

**ADDENDUM TO SITE  
IMPROVEMENT PERFORMANCE AGREEMENT**

**THIS ADDENDUM, MADE THIS** \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Blaine, a municipal corporation of the State of Minnesota (hereinafter referred to as the “City”) and Woodland Development Corporation, (hereinafter referred to as the “Builder”).

**WITNESSETH:**

**WHEREAS,** City and Builder entered a Site Improvement Performance Agreement on September 21, 2010, for Builder to perform improvements on the platted lots within Gardenwood and Gardenwood 2<sup>nd</sup> Addition, located in Blaine MN. Such land is hereinafter collectively referred to as the “Property”.

**WHEREAS,** Builder has purchased the remaining vacant and undeveloped parcels within the Property.

**WHEREAS,** Builder has began performing some of “The Work” set forth in the Site Improvement Performance Agreement. While performing “The Work” Builder has encountered some soil contamination issues on the Property.

**WHEREAS,** the City has successfully recovered \$800,000 in bond funds from the previous developer’s bonding company that are to be used for the benefit of the Property. It is the City’s intention to use a portion of the recovered funds to complete a portion of “The Work” set forth in the Site Improvement Performance Agreement.

**WHEREAS,** the City has agreed to reduce the amount of the financial guarantee from the Builder to \$40,000 and Builder has provided a current letter of credit for such amount.

**WHEREAS,** the City has determined that it is in the best interest of the City and area residents to see that certain development improvements are completed within the Plat in a newly defined time period.

**NOW THEREFORE**, the City and Builder agree as follows:

1. The Parties warrant that each of the recitations set forth above is true and correct and such recitations are incorporated herein as if fully set forth, and are a part of this Addendum.
2. Other than as expressly set forth herein, the terms of the Site Improvement Performance Agreement between the parties shall remain in full force and effect.
3. The City intends to utilize the \$800,000 in bond funds and \$30,000 in other available City (EDA) funds as follows:
  - a) \$100,000 will be held by the City to cover the City's legal and engineering costs in recovering the bond funds and inspecting/reviewing previous and ongoing work within the Plat.
  - b) \$48,000 will be used to complete Ghia Street from Woodland Parkway to the north edge of the Plat. This work will be completed by public contract and administered by the City.
  - c) \$285,000 for completion of street wear course, sidewalks and trails. This work will be completed by public contract and administered by the City.
  - d) Up to \$150,000 will be applied to the assessments for the Lexington Avenue right hand turn lane. The goal of this provision is to reduce the assessment to be levied by the City from the previously estimated amount of \$666 per lot to \$400 per lot. This work is being completed and administered by Anoka County.
  - e) \$247,000 (\$217,000 in bond funds and \$30,000 of other City (EDA) funds) will be used for completion of the organic soil exchange in the platted area west of Hupp Street and South of Woodland Parkway. This work will be completed by the Builder. All work that is completed by Builder pursuant to this provision and documented by proper invoices, will be reimbursed by the City up to \$247,000. City agrees to process up to two progress payments during the term of the construction. Notwithstanding the foregoing, the Builder acknowledges and agrees that completion of any soil correction issues on the Property pursuant to this Addendum and/or the Site Improvement Performance Agreement, shall be the sole responsibility of the Builder.
  - f) Any excess dollars available, after completion of these work items, will be utilized within or for the specific benefit of the Property in the City's discretion and in agreement with the Builder.

4. The City agrees to make its best effort to substantially complete its portion of the work as soon as possible in the 2012 construction season.

5. The Builder agrees to substantially complete the soil exchange work by December 15, 2011 and to complete any remaining grading/soil work related to the soil exchange work as soon as practical in the 2012 construction season.

6. As an inducement for the City to enter into this Addendum, and subject to the terms of this Addendum and the Site Improvement Performance Agreement, the Builder, on behalf of itself and on behalf of any of its agents, insurers, third-party beneficiaries, successors, predecessors and assigns, hereby releases and forever discharges the City, and any of its successors or assigns, from any and all claims the Builder has or may have, whether known or unknown, against the City which arise out of or are related to the Builders development of or presence on the Property. This release specifically includes any claim Builder may have against the City related to previous or current project approvals related to the Property or the physical condition of any parcels within the Property.

7. This Addendum and the Site Improvement Performance Agreement shall be binding upon and inure to the benefit of each Party hereto, as well as any of their affiliates, related companies, partners, officers, directors, shareholders, agents, successors, predecessors, insurers, and assigns, or any other person, company, or entity asserting an interest by or through it or for whose actions a Party might be vicariously liable.

8. The prevailing party in any action for breach or enforcement of this Addendum or the Site Improvement Performance Agreement shall be entitled to its attorneys' fees and costs from

the non-prevailing party.

