

**AGREEMENT FOR PRIVATE INSTALLATION
OF IMPROVEMENTS**

Between

PALM REALTY, INC

And

CITY OF APPLE VALLEY

For

QUARRY PONDS FOURTH ADDITION

And

**JOHNNY CAKE RIDGE ROAD
SANITARY SEWER EXTENSION**

A G R E E M E N T

WHEREAS, the City of Apple Valley, a Minnesota municipal corporation, (the "City") has been requested by Palm Realty, Inc., a Minnesota corporation, (the "Developer") to approve and allow the following described installation of improvements for a portion of the property legally described as follows:

East 50 acres of the East One-Half of the Southwest Quarter of Section 35, Township 115, Range 20, lying North of the plat of Regents Point, Dakota County, Minnesota,

which the Developer desires to subdivide and develop as the plat of Quarry Ponds Fourth Addition (the proposed plat is attached hereto as **Exhibit "A"**) (the "Property"); and

WHEREAS, the City has agreed to approve and allow the installation of improvements on the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the mutual agreements of the parties, it is hereby agreed by and between the parties as follows:

1. Conditional Approval.

Subject to the terms and conditions of this Agreement, the City hereby approves the installation of the following improvements, prior to plat approval and recording, on the Property.

2. Required Improvements and Maintenance.

The Developer has requested and the City has designed the improvements necessary to service the Property. The improvement plans for Apple Valley Project 2016-175 (Quarry Ponds 4th Addition) (the "Improvement Plans") identify sanitary sewer and service stubs, water main and service stubs, storm sewer, bituminous streets with concrete curb, bituminous trail and concrete sidewalks (collectively the "Improvements") for development of the Property as 22 single family lots based on the preliminary plat.

Additionally, the Developer has requested and the City has designed a sanitary trunk sewer (the "Sewer Plan") be installed under the future extension of Johnny Cake

Ridge Road, which lies north of 157th Street. (Apple Valley Project 2016-164, Johnny Cake Ridge Road Sewer) (the “Sewer Improvement”).

Upon completion of the Improvements, and following acceptance by the City and the recording of the final Plat, the Improvements shall be maintained as follows:

- i) The City shall only be responsible for maintenance of sanitary sewer lines having a pipe equal to or greater than eight inches in diameter and located within public right-of-way or utility easements. Maintenance of service and lateral lines shall be in accordance with City Policy 2.03 Water and Sanitary Sewer Service Maintenance and Repair Policy Adopted July 8, 2010, per resolution 2010-144. The Developer shall be responsible for 100% of the cost of installation.
- ii) The City shall only be responsible for the maintenance of water lines have a pipe equal to or greater than six inches in diameter and located within public right-of-way or utility easements. Maintenance of service and lateral lines shall be in accordance with City Policy 2.03 Water and Sanitary Sewer Service Maintenance and Repair Policy Adopted July 8, 2010, per resolution 2010-144. The Developer shall be responsible for 100% of the cost of installation.
- iii) The storm sewer improvements shall be owned and maintained by the City and shall be located entirely within public right-of-way or dedicated public easements. The Developer shall be responsible for 100% of the cost of installation.

3. Installation of Improvements.

The Developer shall install the Improvements in accordance with and under the following conditions:

- A. Grade the Property in accordance with the Grading Plan on file with the City.
- B. Install the Improvements, as designed by the City, in accordance with the Improvement Plans and in accordance with City standards.
- C. To install each item noted herein at the Developer's sole cost and expense.
- D. Attend a preconstruction meeting with representatives of the City and to require the attendance of all contractors and subcontractors, prior to commencement of construction.

- E. Not bury any pipe, install bituminous surface or pour concrete without the specific approval of the City Inspector, prior to the work being performed.
- F. Deliver and to keep in existence with the City a letter of credit or cash escrow in the amount of Five Hundred Twenty-two Thousand Five Hundred Sixteen and No/100 dollars (\$522,516.00) to secure the performance and payment of the Developer's obligations as they relate to the Improvements.
- G. To pay the City's costs related to the installation of the Improvements and this Agreement, including but not limited to administration, engineering, legal fees and inspection, which the City estimates to be approximately Sixty-two Thousand Seven Hundred Two and No/100 Dollars (\$62,702.00). (The estimate of the City's costs under this Agreement excludes design fees previously paid for the Plans). Such costs shall be paid as follows:
 - i) The Developer shall deposit the sum of _____ and No/100 Dollars _____) with the City for payment of the City's costs under this Agreement.
 - ii) Upon separate written request from the Developer, not more than one time per month, the City shall submit a written statement to the Developer with detailed descriptions of the City's costs related to the Improvements and this Agreement, and a statement of the balance of the deposit.
 - iii) If the City's costs exceed the deposit, the Developer agrees to reimburse the City within thirty (30) days of billing. If the costs are less than the amount of the deposit, upon completion of the Improvements, the amount remaining on deposit shall be returned to the Developer.

