

WHEREAS, the CITY requires that certain improvements be constructed on the Property, which improvements (collectively, the "Improvements") are defined in this Contract and

WHEREAS, PERMITTEE desires to construct certain Stage I and Stage II Improvements in accordance with the Plat and plans approved by PERMITTEE and the CITY; and

WHEREAS, PERMITTEE and the CITY have entered into a development permit for obligations related to the site plan approval (the "Development Permit").

WHEREAS, PERMITTEE understands that the **CITY** will expend no **CITY** funds until **PERMITTEE** has complied with the relevant escrow requirements in the Code of Ordinances of the **CITY**.

NOW, THEREFORE, the **CITY, PERMITTEE** agree as follows:

1. Conditions of Approval. The **CITY** hereby approves the Plat on condition that **PERMITTEE** provide the necessary security in accordance with the terms of this Contract.
2. Permittee Plans. **PERMITTEE** shall develop the Property in accordance with the Permittee Plans, with changes as required by the City Staff Review Letter dated June 28, 2011, *revised August 3, 2011*. The Permittee Plans shall not be attached to this Contract, but are in **CITY** files. The Permittee Plans as they are:
 - Final Plat Sheets 1 and 2 prepared by Harry S. Johnson Co., Inc. dated August 3, 2011
3. Stage I Improvements. The “Stage I Improvements” are described in the Permittee Plans and consist of the following:
 - a. Lateral sanitary sewer system
 - b. Lateral watermains and appurtenances
 - c. Trunk and lateral storm drainage facilities
 - d. Lot grading
 - e. Trail construction along Nowthen Boulevard
 - f. Twenty (20) foot perpetual trail easement along Saint Francis Boulevard
 - g. Natural gas
 - h. Telephone service
 - i. Electric service
 - j. Temporary and permanent erosion control
 - k. Boulevard restoration
 - l. Water shut-off boxes
 - m. Easement acquisition
 - n. As-built plans

PERMITTEE agrees to construct the Stage I Improvements according to the terms and conditions of this Contract and in accordance with the Permittee Plans, which are subject to revisions per City Staff Review Letter dated June 29., 2011, *revised August 17, 2011* and which shall be submitted to the City Engineer review and approval prior to execution by **PERMITTEE** of any such contract and prior to commencement of construction of the Stage I Improvements.

PERMITTEE shall not be assessed for any construction of a trail along Saint Francis Boulevard, unless as part of a requirement for future development. **PERMITTEE** acknowledges that any future development will be subject to certain development obligations including, but not limited to, trail construction at the time of the future development. The **CITY** agrees to consider vacating the perpetual trail easement along

Saint Francis Boulevard in the future in the event **PERMITTEE** proposes an acceptable alternative, subject to the approval of the **CITY**, that will provide a permanent trail connection between Nowthen Boulevard and Cobalt Street (ultimately to Sunwood Drive) on the Property for future development, except that the City does not waive its right to do a Special Assessment Chapter 429/Public Improvement project if in the future it determines a trail along St Francis Boulevard is needed.

