

TO: MAYOR AND CITY COUNCIL

FROM: Neil Jensen, City Administrator

SUBJECT: Timber Ridge Developer's Agreement

MEETING DATE: September 19, 2023

BACKGROUND

Leon Endres has been working on a development called Timber Ridge. The Planning Commission and City Council approved the Timber Ridge Preliminary Plat at previous meetings and had a portion of the property rezoned to R-3 with all the property as a PUD. They have submitted a final plat application and are requesting approval of the Timber Ridge 1st Addition final plat and the PUD Agreement along with the Developer's Agreement. The First Addition consists of a portion of the Old Sandstone Ridge Development and a portion of the Endres Canon Falls LLC property.

The Developer's Agreement has been reviewed and approved by Bill Angerman, City Engineer and Shelley Ryan, City Attorney for accuracy.

Upon approval of the Final Plat and PUD Agreement please review and approve the Timber Ridge 1st Addition Developer's Agreement.

STAFF RECOMMENDATION

Please make a motion to approve the Developer's Agreement for Timber Ridge 1st Addition.

REQUESTED COUNCIL ACTION

Please make a motion to approve the Developer's Agreement for Timber Ridge 1st Addition.

TIMBER RIDGE 1st ADDITION
DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made this ____ day of _____, 2023 between the City of Cannon Falls, Minnesota, a Municipal Corporation (“the City”) and Endres Canon Falls, a Minnesota Limited Liability Company (“Developer”). City and Developer may be referred to individually as “Party” or collectively as “Parties” throughout this Agreement.

RECITALS

1. Developer is the owner of the property to be known as Timber Ridge 1st Addition, legally described as follows (collectively, the “Property”):

Block 1, Lots 1-7
Block 2, Lots 1-8

2. Developer has requested permission to construct, at its own expense, certain public improvements within the proposed public right-of-way of the Property according to the plans and specifications prepared by James R. Hill, Inc., titled “Timber Ridge 1st and 2nd Additions; Final Grading, Drainage, Erosion & Sediment Control, Sanitary Sewer, Watermain, Storm Sewer and Street Construction Plans” dated August 31, 2023, with revision date September 6, 2023.
3. The City has the authority to execute agreements to make certain public improvements with developers, per the authorization provided in Minn. Stat. §§ 462.359 *et.seq.*
4. The City is willing to grant Developer permission to complete the proposed improvements at Developer’s own expense, provided the proposed improvements are completed in accordance with the terms of this Agreement and under the supervision of the City Engineer or his agents or representative.

The Parties agree as follows:

ARTICLE I:
DUTIES, MAINTENANCE AND RELEASES

- 1.1 Developer’s Obligations.** Developer shall furnish all materials, all necessary tools and equipment and shall do and perform all the work and labor necessary in the construction of the proposed improvements described in this Agreement and any exhibit hereto, and as recommended by the City Engineer and approved by the City Council.

1.2 Completion Date. Developer shall complete all proposed improvements subject to this Agreement on or before December 31, 2024, which shall include all infrastructure associated with construction, with the exception of the bituminous wear course which shall be completed by November 1, 2025. If for some reason Developer is unable to complete proposed improvements by the date set forth above, Developer shall provide notice to the City as soon as is reasonably possible to negotiate an extension of the completion date by no more than thirty (30) days from the original date of completion.

1.3 Maintenance Ownership. Developer shall be responsible for all maintenance work on the Property from the commencement of Developer's construction work until such time the City accepts such improvements (which acceptance shall not be unreasonably withheld, conditioned, or delayed) (the "Maintenance Period"), at which time ownership of the Property shall transfer to the City. Developer shall guarantee the maintenance of all work performed and material furnished on the Property pursuant to this Agreement for a period of one (1) calendar year after the date of acceptance by the City.