4. Installation of Sewer Improvement.

The Developer shall install the Sewer Improvement in accordance with and under the following conditions:

- A. Install the Sewer Improvement in accordance with the Sewer Plan, at its sole cost and expense.
- B. Attend a preconstruction meeting with representatives of the City and to require the attendance of all contractors and subcontractors, prior to commencement of construction.

- C. Not bury any pipe without the specific approval of the City Inspector, prior to the work being performed.
- D. Deliver and to keep in existence with the City a letter of credit or cash escrow in the amount of Four Hundred Eighty-seven Thousand Nine Hundred Twenty-five and no/100 dollars (\$487,925.00) to secure the performance and payment of the Developer's obligations as they relate to the Sewer Improvement.
- E. Pay the City's costs related to the installation of the Sewer Improvement and this Agreement, including but not limited to administration, engineering, legal fees and inspection, which the City estimates to be approximately Fifty-seven Thousand Five Hundred Seventy-five and No/100 Dollars (\$57,575.00). (The estimate of the City's costs under this Agreement excludes design fees previously paid for the Plans). Such costs shall be paid as follows:
 - i) The Developer shall deposit the sum of _____ and No/100 Dollars _____) with the City for payment of the City's costs under this Agreement.
 - ii) Upon separate written request from the Developer, not more than one time per month, the City shall submit a written statement to the Developer with detailed descriptions of the City's costs related to the Sewer Improvement and this Agreement, and a statement of the balance of the deposit.
 - iii) If the City's costs exceed the deposit, the Developer agrees to reimburse the City within thirty (30) days of billing. If the costs are less than the amount of the deposit, upon completion of the Sewer Improvement, the amount remaining on deposit shall be returned to the Developer.
- F. The Sewer Plan reflect over-sizing of the pipe to accommodate usage beyond the need created by development of the Property. The City agrees to credit the Developer Two Hundred Fifty-four Thousand Six Hundred Sixty-five and No/100 dollars (\$254,665.00) as reimbursement for the cost of the over-sizing. The credit will be allocated to the Developer as part of the Development Agreement(s) for the final plat of the Property and future subdivisions, as necessary. The credit will be applied against the sewer trunk charges due from the Developer to the City in conjunction with the development of the Property.

5. Violation.

Any violation of the terms of this Agreement shall allow the City to stop all construction on the Property until authorization to proceed is given by the City. The Developer agrees to hold the City harmless from any damages, causes of action, or claims related to the construction being stopped by the City.

6. Alternative Urban Areawide Review (AUAR).

Development of the Property required the adoption of an AUAR environmental analysis document, including a mitigation plan. The AUAR is subject to being updated every five years. The Developer is presently preparing an update for review and approval by the City, as the Responsible Governmental Unit for the update. Until the update is approved by the City, per Minnesota Rule 4410.3610, no building permits will be issued by the City for houses or structures to be built on the Property. Developer shall be responsible for all reasonable costs incurred by the City in its role as RGU in reviewing and approving the update.

7. Underground.

The Developer agrees to install all utilities underground in the Property, specifically including electrical, telephone, cable television and gas services.

8. Completion.

Within thirty (30) days after completion of the Improvements and the Sewer Improvement, the Developer shall (i) televise the utilities to ensure they have been completed in accordance with the City Code, City Standards and the plans and specifications on file with the City and (ii) give written notice to the City that the Improvements have been completed in accordance with the City Code, City Standards

and the plans and specifications on file with the City. The City shall then inspect the Improvements and Sewer Improvement and notify the Developer of any item that does not appear to conform to the City Code, City Standards and/or the submitted plans and specifications. If an item does not conform to the City Code, City Standards and submitted plans and specifications or are later discovered to not conform, the City shall immediately notify the Developer of the need for repair or replacement. Notwithstanding any provision herein to the contrary, the Developer agrees that in case of emergency, the City may cure any default by Developer without prior notice to Developer, and the Developer waives any and all rights to notice of default in such event. Any cost incurred by the City to cure the default shall be the financial obligation of the Developer, and shall be paid to the City within ten (10) days of receipt of an invoice for such costs.

9. Payment of City Cost.

The Developer agrees to reimburse the City for all engineering, administrative and legal costs and expenses incurred by the City in connection with this Agreement or the enforcement thereof.

10. Warranties.

Unless a longer warranty period is provided by Minnesota law, the Developer warrants all Improvements and the Sewer Improvement required to be performed by Developer, its agents and employees, against poor design, engineering, materials and faulty workmanship for a period of two (2) years after acceptance by the City. Developer shall provide a warranty bond(s), in an amount equal to the cost of the Improvements and the Sewer Improvement, for a two (2) year period commencing upon the City's acceptance of the Improvements and the Sewer Improvement. The Developer shall be

solely responsible for the cost and expense to perform all required repair work to City Standards within thirty (30) days of written notification by the City.