4. Stage I Improvement Financial Guarantee. The **PERMITTEE** shall provide a financial guarantee to the **CITY** guaranteeing the construction of the Stage I Improvements and their timely completion. The **PERMITTEE** shall be responsible for a financial guarantee in the amount of _____ Dollars and No Cents (\$____.00), which amount is 125% of the **CITY** Engineer's estimated cost of the Stage I Improvements. The financial guarantee shall be deposited with the **CITY** at the time of execution of this Contract. Upon completion of Stage I Improvements (including the removal of "temporary" erosion control measures as identified in the approved Grading Plan), acceptance by the **CITY**, supported by appropriate lien waivers, The **PERMITTEE** may request a reduction in the amount of the financial guarantee, but only if the maintenance guarantees required by Paragraph 8 & 9 below has been deposited.
5. Inspection Fees. **PERMITTEE** shall be responsible for all City inspection costs incurred by the **CITY** related to the installation of the Stage I Improvements in the amount of _____ Dollars and No Cents (\$____.00), which equals 5% of the City Engineer's estimated cost of the Stage I Improvements. **PERMITTEE** shall deposit said amount as a cash escrow held by the **CITY** at the time of execution of this Contract. **PERMITTEE** agrees that said fees may be used to complete the Improvements in the event of default by the **PERMITTEE**. Upon completion of the Stage I Improvements and final inspection and acceptance by the **CITY**, the remaining balance in the escrow account shall be returned to **PERMITTEE**.
6. Stage I Improvement Installation. The Stage I Improvements shall be installed in accordance with the Plans and in accordance with **CITY** standards and the City Code. The **PERMITTEE** shall obtain all necessary permits from all agencies before proceeding with construction of the Stage I Improvements. Within thirty (30) days after the completion of the Stage I Improvements, the **PERMITTEE** shall have prepared a complete set of reproducible "As Built" plans for the Stage I Improvements, developed by a certified engineer and subject to the approval of the City Engineer.
7. Time of Performance. **PERMITTEE** shall install all Stage I Improvements by August 9, 2012. The **DEVELOPER** may, however, request an extension of time from the **CITY**, which extension request shall not be unreasonably withheld. If an extension is granted, it may be conditioned upon updating the security posted by the **DEVELOPER** to reflect cost increases.
8. Stage I Improvement Warranty Financial Guarantee. A Stage I Improvement Warranty Financial Guarantee shall be required for Stage I Improvements. The **PERMITTEE** shall deposit as cash escrow or letter of credit the amount of _____ Dollars and No Cents (\$____.00), which is equivalent to _____. The Stage

Comment [SL1]: Need to know the purpose of this surety – what does it guarantee, how long stays in effect and when can it be returned.

I Improvement Warranty Financial Guarantee shall be collected at the time the Stage I Improvements are accepted as complete by the CITY. The Letter of Credit shall be to form and substance as approved by the City.

9. Maintenance Guarantee for Landscaping. The Maintenance Guarantee for Landscaping is covered as part of the Development Permit.
10. Ownership of Improvements. Upon completion and acceptance by the CITY, the Stage I Improvements lying within public easements shall become CITY property without further notice or action.
11. License. PERMITTEE hereby grants to the CITY, its agents, employees, officers and contractors, a license to enter the Property from time to time in order to perform all work and/or inspections deemed appropriate by the CITY during installation of the Improvements. This license shall expire after the Improvements installed pursuant to this Contract have been installed and accepted by the CITY.
12. Stage II Improvements. The Stage II Improvements which the CITY requires PERMITTEE to construct, which are not otherwise included in the Stage I Improvements, are as follows:

Comment [SL2]: Is the surety returned after the 2 years.

- a. Monument stakes for the Plat

PERMITTEE agrees to construct the Stage II Improvements according to the terms and conditions of this Contract and in accordance with the Permittee Plans, which are subject to revisions per City Staff Review Letter dated June 29, 2011, *revised August 9, 2011* and which shall be submitted to the City Engineer for review and approval prior to execution by PERMITTEE of any such contract and prior to commencement of construction of the Stage I Improvements. **LORD OF LIFE LUTHERAN CHURCH**, a non-profit corporation under the laws of the State of Minnesota, agrees to complete the Stage II Improvements in the event of PERMITTEE default.

