

**CITY OF RAMSEY  
TREE CLEARING AND GRADING AGREEMENT**

This Agreement is dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017 and is by and between the **CITY OF RAMSEY**, a Minnesota municipal corporation (the “**CITY**”) and **PSD, LLC**, a Minnesota limited liability company (the “**PERMITTEE**”).

**WHEREAS**, the **PERMITTEE** is the owner of land legally described on the attached Exhibit A (the “Subject Property”); and

**WHEREAS**, the **PERMITTEE** has submitted an Application to the **CITY** to subdivide the Subject Property and plat the same as BUNKER LAKE INDUSTRIAL PARK (the “Plat”); and

**WHEREAS**, the **PERMITTEE** desires to complete certain site preparation activities in advance of Final Plat and site plan approval; and

**WHEREAS**, the **CITY** is willing to allow said site preparation; and

**WHEREAS**, the parties desire to enter into this Agreement as required by the City Code Chapter 117.

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 Grading and Tree Preservation Plans prepared by Bolton & Menk, Inc., dated \_\_\_\_\_, The Plans remain subject to: (a) **CITY** Staff’s review and approval of the Plans, among other things, confirm that the revisions requested in the **CITY** Staff Review Letter, dated \_\_\_\_\_, 2017 have been made; 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. Stage I Improvements. The Stage I Improvements the **PERMITTEE** will construct or install in accordance with the Plans are as follows:
    - a. Grading
    - b. Root trenching (oak wilt management)
    - c. Tree clearing/grubbing

(the “Stage I Improvements”).

The **PERMITTEE** agrees to construct the Stage I Improvements according to the terms and conditions of this Agreement and in accordance with the Plans and the City Code. Per City Code Section 117-615, the **PERMITTEE** shall provide the **CITY** with a set of re-producible as-built plans in Computer Aided Drafting (CAD) format upon completion of the Stage I Improvements and acceptance by the **CITY**. As as-built plans are a required Stage I Improvement item per City Code Section 117-615, the **CITY** will not release the required Stage I Improvement Financial Guarantee noted in Section 6 below until said as-built plans are provided to the **CITY**. Additionally, the **PERMITTEE** agrees to provide to the **CITY** the plans in CAD format prior to the commencement of construction of the Stage I Improvements.

4. Additional Requirements Related to Certain Stage I Improvements. The **PERMITTEE** is required to hold a pre-construction meeting at **CITY** offices. The **PERMITTEE** shall be responsible for contacting the **CITY** to schedule the pre-construction meeting. The **CITY** will prepare the agenda for the pre-construction meeting. Work within existing rights of way and roadways must be completed under traffic, be brought back up to grade, and must be restored to existing conditions within 24 hours.

5. Stage I Improvement Financial Guarantee. Prior to commencing work on the Stage I Improvements, the **PERMITTEE** shall provide a financial guarantee, in the form of cash or an irrevocable letter of credit, 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 **(\$147,741.00)**, which amount is 125% of 20% of the grading work and 125% of the trenching and tree clearing work in the Engineer's Estimate for the Stage I Improvements. 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. The accepted engineer's estimate is attached as Exhibit C hereto.
6. Inspection Fees for the Stage I Improvements. The **PERMITTEE** shall provide an inspection fee to the **CITY** to inspect the Stage I Improvements. The **PERMITTEE** shall be responsible for an inspection fee in the amount of Five Thousand Six Hundred Sixty Four Dollars and No Cents **(\$29,548.00)**, which amount is 5% of the Engineer's Estimate for the Stage I Improvements. The inspection fee must be in the form of a cash escrow. The **PERMITTEE** may request a refund of the remaining balance in the escrow upon completion of the Stage I Improvements, acceptance by the **CITY**, and supported by appropriate lien waivers. The accepted engineer's estimate is attached as Exhibit C hereto.
7. Installation of the Stage I Improvements. The **PERMITTEE** shall obtain all necessary permits from all governmental agencies before commencing construction of the Stage I Improvements. The **PERMITTEE** must provide the **CITY** with copies of all necessary permits from other governmental agencies prior to or when the **PERMITTEE** applies for a building permit to construct improvements on a lot within the Plat. Within thirty (30) days after the completion of the Stage I Improvements, the **PERMITTEE** shall provide the **CITY** with a complete set of reproducible "As Built" plans in CAD format for the Stage I Improvements.
8. Time of Performance for the Stage I Improvements. The **PERMITTEE** must complete the Stage I Improvements no later than July 11, 2018.
9. Stage I Improvements License. The **PERMITTEE** hereby grants the **CITY** and the **CITY'S** agents, employees, officers, and contractors an irrevocable license to enter the Subject Property to perform all necessary work and/or inspections the **CITY** deems appropriate during the **PERMITTEE'S** installation of the Stage I Improvements.
10. Stage I Improvements to Outlots. The **PERMITTEE** acknowledges that Stage I Improvements are not being required for proposed Outlots, but will be required upon development of said Outlots.
11. Street Cleaning and Clean Up. The **PERMITTEE** shall clear any soil, earth, or debris from the existing streets. From time to time, the **CITY** may remove

