

CITY OF RAMSEY
DEVELOPMENT AGREEMENT FOR BROOKFIELD 5TH ADDITION

This Agreement (hereinafter the "Agreement") is dated as of this _____ day of _____, 2015 and is by and between the **CITY OF RAMSEY**, a Minnesota municipal corporation (the "**CITY**") and **21ST CENTURY BANK**, a Minnesota Bank/Insurance Corporation, whose address is 9380 Central Avenue NE, Blaine, MN 55434 ("**PERMITTEE**").

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:

Outlot F, BROOKFIELD FIRST ADDITION, Anoka County, Minnesota

-or upon recording-

Lot 1, Block 1 BROOKFIELD FIFTH ADDITION, Anoka County, Minnesota

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

WHEREAS, on January 27, 2015, pursuant to Resolution #15-01-026, the **CITY** approved the final plat of the Subject Property, which plat is known as **BROOKFIELD FIFTH ADDITION** (the "Plat"), which approval is contingent on certain requirements, including the **PERMITTEE** and the **CITY** entering into this Agreement.

THEREFORE, THE **CITY** AND THE **PERMITTEE** AGREE AS FOLLOWS:

1. Conditions of Approval. The **CITY** has approved the Plat subject to satisfaction of the following conditions subsequent:
 - a. The **PERMITTEE'S** Execution of this Agreement. That the **PERMITTEE** enter into this Agreement.
 - b. Marketable Title. That prior to recording the Plat, the **PERMITTEE** shall provide the **CITY** with proof of marketable title to the Subject Property either through a currently certified abstract, registered property abstract or title insurance commitment or policy.
 - c. Proof of Authority. That the **PERMITTEE** provide proof that the respective governing boards of the **PERMITTEE** have authorized the **PERMITTEE'S** execution of this Agreement. This proof of authority may be satisfied by providing the **CITY** with a certified copy of the minutes of the governing board of each entity which grants such authority.
2. The Plans. The term "Plans" as used in this Agreement means the Preliminary Plat prepared by E.G. Rud & Sons, Inc. dated January 14, 2015 revised _____ and the Final Plat prepared by E.G. Rud & Sons, Inc. dated January 19, 2015 revised _____

_____. The Plans remain subject to: (a) **CITY** Staff's review and approval of revisions in conformance with comments in the January 23, 2015 Staff Review Letter; and (b) such further revisions as the **PERMITTEE** may propose and the **CITY** approves. The Plans shall not be attached to this Agreement, but are in the **CITY'S** files.

3. Utilities. The **PERMITTEE** shall be responsible for installation and/or extension of utilities to service a home on the Subject Property.
4. Financial Guarantee for Condition of Cul-de-Sac Wing. The **PERMITTEE** shall provide a financial guarantee, in the form of an irrevocable Letter of Credit or a Cash Escrow, to the **CITY** guaranteeing the post-construction condition of the cul-de-sac is the same or will be restored to the same as the pre-construction condition. The **PERMITTEE** shall be responsible for a financial guarantee in the amount of Ten Thousand Dollars and No Cents (**\$10,000.00**).

The **PERMITTEE** and the **CITY** shall have an on-site meeting to review the existing condition of the cul-de-sac prior to commencement of any construction activity. Upon completion of home construction and required landscaping, the **PERMITTEE** and **CITY** shall again meet on site to review the post-construction condition of the cul-de-sac. Upon acceptance of the cul-de-sac condition by the **CITY**, after completion of home construction and required landscaping, the City will release the Financial Guarantee.

5. Stage II CITY Improvements. The future improvements the **PERMITTEE** must construct or install are as follows:
 - a. Potential Future Through Street sign
 - b. Installation of survey monumentation.

(the "Stage II Improvements"). The **PERMITTEE** must complete the construction of the Stage II Improvements within one (1) year after the date upon which the Plat is recorded.

6. Payment of Development Fee's. The **PERMITTEE** must pay to the **CITY** the fees described on Exhibit A which may include, but are not limited to, Park Land Dedication Fees, Trail Development Fees, and Storm Management Fees.
7. Requirements for Building and Occupancy Permits.
 - a. No building permit for any lot in the Plat shall be issued until the **PERMITTEE** has: (a) installed a Class 5 driving surface to within 300 feet of the structure; (b) provided the **CITY** Building Official with a Certificate of Survey; and c.) provided the financial guarantee described in Section 4 to the **CITY**.

