

**TOWN OF BALDWIN**  
**SHERBURNE COUNTY, MINNESOTA**  
**COMMERCIAL DEVELOPER'S AGREEMENT**

Adopted 12/1/03

Revised 12/6/05

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the Town of Baldwin, a municipal Township organized under the laws of the State of Minnesota (the "Town") and \_\_\_\_\_ (the "Owner").

WHEREAS, the Owner has made application to the Town Board for approval of a Conditional Use Permit (hereinafter called the "Commercial Property") within the corporate limits of the Town to be known as \_\_\_\_\_.

WHEREAS, the Owner hereby warrants and represents to the Town as inducement to the Town entering into this agreement, that the Owner's interest in the Commercial Property is that of \_\_\_\_\_. (Indicate whether fee owner, vendee under Contract for Deed from named vendor or other vested interest.)

WHEREAS, the Town Board, by resolution dated \_\_\_\_\_, 20\_\_\_, has granted preliminary approval of the Commercial Property on the condition that Owner enter into this agreement.

NOW THEREFORE, in consideration of the mutual promises and conditions hereinafter contained, the Town and Owner hereby agree as follows:

**1. Fees.** The Owner agrees to pay the Town the following non-refundable fees.

- a. An administrative fee of \$25 to cover administrative and legal costs.
- b. A cul-de-sac maintenance fee to provide for the additional costs of maintaining cul-de-sacs. This fee will be calculated by multiplying the number of permanent cul-de-sacs to be created for all phases of the development in excess of one cul-de-sac by \$6000 per cul-de-sac. The fee will be charged at the time of development of each individual cul-de-sac. The very first cul-de-sac in the first phase of the entire addition shall be the cul-de-sac not be charged for.
- c. The developer shall pay \$45 per lot for material and installation of Baldwin Township Address Signs as noted in the Engineering Design Standards.

**2. Improvements.** In accordance with the policies and ordinances of the Town, the following described improvements (hereinafter collectively called the "Improvements") shall be constructed and installed upon terms and conditions hereinafter contained:

- a. Grading, erosion control, stabilizing, landscaping, including construction of berms and ditches (hereinafter called "Grading Improvements"); and
- b. Drainage system improvements determined to be necessary by the Town Board, including all necessary ditches, ponds, catch basins, inlets, culverts, and other appurtenances (hereinafter called "Storm Sewer Improvements"); and

**3. Designation of Improvements.** Improvements to be installed by Owner at the expense of Owner are hereinafter referred to as "Plan A Improvements\*".

**a. Construction Plans And Approval Thereof.** The Owner shall engage at Owner's expense a Civil Engineer registered in the State of Minnesota to prepare detailed plans and specifications for the complete installation of all Plan A Improvements in accordance with Town of Baldwin "Engineering Standards. Prior Town board approval will be required if the Owner uses the Township Engineer. These plans and specifications shall include preparation of estimated cost, special contract provisions, proposal forms, the designation and description of all necessary temporary and permanent easements, and all elevations, including permanent road elevations. All such plans and specifications shall be based upon Engineering surveys, including soil borings and material tests determined to be necessary by the Owner's Engineer. Soil borings and material tests shall be submitted to and be approved, in writing, by the Township Engineer prior to the commencement of construction of any Plan A Improvements.

The plans and specifications shall conform to the following standards:

1. "Engineering Standards", Township of Baldwin
2. "Sherburne County Zoning Ordinance" and the Sherburne County Commercial Property ordinance
3. Regulations covering drainage, grading, and erosion control as set forth by Sherburne County and Baldwin Township.

**b. Construction Services By The Owner's Engineer.** The Owner's Engineer shall perform the following services:

1. Provide survey stakes for construction,
2. Certify to remaining construction costs for reductions in securities,
3. Recommend construction methods,
4. Specify and inspect materials,
5. Submit copies of test reports to the Town Engineer,
6. Conduct final job inspections with the Town Engineer,
7. Certify that all construction was done in accordance with approved plans and specifications, and

**c. Service To Be Performed By The Town.** The Town will perform the following services with respect to Plan A Improvements:

1. Assist, review and approve the work of the Owner, Owner's Engineer and the Contractors. The Town has the right to have an experienced inspector to monitor construction. The inspector may be present on the job at any time during construction and must be present when the Owner conducts final job inspections. The fees of the Town Engineer shall be paid by the Town from the Owner's escrow deposit.