Developer is responsible to maintain all public ponds until such time that all phases utilizing such ponds for storm water treatment are completed and accepted by the City. Prior to acceptance by the City, all public ponds shall be cleaned out to meet the original design as needed. Upon acceptance of the public ponds, Developer shall convey the corresponding outlot of the pond to the City as part of the infrastructure release form attached hereto as Exhibit E ("Infrastructure Release Form"). In lieu of cleaning out ponds at completion of construction, Developer may elect to construct the ponds deeper to provide additional sediment storage. If Developer chooses this option, then engineering calculations with elevation data must be submitted for review and approval by the City. At the time of acceptance, the pond will be drained and surveyed and as built drawings will be provided to the City by the Developer's consulting civil engineer to determine if the extra volume has been exceeded. If the extra volume is exceeded by more than six inches, then pond cleaning will be required. Pond cleaning near the outlet pipes into the pond will be required if sediment has accumulated around the pipe outlet causing a sediment delta to form. Cleaning near the outlet pipe will be required if more than one foot of sediment has accumulated. This cleaning will occur even if the extra volume in the remainder of the pond has not been exceeded.

1.4 Erosion Control. Developer shall construct permanent stormwater and quality control facilities within the Property, as required by the MPCA NPDES construction stormwater permit.

Before the Property is disturbed, any utility is disrupted, or construction commences, the Stormwater Pollution Prevention Plan (SWPPP) shall be implemented by the Developer and reviewed by the City Engineer. The City may exercise reasonable discretion after work has begun by imposing additional reasonable erosion control requirements (temporary or permanent) for maintenance purposes. All areas disturbed by demolition, grading, excavating and backfilling operations shall be restored in accordance with the SWPPP and MPCA NPDES permit for the site.

The parties recognize that time is of the essence in controlling erosion. If the Developer does not fully comply with the SWPPP or NPDES permit, the City may take immediate reasonable action deemed appropriate to control erosion. Except in cases of emergency, the City will notify the Developer three (3) days in advance (Sundays excluded) of any proposed City 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 (limited to actual costs incurred by the City) shall be made to the City from the Developer within thirty (30) days of written notice by the City. The City may draw on the security, as set forth in Section 2.8 below, 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 with the SWPPP and NPDES permit.

All areas disturbed by excavation, backfilling and stockpiling operations shall be reseeded after the completion of the work in that area. If Developer does not comply with the Erosion Control Plan schedule or any supplementary instructions, the City may, with reasonable notice, take action as appropriate.

During the Maintenance Period, the Developer will provide or perform the following related items regarding erosion:

- A. Inspect the stormwater ponds during the growing season and after every rainfall event exceeding four and one half (4.5) inches in forty-eight (48) hours to identify functional deficits, such as, but not limited to: sediment loading, erosion, or structural deterioration. Written inspection records will be kept and made available to the City upon request.
- B. In no event shall the design sediment storage volume of the stormwater ponds be reduced by more than fifty (50) percent by sediment loading.
- C. All structural and non-structural maintenance necessary to insure the operational performance of the ponds shall be consistent with the parameters established by the approved design.
- D. The minimum intervals for necessary work to be performed as required maintenance of the stormwater ponds shall be:
 - a. Annual inspection of all structures, piping, graded berms, emergency overflows and vegetative cover.
 - b. Repairs as necessary and in a timely manner.
 - c. Removal of sediment, on an as needed basis and prior to the City taking ownership, to maintain compliance with the intended functionality based on the approved construction plans, and the MPCA Construction Stormwater Permit.
 - d. Vegetation management, including at a minimum keeping the stormwater ponds free of nonconforming (tall) grass and noxious weeds as per City Ordinance, and woody vegetation control to preserve the structural integrity of the stormwater pond.

1.5 Clean Up. Developer shall promptly clean up any and all material amounts of dirt

and debris deposited on public streets or public property as a result of construction activity as required in the SWPPP and NPDES permits.

1.6 Request for Release of Infrastructure. Once Developer gives notice by completing the Infrastructure Release Form in accordance with the approved plans, the City, City Engineer, and/or City authorized 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 approved plans, the City shall immediately notify the Developer of the need to repair or replace. The City may in cases of emergencies, proceed to remedy the noted default by Developer, and in such cases of emergencies, the Developer hereby waives any and all rights to prior notice of default. Any 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 thirty (30) 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.

Within thirty (30) days after the City's acceptance of the public infrastructure via the approval of the Infrastructure Release Form 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.