- b. No occupancy permit for any lot in the Plat shall be issued until the **PERMITTEE** has: (a) constructed vehicular access to the lot, including the installation of at least one layer of bituminous surfacing; (b) constructed all utilities and storm water facilities this Contract requires to serve the lot and such utilities and storm water facilities are in place, and operational and the **CITY** has accepted those utilities and storm water facilities; (c) for lots that have a slope of less than 2%, provided the **CITY** with a certificate of grading, prepared by a licensed (State of Minnesota) professional land surveyor, certifying that the flattest grade on the lot is 1% or greater; and (d) installed and planted the sod and landscaping that are required as a part of the Stage I Improvements.
8. **PERMITTEE Defaults.** If the **PERMITTEE** defaults in the performance of one or more of the **PERMITTEE'S** obligations under this Contract, i) the **CITY** gives the **PERMITTEE** thirty (30) days written notice of the default and ii) the **PERMITTEE** fails to cure the default within said thirty (30), then the **CITY** may pursue any and all remedies available at law or in equity including, but not limited to, the following:
 - a. The **CITY** may, at its option, perform or engage one or more third parties to perform the **PERMITTEE'S** obligations. If, in the reasonable judgment of the **CITY'S** staff, the **PERMITTEE'S** default creates an immediate risk to public health or safety, the **CITY** may perform or engage one or more third parties to perform the work before the **CITY** provides the notice described in the initial paragraph of this Section, but the **CITY** must use commercially reasonable efforts to notify the **PERMITTEE** as promptly as possible that the **CITY** is undertaking to perform the **PERMITTEE'S** obligation or obligations. If the **CITY** performs one or more obligations of the **PERMITTEE**, the **PERMITTEE** must reimburse the **CITY** for any costs or expenses the **CITY** incurs, including costs and expenses for **CITY** staff time, to perform the work within 30 days after the **CITY** notifies the **PERMITTEE**, in writing, of the costs and expenses the **CITY** incurred to perform the work. If the **PERMITTEE** does not reimburse the **CITY** within said 30 day period, the **CITY** may pursue any remedies available to the **CITY** either at law or in equity or, in the alternative, the **CITY** may draw on the financial guaranty the **PERMITTEE** has provided to the **CITY** pursuant to this Agreement to reimburse itself for the expenses the **CITY** incurs to perform the work. This Agreement 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 **PERMITTEE** Property. As an alternative to seeking recovery from the **PERMITTEE** or the financial guaranty, the **CITY** may levy special assessments against the **PERMITTEE** Property in accordance with Minnesota Statutes Section 429, and the **PERMITTEE**, for itself and its successors in title, hereby expressly waives any and all substantive and procedural objections or defenses the **PERMITTEE** may have to such special assessments;

- b. The **CITY** may commence an action in Anoka County District Court to pursue any remedy available to the **CITY** at law or in equity including, but not limited to, injunctive relief;
- c. The **CITY** may refuse to grant building permits for improvements to be constructed on any lots within the Plat until the **PERMITTEE** has cured all of its defaults; and
- d. The **CITY** may draw upon all or any portion of the financial guaranty the **PERMITTEE** has provided to the **CITY** pursuant to Section 6 and (i) use all or any portion of the proceeds from the financial guaranty to reimburse the **CITY** pursuant to subsection (a) above; (ii) use all or any portion of the proceeds from the financial guaranty to satisfy any judgment the **CITY** obtains against the **PERMITTEE** pursuant to subsection (b) above; (iii) use all or any portion of the proceeds to reimburse the **CITY** pursuant to Section 19 (j) below; and (iv) hold all or any portion of the proceeds for a reasonable time for the future application as described in subsections (i), (ii) and (iii) of this Section 18(d).

9. Miscellaneous.

- a. Invalidity of Any Section. If any portion, section, subsection, sentence, clause, paragraphs or phrase of this Agreement is for any reason invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- b. Written Amendments Only. The action or inaction of the **CITY** or the **PERMITTEE** 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 a resolution of the **CITY** Council. The **CITY'S** or the **PERMITTEE'S** failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- c. Compliance with Laws and Regulations. The **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 the **PERMITTEE** does comply. Upon the **CITY'S** demand **PERMITTEE** shall cease work until there is compliance.