13. Payment for Stage II Improvements. PERMITTEE shall be responsible for a financial guarantee for the Stage II Improvements to ensure timely completion of the Stage II Improvements. PERMITTEE shall be responsible for a financial guarantee for Stage II Improvements in the amount of 125% of the City Engineer's estimated cost of the Stage II Improvements. PERMITTEE shall deposit said amount as a letter of credit or cash escrow at the time of execution of this Contract.
14. *This paragraph intentionally deleted*
15. Street and Public Property Cleaning. PERMITTEE shall clear any soil, earth or debris from the streets, public property and Stormwater facilities resulting from any construction within the Property. From time to time and upon not less than thirty six (36) hours prior notice to PERMITTEE, the CITY may remove, at the expense of PERMITTEE, accumulations of soil, earth and debris from the streets and Stormwater facilities within the Property resulting from construction of the Stage I Improvements, and PERMITTEE

shall pay each invoice from the **CITY** to **PERMITTEE** for such costs within fifteen (15) days of receipt of the invoice.

16. Default. In the event of default by **PERMITTEE** as to any of the work to be performed by it hereunder, the **CITY** may, at its option, perform the work and **PERMITTEE** shall promptly reimburse the **CITY** for any reasonable expense incurred by the **CITY**, provided **PERMITTEE** is first given written notice of the work in default, not less than 48 hours in advance. This Contract is a license for the **CITY** to act, and it shall not be necessary for the **CITY** to seek a Court Order for permission to enter the Property. When the **CITY** does any such work, the **CITY** may, in addition to its other remedies, assess the cost in whole or in part to the benefitted portion(s) of the Property. **PERMITTEE** authorizes reimbursement from any of **PERMITTEE**'s escrows held by the **CITY**.
17. Miscellaneous.
 - a. Invalidity of Any Section. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Contract is for any reason invalid, such decision shall not affect the validity of the remaining portions of this Contract.
 - b. Written Amendments Only. The action or inaction of the **CITY** shall not constitute a waiver of or amendment to the provisions of this Contract. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The **CITY**'s failure to promptly take legal action to enforce this Contract shall not be a waiver or release.
 - c. Compliance with Laws and Regulations. **PERMITTEE** represents to the **CITY** that the Plat complies with all **CITY**, County, metropolitan, State, and Federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances and environmental regulations. If the **CITY** determines that the Plat does not comply, the **CITY** may, at its option, refuse to allow any construction or development work in the Plat until **PERMITTEE** cause the Plat to so comply. Upon the **CITY**'s demand, **PERMITTEE** shall cease work until there is compliance.
 - d. Recording; Termination and Release. This Contract shall run with the land and shall be recorded in the office of the Anoka County Recorder at the expense of **PERMITTEE**. After **PERMITTEE** has completed the work required of it under this Contract, as to all or any portion of the Property, at the request of **PERMITTEE** the **CITY** will execute in recordable form and deliver either a termination of this Contract or a release of such portion of the Property from the effect of this Contract.
 - e. Mailbox Locations. **PERMITTEE** agree that the placement of mailboxes along public streets is subject to the approval by the **CITY**, and location of utilities will be necessary through Gopher State One-Call.