1.7 Sandstone Road and Sandstone Circle Sewer/Water Main. Prior to the commencement of the Maintenance Period, City agrees to clean the debris from sewer pipes within the vacated Sandstone Circle and the vacated portion of Sandstone Road to the intersection of Bluff Drive. Developer will be responsible for removing any debris entering said pipes during the Maintenance Period. Following the expiration of the Maintenance Period, the City shall be solely responsible for the cleaning and maintenance of said sewer and water pipes and facilities.

ARTICLE II:
COMPLIANCE, DEFAULT, INSURANCE
INDEMNIFICATION AND SECURITY

2.1 Independent Developer. Developer is an independent developer and all persons employed by or contracting with Developer in the performance of any work or services required or provided by this Agreement shall not be considered employees of the City for any purpose, including, but not limited to, worker's compensation coverage, unemployment insurance benefits, social security coverage, retirement membership or credit, or any and all claims made by third parties as a consequence of any act or omission made by Developer's or its employees or contractors while engaged in any work or services under this Agreement.

2.2 Compliance. In connection with the administration and performance of the improvements authorized by this Agreement, Developer shall comply and cause its agents and employees to comply with all federal, state and local laws together with all

ordinances and regulations applicable to this Agreement and to the work to be performed hereunder.

2.3 Developer Default. In the event of default by Developer as to any of the work to be performed by it hereunder, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expenses incurred by the City, provided that Developer, except in an emergency as determined by the City, is first given notice of the work in default, not less than ten (10) working days in advance during which period the Developer may cure the default prior to the City entering the Property to perform the work. This Agreement is a license for the City to enter the land and act, and it shall not be necessary for the City to seek a Court order for permission to enter the land to perform the work addressed herein. When the City does any such work, the City may, in addition to its remedies, assess the cost in whole or in part against the benefited properties in the plat.

2.4 Insurance. Developer shall, at its own expense, maintain the following insurance policies, naming the City of Cannon Falls, and its City Engineering Consultant, WHKS & Co. as an additional insured and filing such policy of insurance, or a certificate of insurance with the City Clerk:

2.4.1 General liability insurance, with bodily injury limits of at least One Million Dollars and No Cents (\$1,000,000.00) and property damage of at least Two Hundred Thousand Dollars and No Cents (\$200,000.00);

2.4.2 Auto insurance on all vehicles required to perform under this Agreement with bodily injury limits of at least One Million Dollars and No Cents (\$1,000,000.00) and property damage limits of at least Two Hundred Thousand Dollars and No Cents (\$200,000.00); and

2.4.3 Worker's compensation coverage.

2.5 Cancellation of Insurance. All policies of insurance shall be endorsed to indicate that in the event of cancellation or termination of any insurance policy described in Section 2.4, the City is to receive thirty (30) days written notice of company's intention to cancel or terminate such policy.

2.6 Subcontractors. In the event that all or a portion of the proposed improvements under this Agreement is to be done by Developer through a subcontractor(s), it shall be the responsibility of the Developer to determine and require that such subcontractor(s) meet all compliance and insurance requirements as set forth as Sections 2.2 and 2.4 of this Agreement.

2.7 Indemnification. Developer shall defend, indemnify, save and hold harmless the City and its consultants, agents and employees from and against any and all claims, demands, liabilities, actions or causes of action, of any nature of character, arising in any manner out of or in connection with this Agreement and the performance of the work or

services or failure to perform the work or services by Developer or its agents.

2.8 Security. Prior to commencement of any proposed improvements under this Agreement, the Developer shall furnish to the City an Irrevocable Letter of Credit (“Letter”) or its equivalent, executed by a financial institution or appropriate corporation authorized to do business in the State of Minnesota, in the sum of Seven Hundred Ninety-Nine Thousand Dollars (\$799,000.00), which shall include administrative, engineering, and supervisory cost, for the use of the City and all persons doing work or furnishing skill, tools, machinery, materials, or insurance for the purpose of this Agreement, as noted in Exhibit B. Letter or escrow funds shall be conditioned as required Minn. Stat. §§ 574.26, and shall guarantee the performance of this Agreement in accordance with the plans and specifications. Escrowed funds may be substituted for a Letter, which shall be in the amount of the Letter.

