

**SUPER AMERICA
DEVELOPMENT PERMIT
CITY OF RAMSEY, ANOKA COUNTY, MINNESOTA**

THIS AGREEMENT, made and entered into by and between the **CITY OF RAMSEY**, a municipal corporation under the laws of the State of Minnesota (the "**CITY**"), and **WEST REAL ESTATE AND MANAGEMENT INC.**, a domestic business corporation under the laws of the State of Minnesota, whose address is 405 South 8th Street, Minneapolis, Minnesota 55404 (the "**PERMITTEE**").

WITNESSETH:

WHEREAS, the **Permittee** is the fee owner of the following described property situated in the **CITY OF RAMSEY**, County of Anoka, State of Minnesota, and legally described as follows:

Lot 5, Block 1, COR TWO, Anoka County, Minnesota

(the "**Subject Property**"); and

WHEREAS, on October 16, 2012 the **CITY** approved the final site plan for Super America on the Subject Property; and

WHEREAS, on October 16, 2012 the **CITY** approved a conditional use permit for motor fuel sales and an accessory car wash on the Subject Property.

WHEREAS, the **PERMITTEE** intends to cause the Required Improvements to the Subject Property to be constructed without financial participation by the **CITY**.

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

**SECTION I
REQUIRED IMPROVEMENTS AND FINANCIAL RESPONSIBILITIES**

1. **City Code Compliance.** The **CITY** approves the Site Plan conditioned on the **PERMITTEE** developing the Subject Property in accordance with the applicable provisions of City Code.
2. **Conformance with Plan.** The Site Plan shall be developed pursuant to the plans prepared by Landform Professional Services, dated September 5, 2012, revised September 27, 2012, and by Pulse, dated September 3, 2012.
3. **Incorporation of All City Code Requirements.** That the recitals above and the applicable provisions of the City Charter, Subdivision Code, Zoning Code and Public Improvement Code of the **CITY**, as amended to date hereof, are incorporated herein by reference.
4. **State Building Code Compliance.** The Structures shall be constructed in accordance with the requirements of the Building Code.
5. **Fire Lanes.** Fire lanes shall be maintained on the Site. The exact locations of these items on the Site shall be as directed by the Fire Chief. The **PERMITTEE** herein agrees to post "No Parking" signs along private streets in accordance with City Code requirements and in conjunction with the instructions of the Fire Chief.

6. **Building Façade.** The **PERMITTEE** agrees to construct the building in accordance with the site plan and architectural elevations prepared by Landform Professional Services dated September 5, 2012, revised September 27, 2012, and approved by the City Council on October 16, 2012.
7. **Required Improvements.** The **PERMITTEE** shall construct and install the following site improvements on the Subject Property in accordance with the specifications and location as shown on the Site Plan. The Required Improvements are as follows:
 - a. Site grading in accordance with the Grading Plan prepared by Landform Professional Services dated September 5, 2012, revised September 27, 2012.
 - b. Private storm sewer and appurtenances.
 - c. Private sanitary sewer system
 - d. Private watermains and appurtenances
 - e. Private trunk and lateral storm drainage facilities
 - f. Bituminous driveways, parking lots, and maneuvering areas, including access to Sunwood Drive.
 - g. Continuous, B6/12 concrete curbing and gutter around the perimeter of all bituminous surfaces.
 - h. Installation of Landscaping in accordance with the Landscape Plan prepared by Landform Professional Services, dated September 5, 2012, revised September 27, 2012.
 - i. Irrigation metering and backflow devices shall be approved as part of the Utility Plan, and installed accordingly.
 - j. Irrigation rain sensors shall be installed and appropriately placed throughout the development.
 - k. Establishment of turf in areas disturbed during construction and in accordance with the Site Plan.
 - l. Temporary and permanent erosion control.

("Required Improvements").

The **PERMITTEE** agrees to construct the Required Improvements according to the terms and conditions of this agreement and in accordance with **PERMITTEE's** plans submitted to the **CITY**.