2. The Town Board will arrange for a preconstruction conference. Those present shall include a Town Board representative, the Town Engineer, the Owner (not Owner's representative), Owner's Engineer and any other parties the Town Board may deem necessary.

**d. Responsibility for costs.** Upon execution of this agreement the Owner shall pay all fees and securities as listed on Schedule A. All costs incurred by the Township connected with this development, including, but not limited to administrative, legal, planning, engineering, and inspection expenses, shall be reimbursed to the Township by the Owner. If costs incurred by the Township exceed those listed in Schedule A, the Owner shall pay for any additional reimbursable costs listed in Schedule A within thirty days when billed by the Township. The Owner agrees also to reimburse the Township for all its costs that it may incur in the enforcement of this Agreement.

**e. Hold Harmless.** The Owner shall hold the Township, its board members, officers, employees, and consultants, harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from Commercial Property plat approval and development. The Owner shall indemnify the Township, its board members, officers, employees, and consultants, for all costs, damages, or expenses which the Township may pay or incur in consequence of such claims, including reasonable attorney's fees, provided that nothing herein shall require the Owner to indemnify the Township, its board members, officers, employees, and consultants for any violation of law or from the consequences of their own negligence.

**f. Construction of Plan A Improvements.** The construction, installation, materials and equipment shall be in accordance with the plans and specifications approved by the Town Board and as set forth in the Town of Baldwin "Engineering Standards" which are incorporated herein by reference. The Owner's Contractor shall furnish the Town Engineer with a schedule of proposed operations at least three (3) days prior to commencement of any construction work. No construction on any improvement shall begin until the schedule is approved by the Town Engineer. No building permits shall be issued in said development until ditches, swales and drainage systems are in and approved by the Town.

**g. Supervision.** All of the work shall be under and subject to supervision of the Town

Board, Town Engineer and Owner's Engineer where appropriate and any other governmental agency having jurisdiction over the work.

**h. Insurance.** The Owner shall cause each person with whom the Owner contracts for the construction and installation of any Plan A Improvements to furnish the Town with evidence of insurance coverage. Insurance Requirements: Insurers must have an A.M. Best (insurance industry financial rating guide) rating of B+ or better. A Certificate of Insurance must be provided to the Town of Baldwin, prior to project commencement, evidencing the following limits of liability. Equal to or greater than stated herein: Commercial General Liability Limits of; \$1,000,000 per Occurrence, \$2,000,000 General Aggregate, Minnesota Statutory Workers' Compensation coverage and Employers' Liability Limits of; \$100,000/\$500,000/\$100,000, Automobile Liability Limit of; \$1,000,000. Written notification must be given to the Town of Baldwin thirty (30) days prior to cancellation of coverage by the Insurer and/or Insured. All certificates must be submitted with current effective dates. Renewal certificates are due thirty (30) days prior to expiration of coverage.

**i. Faithful Performance of Construction Contract & Security.** The Owner will fully and faithfully comply with all terms of any and all contracts entered into by the Owner for the installation and construction of all Plan A Improvements and hereby guarantees the workmanship and materials for the specified periods following the Town's final acceptance of each of the Plan A Improvements. To secure performance hereunder and prior to the commencement of construction, the Owner shall provide the following securities as indicated in Schedule A to the Town:

1. Furnish a cash deposit to the Town, for "Estimated costs refundable to the Owner" (Line 10, "Exhibit A")
2. Furnish a Performance Bond or a commercial bank issued letter of credit one and half times (1.5x) the cost of the Plan A estimated construction costs. (Line 7, "Exhibit A")
3. Security amounts are subject to review and adjustment by the Town Board in order to maintain 1.5 times the estimated cost of construction and shall consider variables such as weather, inflation and other unforeseen changes in original estimates of cost. This review and adjustment shall include any additional Administrative and Engineering Costs which have been incurred.