- d. Mailbox Locations. If the **PERMITTEE** desires to construct mailboxes within the public right of way, the **PERMITTEE** agrees that the placement of mailboxes along public streets is subject to the approval by the **CITY**. Utility locates will be necessary.
- e. Boulevard and Wetland Restoration. The **PERMITTEE** shall be responsible for the cost of establishing seed in all boulevards within thirty (30) days of the completion of the street improvements, and restoring all other areas disturbed by the development grading operation in accordance with the approved Grading and Erosion Control plan. The **PERMITTEE** shall be responsible for the cost of cleaning any soil, earth, or debris from the wetlands within and adjacent to this Plat resulting from grading performed in the development of the Plat.
- f. Construction Hours. The **CITY** restricts construction and delivery hours to Monday through Saturday 7:00 a.m. to 10:00 p.m.
- g. Construction Site Maintenance. The **PERMITTEE** shall adhere to all of the **CITY** ordinances relating to, but not limited to, dumping of garbage, site development, construction debris, open burning, etc. The **CITY** reserves the right to withhold permits, inspections, or certificates of occupancy to correct violations relating to construction site maintenance.
- h. Plat Approval Expenses. The **PERMITTEE** agrees that it will pay to **CITY** all **CITY** expenses incurred in the approval of the Plat, including, but not limited to, administration expenses, engineering and legal fees. Said expenses incurred after recording of the Final Plat 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 Agreement for payment.
- i. Reimbursement to the CITY. The **PERMITTEE** agree 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.
- j. Certificate of Occupancy. The term "Certificate of Occupancy" as used in this Agreement shall be defined as a document issued by the **CITY'S** Building Official, which authorizes the structure to be used for its intended purposes.

k. Estoppel Certificates and Certificate of Completion. Within ten (10) days after a written request from the **PERMITTEE**, the **CITY** will provide the **PERMITTEE** and any third party who is purchasing all or any portion of the Subject Property or to whom the **PERMITTEE** is granting a mortgage on all or any portion of the Subject Property with a written estoppel certificate stating: (i) that this Agreement remains in full force and **effect** – **or** - that this Agreement has been terminated; (ii) that this Agreement has not been modified or amended - **or, if this Agreement has been modified or amended** -, identifying such modifications or amendments; (iii) the type and amount of any security the **CITY** is holding to secure the performance of the **PERMITTEE'S** obligations under this Agreement; (iv) that, to the best of the **CITY'S** actual knowledge, the **PERMITTEE** is not in default in the performance of the **PERMITTEE'S** obligations under this Agreement - **or, if the CITY has knowledge of PERMITTEE defaults**, describing those defaults; and (v) that, to the best of the **CITY'S** actual knowledge, the **CITY** is not in default in the performance of the **CITY'S** obligations under this Agreement - **or, if the CITY has knowledge of CITY defaults**, describing those defaults. At any time that the **PERMITTEE** believes it has fully performed its obligations under this Agreement, the **PERMITTEE** may so notify the **CITY** and the **CITY** shall promptly inspect the Subject Property to determine if the **PERMITTEE** has fully performed its obligations under this Agreement. Within ten (10) days after the **CITY'S** inspection the **CITY** must provide the **PERMITTEE** with either a detailed written description of the **PERMITTEE's** obligations which the **CITY** determines the **PERMITTEE** has not fully performed or a recordable instrument executed by the **CITY'S** mayor and **CITY** administrator evidencing the termination and satisfaction of this Agreement.

l. Notices. Required notices shall be in writing, and shall be either hand delivered to the Parties, its employees or agents, or mailed to them by certified or registered mail at the following address:

TO PERMITTEE:

21st Century Bank
Attn: Thomas Dolphin, Chief Executive Officer
9380 Central Avenue NE
Blaine, MN 55434

TO THE CITY:

City of Ramsey
Attn: Community Development Director
7550 Sunwood Drive NW
Ramsey, MN 55303

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EXHIBIT A

Fees Payable to the City

1. Park Dedication. The **PERMITTEE** is responsible for satisfying applicable Park Dedication requirements. The 2015 Park Dedication Fee applicable to the Plat is \$2,600 per residential unit. **PERMITTEE** must pay a Park Dedication Fee of Two Thousand Six Hundred Dollars and No Cents ($\$2,600 \times 1 \text{ unit} = \mathbf{\$2,600.00}$). The **PERMITTEE** acknowledges that these fees are estimates. The rate in effect when the Plat is recorded will be collected.
2. Trail Development Fees. The **PERMITTEE** is responsible for satisfying applicable Trail Development Fee requirements. The 2015 Trail Development Fee applicable to the Plat is \$700 per residential unit. **PERMITTEE** must pay a Trail Development Fee of Seven Hundred Dollars and No Cents ($\$700 \times 1 \text{ unit} = \mathbf{\$700.00}$). The **PERMITTEE** acknowledges that these fees are estimates. The rate in effect when the Plat is recorded will be collected.
3. Stormwater Management Fee. The **PERMITTEE** is responsible for satisfying applicable Stormwater Trunk Fee requirements. The 2015 Stormwater Management Fee \$459 per residential unit. **PERMITTEE** must pay a Stormwater Management Fee of Four Hundred Fifty Nine Dollars and No Cents ($\$459 \times 1 \text{ unit} = \mathbf{\$459.00}$). The **PERMITTEE** acknowledges that these fees are estimates. The rate in effect when the Plat is recorded will be collected.