8. **Required Improvements Completion Date.** The Required Improvements shall be completed on or before October 16, 2013.
9. **Required Improvements Financial Guarantee.** In order to ensure the installation of the Required Improvements in accordance with **CITY** specifications and in a timely manner, the **PERMITTEE** shall be required to deposit with the **CITY** a cash escrow or letter of credit, approved as to form by the **CITY**, in the amount of _____ Dollars and No Cents. (\$_____.00), which is 150% of the **CITY's** estimated cost of the Required Improvements. Prior to the issuance of the building permit, all financial guarantees must be provided as required herein.

Upon completion of the construction of the Required Improvements, the financial guarantee shall be returned to the **PERMITTEE** and the **PERMITTEE** shall be required to provide the landscaping maintenance guarantee described in Item #14 of this Development Agreement. The determination of completion of the construction of the Required Improvements shall be made by the City Council after consultation with the City Engineer. In the event the **PERMITTEE** fails to construct and install the Required Improvements as required herein, the City Council may order the completion of the Required Improvements with **CITY** day labor and/or by letting contracts for said completion and

draw upon the escrow for payment. Only the City Council shall have the authority to direct completion of the Required Improvements and withdraw from the escrow account. The **PERMITTEE** hereby grants permission and a license to the **CITY** and/or its contractors and assigns to enter upon the Subject Property for the purpose of completing the construction and installation of the Required Improvements in the event of the **PERMITTEE**'s default.

10. **Inspection Fees.** The **PERMITTEE** shall be responsible for all inspection costs incurred by the **CITY** related to the installation of Required Improvements. The **PERMITTEE** shall make a cash deposit into the appropriate escrow account at the **CITY** and the **CITY** shall have the authority to draw upon these funds for the purpose of compensating for inspection services. The amount of the deposit shall be equal to five percent (5%) of the estimated cost of the Required Improvements, which equates to _____ Dollars and No Cents (\$_____.00) (5% x \$_____.00). Upon completion of the Improvements to the satisfaction of the City, any surplus balance remaining in the **CITY**'s escrow account shall be refunded to the **PERMITTEE**.

**SECTION II
PERMITS AND OCCUPANCY**

11. **Requirements for Building Permits.** 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 structure; (b) site plan approval is granted by the **CITY** and any expense incurred in giving site plan approval has been reimbursed to the **CITY**; (c) the Building Official has been provided with a copy of the approved site plan, signed by a registered architect or surveyor, showing all dimensions to scale; (d) the Plat has been recorded at Anoka County Property Records, (e) a Lower Rum River Watershed Management Organization Permit has been obtained. The **CITY** reserves the right to suspend all building activities upon the **CITY** being notified by an outside agency that the appropriate permit(s) was not obtained from the applicable agency. Approval of the building foundation requires a certificate of elevation signed by a licensed (State of Minnesota), professional land surveyor, verifying that the elevation with the approved grading plan for the Plat. Foundation approvals will require a certificate of elevation verifying that the actual elevation is in compliance with the approved grading and drainage plan. The lowest floor elevation shall be at least 2 feet above the 100 year elevation.

No occupancy permit for any lot in the Plat shall be issued until: (a) vehicular access to the lot is provided including the installation of at least one layer of bituminous surfacing; (b) all utilities are in place, operational and accepted by the **CITY**; (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, must be provided to the **CITY** documenting that the flattest grade on this lot is 1% or greater will require certificates of grading.

**SECTION IV
LANDSCAPING**

12. **Maintenance Guarantee for Landscaping.** It is herein agreed that the **PERMITTEE** shall provide a maintenance guarantee to ensure the survival of the plantings. Said maintenance guarantee shall consist of cash or a letter of credit, approved as to form by the **CITY**, in the amount of Two Thousand Nine Hundred and Three Dollars and No Cents (**\$2,903.00**) [# plantings (16 trees, 65 shrubs) x cost/planting (\$300/tree, \$75/shrub) x 30% average non-survival rate], which shall be in effect for a two-year period commencing on the date of the **CITY**'s acceptance of said plantings as part of the Required Improvements.

At the end of the two-year period, the maintenance guarantee shall be returned to the **PERMITTEE**. The determination that all plantings that have been planted in accordance with the Site Plan have either survived or have been replaced shall be made by the Community Development Department. In the event the **PERMITTEE** fails to maintain the required plantings for a two-year period, the City Council may order the replacement of plantings with **CITY** day labor and/or by letting contracts and draw upon the escrow for payment. Only the City Council shall have the authority to direct replacement of the plantings and withdraw from the escrow account. The **PERMITTEE** hereby grants permission and a license to the **CITY** and/or its contractors and assigns to enter upon the Subject Property for the purpose of replacing plantings in the event of the **PERMITTEE** default.