All escrow amounts will be placed in escrow accounts under the control of the Township. Any interest generated by these accounts the Owner agrees to forgo to the benefit of the Township. Such interest shall be used by the Township to offset administrative costs relative to the maintenance of the accounts.

**j. Default.** In the event that the Owner has not completed any or all aforementioned work and requirements on the completion dates as set forth herein or violates any agreements or

requirements as set forth herein, the Town will notify the Owner in writing of said violations or breaches and shall upon written demand by the Owner received within 10 days of receipt of said demand, conduct a hearing before the Town Board to inquire into such defaults or breaches. Said hearing may be canceled upon compliance by Owner with all items specified in the Town's notice. If the Town Board determines there is a breach or noncompliance with the terms of this agreement, it may, by resolution, authorize its officers, its employees or its authorized agents to enter upon the Owner's property and to complete any or all such uncompleted or improperly performed work in conformity with this agreement. The Owner's security escrow and any accrued interest shall be used for all costs incurred by the Town in completing or correcting the work, including administrative expenses, contractor costs and all Engineering and attorney's fees necessitated by Owner's breach of this agreement.

**k. Release Of Security.** After completion by the Owner and acceptance by the Town of part of the Plan A Improvements and upon request by the Owner, escrow security amounts proportional to the amount of work completed and accepted may be released to the Owner.

The Owner shall fully and faithfully discharge the Owner's obligations with respect to the Plan A Improvements and all contractors and suppliers doing work or furnishing skills, tools, machinery, materials, insurance premiums, equipment or supplies in connection with the construction and installation of Plan A Improvements.

The security amount released shall be determined by the Township Engineer after determining the cost of the Plan A Improvements remaining to be constructed. Fifteen (15) percent of the Plan A Improvement escrow deposit amount shall be retained by the Town for the specified warranty period to assure the prompt and complete repair, by the Owner, of all defects in materials and workmanship and deterioration that exceeds normal wear and tear. Upon the completion of any such repairs or the expiration of the warranty period, whichever occurs last, all remaining escrow funds held by the Town with any unpaid accrued interest thereon shall be returned to the Owner. The Owner agrees to maintain any Letter of Credit, or remaining Letter of Credit not yet released by the Township, given as security until such time as the Township releases the remaining escrowed funds.

The Owner may request The Town to release Plan A security amounts at the regular monthly meeting by:

- 1) Furnishing the Town with evidence that the Contractors and suppliers doing the work have been paid prior to release of securities.

And,

- 2) furnishing evidence of partial completion of the project. The Owner's Engineer will certify to the dollar amount complete of the entire project, and to that amount yet remaining. The Township Engineer will confirm the Owner's Engineer assessment of the amount of construction yet remaining. The Owner and the Township will then authorize the release of securities jointly to the Contractor and

suppliers submitting the bill.

**4. Warranty period.** The Owner shall guarantee the construction of all Plan A improvements for a period of two (2) years following final acceptance of the Township of all improvements.

**5. Property Irons and Survey Monuments.** All property irons and survey monuments shall be in place at the time of final acceptance of the above Plan A Improvements by the Town.

**6. Easements.** The Owner shall make available to the Town, at no cost to the Town, all permanent or temporary easements necessary for the installation of the Plan A Improvements, as determined by the Town Board. All easements requested by the Town shall be in writing in recordable form. All easements, including utility and drainage easements, shall be noted in the final "as built" plans and permanent drainage and utility easements shall be shown on the final plat.