- f. Boulevard and Area Restoration. **PERMITTEE** shall be responsible for the cost of establishing seed in all boulevards, except as otherwise noted, within thirty (30) days after completion of the street improvements included in the Stage I Improvements, and restoring all other areas disturbed by the Stage I Improvements, in accordance with approved Permittee Plans. **PERMITTEE** shall be responsible for the cost of cleaning any soil, earth or debris from wetlands within and adjacent to the Property resulting from grading in connection with the Stage I Improvements.
- g. Construction, Hours and Entrance Signs. The **CITY** restricts construction and delivery hours to Monday through Saturday, 7:00 a.m. to 10:00 p.m. **PERMITTEE** is required to provide a sign at each entrance point stating delivery and construction operation hours. Said signs are not to exceed eighty (80) square feet in size and must be clearly visible at all times during the construction period.
- h. Construction Site Maintenance. **PERMITTEE** shall adhere to all **CITY** ordinances relating to, but not limited to, dumping of garbage, site development, construction debris, open burning, etc.
- i. Estimated Cost. It is understood and agreed that cost amounts set forth in this Contract as to the Stage I and Stage II Improvements, unless qualified as fixed amounts, are estimated. **PERMITTEE** and **LORD OF LIFE** agree to pay the entire cost of the Improvements, including interest, engineering and legal fees related thereto.
- j. Plat Approval Expenses. **PERMITTEE** shall pay to **CITY** all **CITY** expenses incurred in the approval of the Plat, including, but not limited to, administration expenses, and engineering and legal fees. Any such expenses incurred after recording of the Plat shall be paid within fifteen (15) days after receipt of an invoice therefor. Failure to pay the **CITY'S** expenses within that fifteen (15) day period will permit the **CITY** to draw for payment upon any of the escrows required by this Contract. The **CITY** agrees to provide to **PERMITTEE**, promptly upon request, an estimate of all such expenses.
- k. Reimbursement to the CITY. **PERMITTEE** shall reimburse the **CITY** for all costs incurred by the **CITY** in defense or enforcement of this Contract if the City prevails in such action, or any portion thereof, including court costs and reasonable engineering and attorney's fees.
- l. Marketable Title. Prior to recording of the Plat, **PERMITTEE** shall provide the **CITY** with proof of marketable title to the Property, either through a currently certified abstract, registered property abstract or title insurance.
- m. Certificate of Occupancy. The term "Certificate of Occupancy" as used in this Contract shall be defined as a document issued by the **CITY'S** Building Official, which authorizes a structure to be used for its intended purposes.

- n. Proof of Authority. The CITY requires PERMITTEE to provide proof of authority by its governing board to execute this Contract. This proof of authority may be satisfied by providing the CITY with a certified copy of the minutes of the governing board of PERMITTEE.
 - o. Recording of This Contract. See Section 17(d) above.
 - p. Violation of This Contract. If PERMITTEE fail to perform any of the terms of this Contract, the CITY shall be entitled to recover, from PERMITTEE or the issuer of its financial guarantee, the full amount of any and all financial guarantees or withhold the Certificate of Occupancy as defined in Section 16(m) above. Breach of any of the terms of this Contract by PERMITTEE shall be grounds for denial of a building permit for any portion of the Property still owned by PERMITTEE.
 - q. Contract Binding On Successors and Assigns. This Contract shall be binding upon the parties, and their respective successors and assigns.
 - r. Letters of Credit. All letters of credit presented as a financial guarantee, if required prior to issuance of a Certificate of Occupancy, shall be first approved as to form and content prior to acceptance by the CITY.
18. Requirements for Building Permit and Certificate of Occupancy.
- a. No building permit for any lot in the Plat shall be issued until: (a) a Class 5 driving surface is installed to within 300 feet of the proposed structure; (b) a Certificate of Survey, including the survey information required by the CITY, has been supplied to the CITY Building Official; (c) all the financial guarantees required by the CITY have been satisfied; (d) a permit from the Lower Rum River Watershed Management Organization has been obtained; (e) a permit from Anoka County Soil Conservation District has been obtained (if necessary); and (f) this Contract has been signed and received by the CITY.
 - b. No Certificate of Occupancy for any lot in the Plat shall be issued until: (a) vehicular access to the lot is provided, including installation of at least one layer of bituminous surfacing; (b) all utilities are in place, operational and accepted by the CITY in accordance with this Agreement; (c) for lots that have a slope of less than 2%, a certificate of grading, prepared by a licensed (State of Minnesota) professional land surveyor, is provided to the CITY documenting that the flattest grade on the lot is 1% or greater; and (d) boulevard sod and landscape tree, or escrow for same, have been provided.
 - c. All improvements included in the Permittee Plans, including amendment required of the City Staff Review Letter dated June 29, 2011, *revised August 3, 2011* are completed, or financial guarantee in the amount of 125% the City Engineer's estimate of the cost of said improvements is secured in the form of cash escrow or letter of credit for the parking lot and related items.