**SECTION V
GENERAL**

13. **Boulevard and Area Restoration.** The **PERMITTEE** shall be responsible for restoring all areas disturbed by the development grading operation in accordance with the approved erosion and sediment control plan. The **PERMITTEE** shall also be responsible for the cost of cleaning any soil, earth or debris from the wetlands within and adjacent to this Site Plan resulting from grading performed in the development of the land.
14. **Construction Site Maintenance.** The **PERMITTEE** shall adhere to all **CITY** ordinances relating to, but not limited to, dumping of garbage, site development, construction debris, open burning, etc.
15. **Estimated Cost.** It is understood and agreed that cost amounts set forth in this Agreement as Required Improvements, unless specified as fixed amounts, are estimated. The **PERMITTEE** agrees to pay the entire cost of said improvements including interest, engineering and legal charges.
16. **Site Plan Approval Expenses.** The **PERMITTEE** agrees that it will pay to the **CITY** all **CITY** expenses incurred in the approval of the Site Plan, including, but not limited to administration expenses, engineering and legal fees. Said expenses shall be paid within fifteen (15) days of billing by the **CITY** and outstanding billings shall be paid prior to issuance of the building permit. Any expenses incurred after the release of the building permit shall also be paid within said fifteen (15) day billing period. Failure to pay the **CITY's** expenses within the fifteen (15) day billing period will permit the **CITY** to draw upon any of the escrows required by this contract for payment.
17. **Reimbursement to the City.** The **PERMITTEE** agrees to reimburse the **CITY** for all costs incurred by the **CITY** in defense or enforcement of this Agreement, or any portion thereof, including court costs and reasonable engineering and attorney's fees.
18. **Invalidity of Any Section.** If any portion, section, subsection, sentence, clause, paragraph or phase of this Agreement is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not effect or void any of the other provisions of this Agreement.
19. **Proof of Authority.** When the **PERMITTEE** is a corporation, the **CITY** requires proof of authority by the corporation to execute this Agreement. This proof of authority may be satisfied by providing the **CITY** with a certified copy of minutes of the corporate Board of Directors granting such authority.
20. **Violation of This Permit.** If the **PERMITTEE** fails to perform any of the terms of this Permit in the manner required by the **CITY**, the **CITY** shall be entitled to recover, from the **PERMITTEE** or the issuer of **PERMITTEE** financial guarantee, the full amount of any and all financial guarantees. Breach of any of the terms of this Development Permit by the **PERMITTEE** shall also be grounds for denial of Building Permit or issuance of Certificate of Occupancy.
21. **Agreement Binding On Successors and Assigns.** The **PERMITTEE** agrees that this Development Permit shall be binding upon its successors and assigns.

IN WITNESS THEREOF, the parties have hereunto set their hands and seals, this _____ day of _____, 2012.

WEST REAL ESTATE AND MANAGEMENT INC. CITY OF RAMSEY

By: _____ By: _____
Its: Mayor

Its: _____ **ATTEST**
By: _____
Its: City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF ANOKA)

On this _____ day of _____, 2012, before me a Notary Public personally appeared Bob Ramsey and Jo Thieling, to me personally known, being each by me duly sworn did say that they are respectively the Mayor and City Clerk of the City of Ramsey, the municipal corporation named in the foregoing instrument, and seal affixed to said instrument is the corporate seal of said municipal corporation, and the said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council and said Bob Ramsey and Jo Thieling acknowledge said instrument to be the free act and deed of said municipal corporation.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF)

The foregoing was acknowledged before me this _____ day of _____, 2012, by _____, the _____ of the West Real Estate and Management Inc., a domestic business corporation under the laws of the State of Minnesota, on behalf of the corporation.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
City of Ramsey
7550 Sunwood Dr NW
Ramsey, MN 55303

REVIEWED BY:
Randall & Goodrich
2140 Fourth Avenue
Anoka, MN 55303