**7. Construction Activity Schedule.** The Developer must receive Town Board approval and must deposit the required escrow deposit, including any administrative fees prior to any construction activity to the Town. Grading will be permitted after preliminary plan approval by the County, providing the Developer acquires a grading permit from the Town. The following items need to be completed prior to any additional construction activity:

- A final plat approval from the county board
- A execution and delivery of this agreement
- A deposit of all contract securities, escrows, and letters of credit

Inspections by the Township Engineer will be required for the following stages of construction for the Township to accept the constructed roadways. The Owner should give the Township Engineer notice of the need for inspection 24 hours in advance. Stages of construction which need inspection are:

- 1) After clearing and grubbing and stripping of topsoil.
- 2) After completion of rough grading.
- 3) After completion of final grading.
- 4) Punch list inspection after initial completion of project.
- 5) Final inspection immediately before the Town's acceptance.
- 6) Warranty inspection at the end of the warranty period.

**8. Final Plat Approval.** The Town agrees to give final approval of the Commercial Property upon the preliminary approval by the County Board and after the grading plans have adequately addressed any review comments to the board's satisfaction.

**9. Final Inspection and Acceptance of the Constructed Road.** Upon successful completion of the Plan A Improvements, the Owner shall notify the Township by certified letter of its desire to have the grading, drainage and erosion control accepted by the Township. The Township Engineer will schedule a final inspection to include the Owner, the Owner's Engineer, the Township

Engineer, and members of the Township Board. Upon completion of the final inspection a punch list will be developed by the Township for all work yet to be completed for final acceptance. The Owner shall notify the Township Engineer of the completion of the items listed on the punch list. The Township Engineer upon review of the completed items, if satisfied that the punch list items have been satisfactorily completed, shall recommend acceptance of the improvements to the Township Board. The Township Board upon review of the project if satisfied the Plan A Improvements have been satisfactorily completed, will accept the grading, drainage and erosion control and release the security per article 7j.

**10. Ownership and Maintenance of Constructed Improvements.** The Township upon acceptance of the constructed Plan A improvements shall accept ownership and maintenance of such improvements subject to the Developers warranty period.

Until the Town Board has accepted the roadways, the Developer agrees to be responsible for all maintenance of the roadway, including snowplowing.

#### **11. General.**

**a. Binding Effect.** The terms and provisions hereof shall be binding upon and inure to the benefit of the heirs, representative, successors and assigns of the parties hereto and shall be binding upon all future owners of all or any part of the Commercial Property. References herein to Owner, if there be more than one, shall mean each and all of them. This Agreement, at the option of the Town, may be placed of record so as to give notice hereof to subsequent purchasers and encumbrances of all or any part of the Commercial Property and all recording fees, if any, shall be paid by the Owner.

**b. Notices.** Whenever, in this Agreement, it shall be required or permitted that notice or demand be given or served, such notice or demand shall be delivered personally or mailed by United States mail to addresses hereinafter set forth. Such notice or demand shall be deemed timely given when delivered personally or when deposited in the mail as set forth herein.

**c. Incorporations by Reference.** All plans, special provisions, proposals, specifications and contracts for the Improvements furnished and let pursuant to the Agreement shall be and are hereby incorporated by reference and made a part of this agreement as fully as if set forth herein.

The addresses of the parties hereto are as follows, until changes by notice given as above:

Township of Baldwin:      Chairman of the Board  
Jay Swanson  
30239 – 128<sup>th</sup> Street  
P.O. Box 25  
Princeton, MN 55371

Owner:

Township Engineer:      Jon Bogart  
Bogart, Pederson & Associates  
13076 First Street  
Becker, MN 55308

Township Attorney:

IN WITNESS WHEREOF, the Town and Owner have caused this Agreement to be duly executed on the day and year first above written.

Town OF Baldwin

BY:  
    Its Chairperson of the Board

BY:  
    Its Town Clerk

Owner

\_\_\_\_\_

EIN or SSN

Title of Signer

STATE OF MINNESOTA

ss

COUNTY OF SHERBURNE

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, a Notary Public, within and for

said County, personally appeared \_\_\_\_\_ and, \_\_\_\_\_ to me personally known, being each by me duly sworn, did say that they are respectively the Chairperson of the Board and Town Clerk, of the Town of Baldwin, the municipal Township named in the foregoing instrument, was signed and sealed on behalf of said Township by Authority of its Town Board and they acknowledged said instrument to be the free act and deed of said municipal Township.