19. Park Dedication. The Plat is located in the CITY's Prairie District. The current park dedication requirement for assisted living complexes is \$4,738 per acre. The amount due for the Plat is Thirty One Thousand Forty Three Dollars and No Cents ($\$4,735 \times 6.55$ acres = **\$30,778.00**). The rate in effect the time this Contract is executed shall be collected. The park dedication fee shall be paid to CITY before ~~release of the Plat execution of the Development Permit by and between the City of Ramsey and First Phoenix Group, LLC and before the City will issue the Building Permit for Stoney River~~.
20. Trail Development Fees. The current trail development fee is \$600 per dwelling unit. The amount due for the Plat is Forty Three Thousand Two Hundred Dollars and No Cents ($\$600 \times 33$ units = **\$19,800.00**). PERMITTEE is constructing trail improvements to connect the existing trail along Nowthen Boulevard through Lot 1. These improvements located on the remaining parcels to be consolidated into the existing parcel shall be considered off-site improvements and actual construction costs shall be eligible for credit against Trail Development Fees, as indicated on Exhibit A attached hereto. The rate in effect the time this Contract is executed shall be collected and paid to the City before ~~release of the Plat~~ execution of the Development Permit by and between the City of Ramsey and First Phoenix Group, LLC and before the City will issue the Building Permit for Stoney River.
21. Water and Sanitary Sewer Connection (Trunk) Fees. The current water connection fee is \$2,308 per unit. The current sanitary sewer connection fee is \$1,318 per unit. The total amount due on the Plat is Seventy Six Thousand Three Hundred and Eight Dollars and No Cents ($\$2,308 \times 33$ units = **\$76,164.00**) for water trunk fees. The total amount due on the Plat is Forty Three Thousand Four Hundred Ninety Four Dollars and No Cents [$\$1,318 \times 33$ units = **\$43,494.00**]. The rate in effect the time this Contract is executed shall be collected and paid to the CITY before ~~release of the Plat~~ execution of the Development Permit by and between the City of Ramsey and First Phoenix Group, LLC and before the City will issue the Building Permit for Stoney River.
22. Water and Sanitary Sewer Lateral Fees. The current water lateral fee is \$2,308 per connection. The current sanitary sewer lateral fee is \$1,318 per connection. The total amount due on the Plat is Twelve Thousand Nine Hundred Twenty Six Dollars and No Cents ($[\$9,102 \times 1 \text{ connection} = \$9,102] + [\$3,824 \times 1 \text{ connection} = \$3,824] =$ **\$12,926.00**). The rate of said fee in effect at the time this Contract is executed shall be collected. The cost to extend these services to the proposed building shall be credited to these fees.
23. Stormwater Management Fee. The current stormwater management fee is \$4,465 per commercial acre. The amount due for the Plat is Fifteen Thousand Three Hundred Forty Five Dollars and No Cents ($\$465 \times 33$ units = **\$15,345.00**). The rate in effect the time this Contract is executed shall be collected and paid to the CITY before ~~release of the Plat~~ execution of the Development Permit by and between the City of Ramsey and First Phoenix Group, LLC and before the City will issue the Building Permit for Stoney River.

Comment [s3]: Not sure what this means?

24. Future Development Fees. **PERMITTEE** agrees that none of the above fees are being collected for any of the outlots in the Plat, and therefore said outlots are subject to similar fees at a future date when such outlots are subdivided for development.
25. Trail Construction. Trails shall be constructed in accordance with Paragraph #3 above. Any trail constructed on private property within the Plat (not in right of way) shall be encumbered by a perpetual trail easement in accordance with Paragraph 26 below.
26. Easements. **PERMITTEE** shall be responsible for drafting and recording easement documents for all easements required by this Contract on private property. Said easements shall be executed prior to the **CITY** releasing the Plat for recording and shall be recorded at the same time as the Plat.
27. Maintenance Agreement. **PERMITTEE** shall be responsible for drafting and recording a maintenance agreement for on-site stormwater improvements, subject to review and approval of the City Engineer.
28. Notices. All notices required or permitted by this Contract to be given to a party shall be in writing, and shall be either personally delivered or mailed by certified or registered mail to such party at the following address or such other address as such party shall specify in a notice to the other party:

First Phoenix Ramsey, LLC
601 Carlson Pkwy #1050
Minnetonka, MN 55305

Lord of Life Lutheran Church
14501 Nowthen Blvd NW
Ramsey, MN 55303

City Administrator
City of Ramsey
7550 Sunwood Dr NW
Ramsey, MN 55303

IN WITNESS THEREOF, the parties have hereunto set their hands and seals, the day and year first written above.

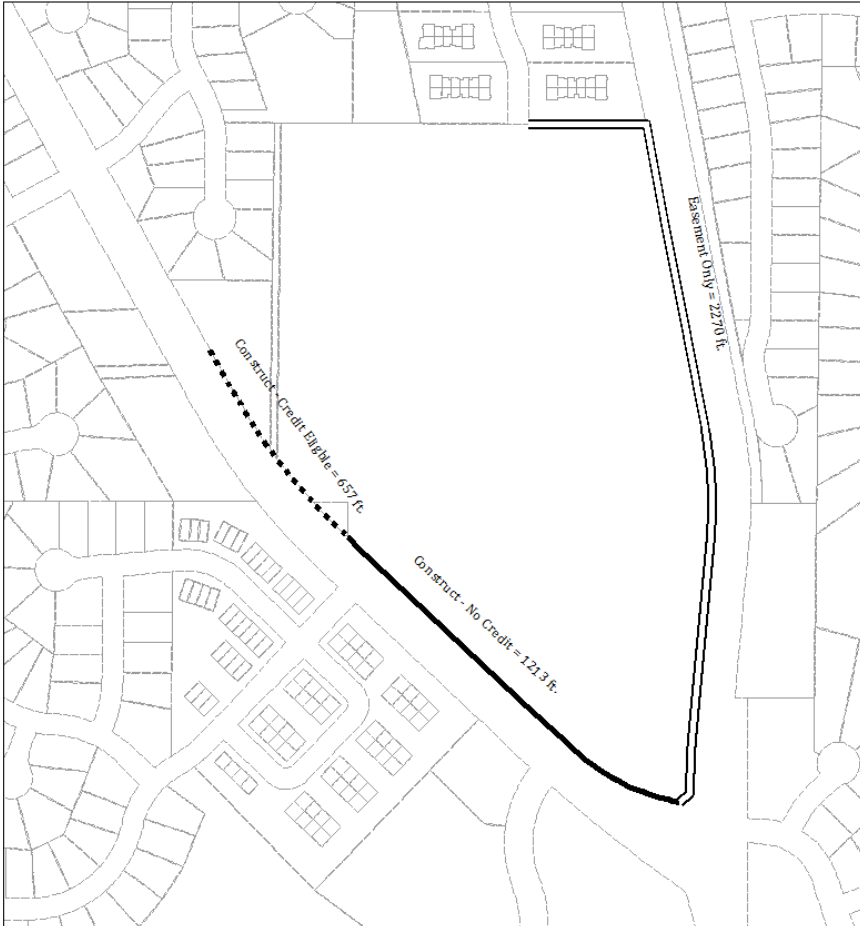
The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, the _____ of First Phoenix Ramsey, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

This Document Drafted By:
City of Ramsey
7550 Sunwood Dr NW
Ramsey, MN 55303


This Document Reviewed By:
Randall and Goodrich
2140 4th Avenue
Anoka, MN 55303


Exhibit A
Trail Construction

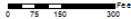


Trail

- Construct Trail
- Front & Trail Easement
- Construct Trail Credit Trail Fee


City of
RAMSEY
Stoney River
Trail Development


N
W E
S


0 75 150 300 Feet