Developer shall have thirty (30) days after written request from the City to draw funds from the Letter or escrowed funds, as the case may be. In addition, the Letter (or its equivalent) shall be appropriately reduced from time to time as work is completed, as reasonably agreed to and approved by the City Engineer in writing. The Letter shall be released, or any remaining escrowed funds, if any, returned to Developer within ten (10) days of the completion of Developer’s obligations under this Agreement, including the maintenance obligations in Section 1.3 of this Agreement.

ARTICLE III: **APPROVALS, ASSESSMENTS, AND FEES**

3.1 Access. Developer shall provide the City with reasonable access to the Property for inspection purposes. City shall provide a final inspection of the Property no later than Ten (10) days after the completion of the proposed improvements and after receipt of the completed “Infrastructure Release Form” application.

3.2 Construction Observation. WHKS & Co., Professional Engineers, shall observe the construction of all public infrastructure and provide confirmation to the City that the construction is in conformance with the plans and specifications. WHKS shall also arrange for soil and material testing of all public infrastructure through a geotechnical testing company. Deposit shall be to the City as work progresses with a total fee of \$20,000.00. The estimate is based on assumed standard contractor production rates and weather conditions. If contractor takes longer than anticipated for the project then fees will be adjusted accordingly.

3.3 Deferred Assessments. There shall be no lands benefited by the proposed improvements authorized by this Agreement that are subject to deferred assessments.

3.4 Reimbursement. City shall not reimburse Developer for installation of oversized pipes or other such activities. City and Developer have signed a tax abatement agreement of event date herewith to cover the Developer’s cost to complete demolition of the curb from the previous Sandstone development, in the amount of \$50,000 over a period of ten

(10) years, at an interest rate equal to the Wall Street Journal Prime Rate at the time such agreement is executed.

3.5 Parkland Dedications. Developer will dedicate parkland to the City as shown on attached Exhibit D. Developer shall record and transfer ownership to the City. This parkland dedication will cover all future phases of Timber Ridge.

3.6 Storm Sewer Fees. Developer shall create stormwater ponds to serve the property at Developer's expense. Exhibit A will show no fees required.

3.8 Sewer Availability Charges. The sewer availability charges for the Property shall be identified in the Final Plat Fee Schedule, attached to this Agreement as Exhibit A. Exhibit A will show no fees required.

3.9 Water Availability Charges. The water availability charges for the Property shall be identified in the Final Plat Fee Schedule, attached to this Agreement as Exhibit A. Exhibit A will show no fees required.

3.10 Street Signs/Street Lights. The Developer is responsible for the installation of street lights per the plan submitted by Xcel Energy for Timber Ridge 1st Addition.

Developer will be invoiced for signs furnished and installed in the public right-of-way in accordance with the approved current year Fee Schedule. The City will furnish, install and maintain all signage that is placed in the public right-of-way.

3.13 USPS Cluster Boxes. Cluster boxes meeting requirements set forth in the U.S. Postal Service National Delivery Planning Standards A Guide for Builders and Developers must be installed prior to any homes being issued Certificates of Occupancy.

ARTICLE IV: **GENERAL PROVISIONS**

4.1 Entire Agreement. This Agreement, and the Exhibits attached hereto, constitutes the complete, final and exclusive embodiment of the entire agreement between the Parties. This Agreement supersedes any other such promises, warranties, or representations and any other written or oral statement concerning the Parties rights to any compensation, equity, legal right, or benefits relating to the subject matter of this Agreement.

4.2 Counterparts. This Agreement may be executed in one (1) or more duplicated counterparts, each of which shall be deemed an original and part of the complete Agreement.

4.3 Notice. Any notice of other communication required or permitted under this Agreement will be effective only if it is in writing and delivered personally or sent by fax, e-mail, or certified mail, postage prepaid, addressed as follows:

If to the City:

Neil Jensen, City Administrator
918 River Road
Cannon Falls, MN

If to Developer:

*Endres Canon Falls LLC.
Attn: Leon Endres
1505 River Shore Drive
Hastings, MN 55033*

4.4 Governing Law. This Agreement will be construed and enforced in accordance with the substantive laws of the State of Minnesota without regard to any conflict of laws principles that would require the application of laws of a different state.