NOTARY PUBLIC

INDIVIDUAL ACKNOWLEDGMENT

STATE OF MINNESOTA

ss

COUNTY OF SHERBURNE

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, a Notary Public, within and for said

County personally appeared \_\_\_\_\_ to me known to be the person described herein and who executed the foregoing instrument and acknowledged that \_he executed the same as h\_ free act and deed.

NOTARY PUBLIC

CORPORATE ACKNOWLEDGMENT

STATE OF MINNESOTA

ss

COUNTY OF SHERBURNE

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, before me, a Notary Public, within and for said

County, personally appeared \_\_\_\_\_ and \_\_\_\_\_ to me personally known, being each by me duly sworn, did say that they are respectively the

\_\_\_\_\_ and \_\_\_\_\_ of the corporation named in the foregoing instrument, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and they acknowledged said instrument to be the free act and deed of said corporation.

NOTARY PUBLIC

**SCHEDULE A**  
**SCHEDULE OF SECURITIES AND TOWNSHIP FEES (COMMERCIAL DEVELOPMENT)**

| DESCRIPTION OF IMPROVEMENT                                      | COMPLETION DATE FROM DATE OF THIS AGREEMENT | EST. COST |
|---|---|-----------|
| 1. Grading & Erosion Control                                    | 2 Years                                     | \$ _____  |
| 2. Storm Sewers & Road Culverts                                 | 2 Years                                     | \$ _____  |
| 3. Permanent Street Surfacing**                                 | 2 Years                                     | \$ _____  |
| 4. Total cost of Plan A Improvements                            |   | \$ _____  |
| 5. Work completed prior to signing of the Developer's Agreement |   | \$ _____  |
| 6. Plan A Estimated Construction Cost (Line 4 - Line 5)         |   | \$ _____  |
| 7. Required Security (Bond or Letter of Credit, 1.5 x Line 6)   |   | \$ _____  |

**Estimated Costs Refundable to the Developer**

Unused portions of these escrow amounts upon final acceptance of the Plan A Improvements shall be returned to the Developer. Any interest generated in these accounts shall be retained by the Township to offset administrative maintenance of the escrow accounts. Of the estimated legal, administrative, and engineering costs \$200 shall be retained by the Township for final warranty inspection by the Township Engineer which occurs eighteen months after road acceptance by the Township. If these funds are insufficient for the costs incurred by the Township, the additional cost shall be passed on to the Developer. Final acceptance of the project shall occur after any additional fees assessed to the project by the Township are paid by the Developer.

|  |                              |          |
|--|------------------------------|----------|
| 8. Estimated Legal, and Engineering Costs (5% of line 4)                                 |                              | \$ _____ |
| 9. Traffic Signing *** (\$150/ roadway sign, number of signs determined by the Township) | Est. No. of Road Signs _____ | \$ _____ |
| 10. Refundable Cash Escrows (Line 8 + line 9)  |                              | \$ _____ |

**Non-Refundable Cash Fees**

|   |                             |          |
|---|-----------------------------|----------|
| 11. Administrative Fees (\$25/Lot)  | Number of Lots _____        | \$ _____ |
| 12. Cul-de-Sac Maintenance Fee (Number of Cul-de-Sacs excluding temporary cul-de-sacs) x \$6000 | Number of Cul-de-Sacs _____ | \$ _____ |
| 13. 911 Address Sign Fees (\$45/Lot)  | Number of Lots _____        | \$ _____ |
| 14. Total Non-Refundable Cash Fees  |                             | \$ _____ |

\* Plan A Improvements are as described in detail within the plans and in contract documents and technical specifications, for the site grading, storm sewer, road culverts, street, and sidewalk.

\*\* The bituminous pavement will be considered for acceptance upon its completion over an approved subgrade. Acceptance may be postponed over one winter season if the subgrade has not been approved.

\*\*\* For traffic signing, and the legal, administrative, and engineering fee, the Developer shall deposit refundable cash with the Town and said work shall be performed by the Town. These items shall not be included in the Plan A Escrow computations.