9. All parties to this Addendum acknowledge they have entered into this Addendum freely and voluntarily.

10. This Addendum is made and executed under the laws of the State of Minnesota and is intended to be governed by the laws of the State of Minnesota and the ordinances and Charter of the City of Blaine.

**IN WITNESS WHEREOF**, we have set our hands and seals.

**CITY OF BLAINE:**

**Woodland Development Corporation  
DEVELOPER:**

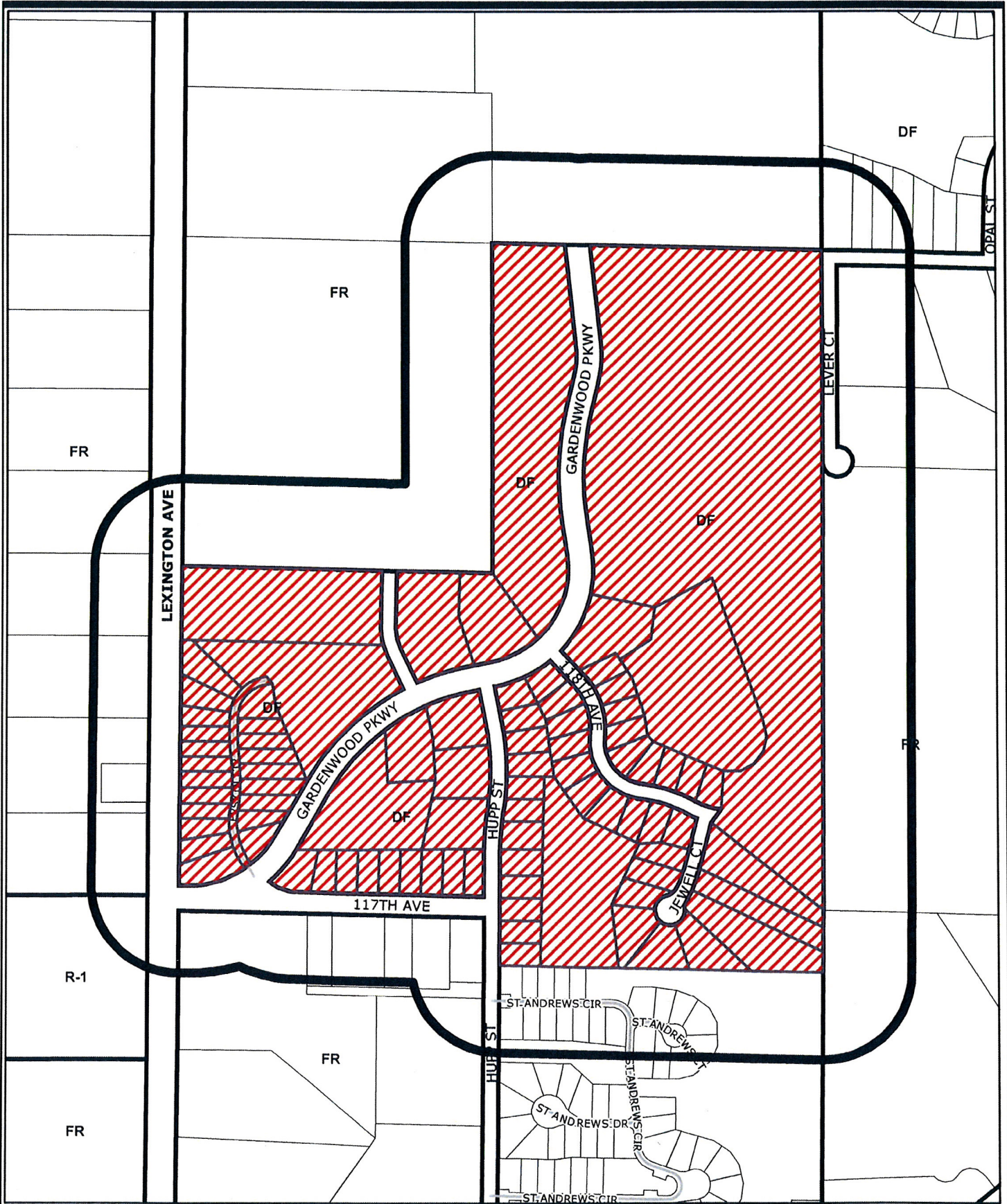
By: \_\_\_\_\_  
Tom Ryan, Mayor

By: \_\_\_\_\_  
Byron D. Westlund, President

By: \_\_\_\_\_  
Clark Arneson, City Manager

(SEAL)





## Zoning & Location Map

Case File No. 11-0007



City of Blaine Planning Department / 10801 Town Square Dr NE / Blaine, MN 55449 / (763) 785-6180