4.5 Venue. The Parties shall be subject to the exclusive jurisdiction of the Federal and state courts of the State of Minnesota in any suit or proceeding arising out of or relating to this Agreement.

4.6 Assignment. Neither Party may assign this Agreement or assign any rights or delegate any obligation under this Agreement without the other Party's written consent, not to be unreasonably withheld, except that such Party may assign this Agreement, without the other Party's written consent pursuant to a merger, acquisition, or sale of all or substantially all of such Party's assets relating to this Agreement. Any attempt or purported assignment in violation of this section will be null and void.

4.7 Amendment. No amendments or variations to the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

4.8 Severability. If any provision of this Agreement is determined invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement. The court may modify the provision(s) in question in order to be rendered enforceable in a manner consistent with the intent of the Parties.

[Signature Page Follows]

The Parties have read, understand and agree to the terms and conditions set out in this Agreement dated this _____ day of _____, 20_____.

City of Cannon Falls

Developer

By: _____
Matt Montgomery
Mayor, City of Cannon Falls

By: _____
Leon Endres
Manager

By: _____
Neil Jensen
City Administrator

EXHIBIT A: FINAL PLAT FEE SCHEDULE

Fees are based on 15 lots in the Subdivision.

Final Plat Fees: \$500 + \$500 escrow deposit = \$1,000 (complete with application)

Parkland Fees: N/A (No cash fees, Outlot A to be dedicated to City)

Storm Sewer Fee: N/A

Water Availability Charge: Collected with individual building permit

Sewer Availability Charge: Collected with individual building permit

Street Signs: \$1,000(estimated). Final amount based on actual.

Construction Observation Fee (WHKS): \$20,000.00

Total Final Plat Fees: \$22,000.00

EXHIBIT B: RELEVANT DOCUMENT LIST

The following are a list of the corresponding documents and contracts pertaining to this Agreement.

1. Preliminary and Final Plat
2. Approved plans and specifications from James R. Hill (revision date (9-6-2023))
3. Drainage Agreements or Easements for stormwater discharge
4. NPDES Construction Stormwater Permit
5. Goodhue County Approval Letter

EXHIBIT C: SUBDIVISION PUBLIC IMPROVEMENTS SECURITY REQUIREMENTS.

Fees will be honored for one construction season

Public Improvements

Sanitary Sewer	\$44,600.00
Water Main	\$13,300.00
Storm Sewer	\$191,000.00
Streets	\$445,500.00

SUBTOTAL **\$694,400.00**

City Engineering (Construction Observation)	\$32,000.00
Legal, Administrative, Expense & Miscellaneous	