accumulations of soil, earth, and debris from the streets resulting from the construction of the Stage I Improvements. It shall be the **PERMITTEE'S** responsibility to pay the costs associated with this necessary street cleaning. Invoices from the **CITY** to the **PERMITTEE** for such costs shall be paid within fifteen (15) days of the date of the invoice.

12. Payment of Development Fees. Development Fees will be outlined and addressed in the Development Agreement for Bunker Lake Industrial Park.
13. 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) days, 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** 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'S** 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).

14. 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. Boulevard and Wetland Restoration. The **PERMITTEE** shall be responsible for 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.
  
- e. 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. The **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.
  
- f. 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.
  
- g. Estimated Cost. It is understood and agreed that cost amounts set forth in this Agreement as to Stage I and Stage II Improvements, unless qualified as fixed amounts, are estimated. The **PERMITTEE** agree to pay the entire cost of said improvements including interest, engineering and legal fees related thereto.
  
- 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 be paid within a 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** 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.
  
- 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. 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:**

PSD, LLC  
Attn: Matt Kuker  
7533 Sunwood Dr NW  
Ramsey, MN 55303

**TO THE CITY:**

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

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## **EXHIBIT A**

### **Legal Description of the Subject Property**

That part of Outlot B, Alpha Development lying within North West  $\frac{1}{4}$  of the of the North East  $\frac{1}{4}$  of Section 29, Township 32, Range 25

-AND-

That part of Outlot B, Alpha Development lying within North East  $\frac{1}{4}$  of the of the North West  $\frac{1}{4}$  of Section 29, Township 32, Range 25

# Exhibit B Engineer's Estimate

**PRELIMINARY COST OPINION**

BUNKER LAKE INDUSTRIAL PARK  
PSD, LLC  
BMI PROJECT NO. R16.113129

PHASE 1 - SITE GRADING

7/6/2017

ITEM NO.	ITEM	UNIT			
			QTY	UNIT PRICE	TOTAL
1	MOBILIZATION	LS	1	\$5,000.00	\$5,000.00
2	CLEARING & GRUBBING	LS	1	\$45,000.00	\$45,000.00
3	COMMON EXCAVATION (EV)	CY	110,000	\$3.00	\$330,000.00
4	TRAFFIC CONTROL	LS	1	\$1,500.00	\$1,500.00
5	STABILIZED CONSTRUCTION EXIT	LS	1	\$1,500.00	\$1,500.00
6	SILT FENCE, TYPE MS	LF	2,810	\$2.60	\$7,306.00
7	SEDIMENT CONTROL LOG TYPE STRAW	LF	180	\$3.15	\$567.00
8	SITE (TURF) RESTORATION - SEED, FERTILIZE & MULCH	SY	175,000	\$0.75	\$131,250.00
9	EROSION CONTROL BLANKETS CATEGORY 3	SY	7,200	\$2.10	\$15,120.00
<b>ESTIMATED CONSTRUCTION COST</b>					<b>\$537,243.00</b>
<b>CONSTRUCTION CONTINGENCY (10%)</b>					<b>\$53,724.30</b>
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>					<b>\$590,967.30</b>