

**CONTRACT FOR SUBDIVISION IMPROVEMENTS
NORTHPORT COMMONS
CONTRACT NO. 1982
PROJECT NO. 53B1982

MADISON, WISCONSIN**

THIS AGREEMENT, made and entered into this 1 day of July, 2004, by and between C-CAP, LLC, of Waukesha, Wisconsin, hereinafter the "Developer", and the City of Madison, hereinafter the "City", a municipal corporation located in Dane County, Wisconsin.

RECITALS

1. WHEREAS, the Developer has received approval from the City for a subdivision known as Northport Commons, a copy of which is incorporated by reference.
2. WHEREAS, Section 16.23(9) of the Madison General Ordinances (MGO) requires that provisions be made for the installation of public sanitary sewer facilities, storm sewer and drainage system, water mains and water service laterals, the grading of public and private lands, erosion and stormwater runoff control, street improvements, street signs, pavement marking, street lights, to serve the developer's subdivision. Section 16.23(9) also permits the installation of said public improvements by construction phases.
3. WHEREAS, the Developer proposes to complete the installation of the required public improvements to serve said subdivision as initial construction phase, and does not propose to install any said public improvements of said subsequent construction phases.

CONTRACT FOR SUBDIVISION IMPROVEMENTS

NOW, THEREFORE, the Developer and the City hereby agree as follows:

ARTICLE I - GENERAL CONDITIONS

A. Contractors Qualified By Board of Public Works

The Developer agrees to engage Contractors for all construction included in this contract who shall be listed as qualified for such work by the Director of Public Works and who shall comply with every requirement of Section 23.01, M.G.O. (Minimum Wage Scale). The Developer shall furnish the City Engineer with the names of all Contractors and their subcontractors, with the classification of the work they perform, prior to any work beginning.

B. Affirmative Action

(The term "Contractor" used in this paragraph shall be synonymous with the term "Developer" used in the remainder of this Agreement.)

In the performance of the services under this Agreement the Contractor agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex or national origin.

The contractor agrees that, within thirty (30) days after the effective date of this agreement, the contractor will provide to the City Department of Affirmative Action certain workforce utilization statistics, using a form to be furnished by the City.

If the contract is still in effect, or if the City enters into a new agreement with the contractor, within one year after the date on which the form was required to be provided, the contractor will provide updated workforce information using a second form; also to be furnished by the City. The second form will be submitted to the City Department of Affirmative Action no later than one year after the date on which the first form was required to be provided.

The contractor further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the City Department of Affirmative Action of each of its job openings at facilities in Dane County for which applicants not already employees of the contractor are to be considered. The notice will include a job description, classification, qualifications and application procedures and deadlines. The contractor agrees to interview and consider candidates referred by the Department of Affirmative Action if the candidate meets the minimum qualification standards established by the contractor, and if the referral is timely. A referral is timely if it is received by the contractor on or before the date stated in the notice.

Articles of Agreement

Article I

The contractor shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of

compensation and selection for training including apprenticeship insofar as it is within the control of the contractor. The contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

Article II

The contractor shall in all solicitations or advertisements for employees placed by or on behalf of the contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

Article III

The contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

Article IV

(This article applies only to non-public works contracts).

The contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true (check one):

_____ It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison Ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.

Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.

*Per telephone
conversation w/
Robert Schwarz
8-2-04 - mcd*

Article V

(This article applies only to public works contracts).

The contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City, including the contract compliance requirements. The contractor agrees to submit the model affirmative action plan for public works contractors in a form approved by the Director of Affirmative Action.

Article VI

The contractor will maintain records as required by Section 3.58(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 3.58(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

Article VII

In the event of the contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action Provisions of this contract or Sections 3.23 and 3.58 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

1. Cancel, terminate or suspend this contract in whole or in part.
2. Declare the contractor ineligible for further City contracts until the Affirmative Action requirements are met.
3. Recover on behalf of the City from the prime contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime contractor from recovering the amount of such damage from the noncomplying subcontractor.

Article VIII

The contractor shall include the above provisions of this contract in every subcontract so that such provisions will be binding upon each subcontractor. The contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance. (This article applies to public works contracts only).

Article IX

The contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE and WBE" shall be substituted for the term "small business" in this article).

C. Preconstruction Meeting

The Developer further agrees to coordinate a preconstruction meeting with the City Construction Engineer.

D. Construction Plans

The Developer further agrees to work from Construction Plans that have been approved by the Common Council. The plan shall be prepared by the Developer or by the City Engineer from data submitted by the Developer, as determined by the City Engineer. The Developer shall note that Plan Commission approval of the project does not constitute approval of the improvements within the public right-of-way. Separate approval is required. The Plan shall be signed by the City Clerk and the City Engineer.

E. City Approval of Starting Dates

The Developer further agrees that no work shall be scheduled for the above mentioned improvements without the City Engineer's and Water Utility Manager's approval of starting date and schedule.