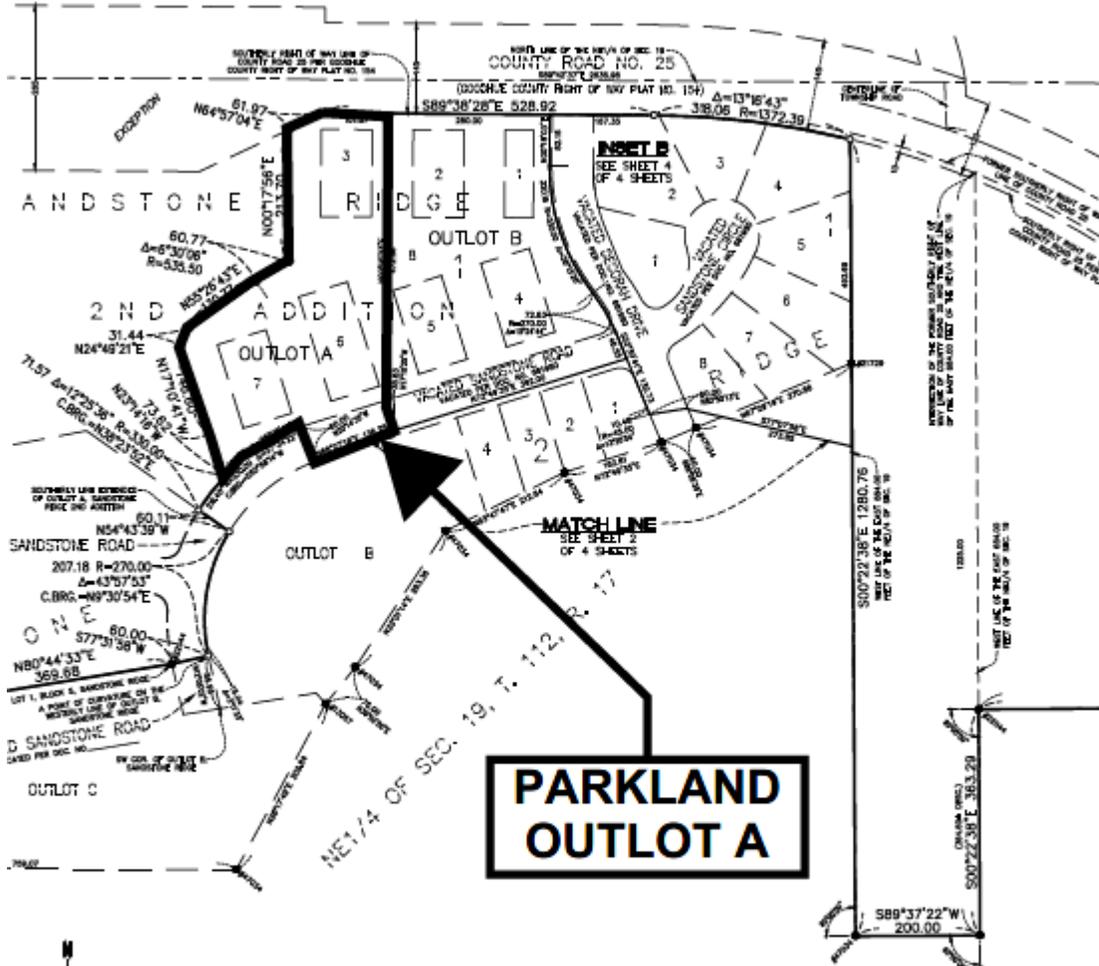
TOTAL **\$726,400.00**

Security Amount (10% of total)	\$72,600.00 (rounded)
--------------------------------	-----------------------

**LETTER OF CREDIT OR
ESCROW FUNDS** **\$799,000.00 (rounded)**

EXHIBIT D: DEPICTION OF PARKLAND

TIMBER RIDGE FIRST ADDITION



BEARINGS ARE BASED ON THE WEST LINE OF THE NE 1/4 OF SEC. 19, T. 112, R. 17 WHICH IS ASSUMED TO HAVE A BEARING OF N 89°04'16\"

NOTE: NO MONUMENT SYMBOL SHOWN AT ANY STATUTE REQUIRED LOCATION INDICATES A PLAT MONUMENT THAT WILL BE SET WITHIN ONE YEAR FROM THE RECORDING DATE OF THIS PLAT. SAID MONUMENTS SHALL BE 1/2 INCH X 3/4 INCH IRON PIPES MARKED BY I.S. NO. 4748E.

- DENOTES FOUND 1/2 INCH OREN IRON MONUMENT UNLESS OTHERWISE NOTED
- DENOTES SET 1/2 INCH BY 3/4 INCH IRON MONUMENT WITH CAP MARKED I.S. NO. 4748E.
- DENOTES FOUND GOODHUE COUNTY CAST IRON MONUMENT

EXHIBIT E: INFRASTRUCTURE RELEASE FORM.

[SEE ATTACHED]

City of Cannon Falls
Request for Release of Infrastructure

Date of Request: _____

Name of Developer: _____

Address: _____

City/State/Zip: _____

Subdivision: _____

We, the undersigned, request that the Cannon Falls City Council accept the infrastructure for the above-named subdivision and warrant that all construction items, including the project punch list, are complete. We acknowledge that 10% of the project's line of credit will be withheld until the end of the one-year warrantee period. The one-year warrantee period will begin after final acceptance by the City Council.

By: _____ Signature: _____

Title: _____

Date: _____

City Staff use Only

Date of Subdivisions Completion: _____

Recommended for City Council Approval: _____

By: _____

Title: **City Engineer**

Date: _____

By: _____

Title: **Public Works Director**

Date: _____

Date of Acceptance by City Council: _____

Date of one year Warrantee Expiration: _____