11. Insurance.

- A. General Requirements: The Developer shall not commence work under this Agreement until it has obtained all insurance required under this Section and shall have filed the certificate of insurance or the certified copy of the insurance policy with the City, and the Developer shall maintain such insurance until the date six (6) months after the City has accepted the Improvements. The Developer shall not allow any subcontractor to commence work on its subcontract until all insurance required for the subcontractor has been obtained. Each insurance policy shall contain a clause providing that it shall not be canceled by the insurance company without ten (10) days written notice to the City of intent to cancel. The Developer shall notify its insurance company in writing that the insurance company must notify the City if it cancels the Developer's insurance. The Developer shall provide a copy of this written notice to the City. Each insurance policy shall contain a clause naming the City as an additionally insured party under the policy.

Certificates of insurance shall be submitted on Standard Form C.I.C.C.-701 or ACORD 25 forms and shall specifically note the clause providing for 10 days written notice to the City of intent to cancel. The certificates of insurance shall also specifically note the clause naming the City as an additionally insured party under the policy. The following minimum coverage shall apply.

- i) Worker's compensation insurance as required by law.
- ii) Employer's liability insurance with minimum limits as follows:

Bodily Injury By Disease:	\$500,000 per person
Bodily Injury By Disease:	\$500,000 general aggregate
Bodily Injury By Accident:	\$500,000 general aggregate
- iii) Contractor's Comprehensive general and automobile liability insurance, including coverage for non-owned and hired vehicles, in limits as follows:

General Liability -	\$1,000,000 each occurrence
	\$2,000,000 aggregate

Automobile Liability - \$1,000,000 Combined
Single Limit for Bodily Injury and
Property damage

iv) In addition to all listed coverages, Developer shall procure and maintain an Umbrella or Excess liability policy in a minimum limit of \$2,000,000.

B. Minimum Insurance Requirements: Losses other than those covered by insurance shall be the sole responsibility of the Developer. The insurance requirements as set forth herein shall be considered to be minimum requirements only. Any other insurance that may be necessary to provide adequate coverage must be provided by the Developer at its sole cost and expense.

C. Contractual Liability: To the fullest extent permitted by law, the Developer shall indemnify and hold harmless the City and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of this Agreement provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Developer, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section.

12. Release.

The Developer hereby specifically releases the City and the members of the City Council from any liability in connection with the installation of the Improvements and the Sewer Improvement and the handling of funds pursuant to the terms of this Agreement, and further agrees to indemnify and hold the City and the members of the City Council harmless from any claim of any and every nature whatsoever as a result of this Agreement or the installation of the Improvements and the Sewer Improvement.

13. Developer Undertaking.

The Developer acknowledges and agrees that (i) approval of this Agreement does not constitute approval of the Developer's plans for Quarry Ponds Fourth Addition (the "Development Plans"), which remain subject to approval by the City; (ii) the Developer's obligation to pay the cost of the Improvements and the Sewer Improvement is not contingent upon approval of the Development Plans by the City; (iii) this Agreement or the performance thereof by one or more of the parties shall not affect the City's consideration of the Development Plans; Developer undertakes the installation of any and all Improvements and the Sewer Improvement at its own risk and (iv) the Developer may incur additional costs if the City requires revision of the Development Plans and removal or relocation of the Improvements.

14. Assigns.

The parties mutually recognize and agree that all terms and conditions of this Agreement shall run with the Property and shall be binding upon the successors and assigns of the Developer.

IN WITNESS WHEREOF, the parties have hereunto set their hands.

PALM REALTY, INC.,
a Minnesota corporation

By: Liza Robson
Its: President

CITY OF APPLE VALLEY

By: Mary Hamann-Roland
Its: Mayor

By: Pamela J. Gackstetter
Its: City Clerk

[illegible]

On this ____ day of _____, 20____, before me a Notary Public within and for said County, personally appeared Liza Robson to me personally known, who being by me duly sworn, did say that she is the President of Palm Realty, Inc., the corporation named in the instrument, and that said instrument was signed on behalf of said corporation by authority of the corporation and said Liza Robson acknowledged said instrument to be the free act and deed of the corporation.

Notary Public

[illegible]

On this ____ day of _____, 2016, before me a Notary Public within and for said County, personally appeared Mary Hamann-Roland and Pamela J. Gackstetter, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Clerk of the City of Apple Valley, the municipality named in the foregoing instrument, and that the seal affixed on behalf of said municipality by authority of its City Council and said Mayor and Clerk acknowledged this instrument to be the free act and deed of said municipality.

Notary Public

This instrument was drafted by:
Dougherty, Molenda, Solfest, Hills & Bauer P.A.
14985 Glazier Avenue, Suite 525, Apple Valley, Minnesota 55124
(952) 432-3136 / (66-37053)

Consent to Installation Agreement

Fischer Sand & Aggregate, LLP, a Minnesota limited liability partnership, the fee owner of the Property described in the foregoing Agreement for Private Installation of Improvements, agrees to the terms and conditions contained therein and shall be responsible to complete the Developer's requirements in the event of a default or the loss of Developer's ability to complete the Improvements and Sewer Improvement.

Fischer Sand & Aggregate, LLP
A Minnesota limited liability partnership