F. Notification of Work

The Developer further agrees to notify the City Construction Engineer two (2) working days prior to beginning work or resuming work in the right-of-way.

G. Change Order to Work

The Developer further agrees that the City shall not be responsible for any costs or changes related to this project except those specifically enumerated and agreed in this or other written agreements between the City and the Developer.

H. Acceptance of Work

The Developer further agrees that the acceptance of public improvements is conditioned on completion of the following:

1. That all outstanding engineering and inspection charges indicated herein have been paid in full.
2. That affidavits and lien waivers are received by the City indicating that the Contractor has been paid in full for all work and materials furnished under this contract.
3. That a complete breakdown of costs incurred by the Developer is provided to the City for the following public improvement components in the public right of way and within public easements:
 - a. Sanitary sewer and sanitary sewer laterals.
 - b. Water main and laterals.
 - c. Storm sewer and storm water management facilities.
 - d. Streets including sidewalks, pavement marking, signage and street plantings.
 - e. Street lighting.
 - f. Traffic Signals.
 - e. Other items of work within the Public Right of Way.
4. That the water main is tested and a bacteriologically safe sample is obtained by testing at the Madison Board of Health. The Water Utility will flush the main and obtain the samples required for this testing.

The maintenance of specified public improvement components becomes the responsibility of the City upon acceptance of those components by the Common Council

I. Time of Completion

All work specified herein shall be completed within eighteen (18) months from the date of this agreement by the Developer.

J. Indemnification and Insurance Required of Private Contractors

The Developer shall require all Contractors engaged in the construction of this project to comply with the City contract requirements pertaining to damage claims, indemnification of the City and insurance, all as specified in Section 107 of the City of Madison Standard Specifications for Public Works Construction and addendums thereto.

The Developer shall also require all Contractors engaged in the construction of this project to maintain a current Certificate Of Insurance on file with the City Engineer.

K. Guarantee of the Work

The Developer agrees to guarantee all work performed under this contract, except tree and shrubbery planting, for a period of one year from the date of final acceptance by the City Common Council, against defects in workmanship or materials. If any defect should appear during the guarantee

period, the Developer agrees to make required replacement or acceptable repairs of the defective work at his own expense. This expense includes total and complete restoration of any disturbed surface or component of the improvement to the standard provided in the plans and specifications, regardless of improvements on lands where the repairs or replacement is required.

The Developer agrees to guarantee all tree and shrubbery planting for a period of two years from the date of final acceptance by the City Common Council, in accordance with Section 209.6 of the City of Madison Standard Specifications for Public Works Construction.

L. Specifications for Improvement

The Developer agrees to install the improvements specified in this Agreement in accordance with the plans and specifications approved by the Common Council and in accordance with the City of Madison Standard Specifications for Public Works Construction and the following conditions:

1. Grading, Erosion Control, Barricades, and Traffic Control:
 - a. The Developer shall undertake the grading, erosion control and barricade requirements for streets whose right-of-way are contained within the subdivision to subbase grades established by the City Engineer and approved by the Common Council, said grading shall include the grading of the terraces to a sidewalk grade established by the City Engineer and in accordance with the Madison Standard Typical Street Sections and Standard Detail Drawings of the Specifications.
 - b. The Developer shall grade the terrace of those existing streets which abut the plat to a sidewalk grade or a grade established by the City Engineer, grade a ditch abutting said lots for temporary drainage and install culverts at driveway locations.
 - c. The Developer shall grade vision clearance triangles on corner lots to a maximum height of two (2) feet above the proposed curb elevation within the triangular space formed by two intersecting street lines or their projections and a line adjoining said points on said street lines located a minimum of twenty-five (25) feet from such street intersections. No structures, screenings, plantings, or embankments of any kind are allowed within this triangular area if they violate Section 28.04(12)(e), M.G.O.
 - d. The Developer shall furnish, install barricades, signs and other traffic control devices as specified by the City Traffic Engineer at all street ends.
 - e. The Developer shall prepare a traffic control plan, which shall be submitted for approval to the Traffic Engineering Division. Work shall not begin until the traffic control plan is approved by the Traffic Engineering Division and a copy of the approved traffic control plan has been submitted to the Construction Engineer. The Developer shall furnish, install and maintain during construction, barricades, signs, pavement markings and other traffic control devices as specified on the approved traffic control plan or as directed by the City Traffic Engineer.
 - f. The Developer shall obtain a Erosion Control and Stormwater Management Permit for the erosion and runoff control as required by Chapter 37, M.G.O. prior to the grading, utility installation or other land disturbance activity. A permit shall be obtained for each construction phase. The Developer shall adhere to conditions specified on the permit and grants the right-of-entry on the subdivision to designated personnel of the City to inspect and monitor compliance with this Agreement.

Prior to acceptance, the Developer shall submit a post construction erosion control plan to the City. This plan shall address erosion control in the interim between the completion of the public works improvements specified in this contract and ultimate

development. The Developer shall install those facilities and structures required by the post development erosion control plan.

- g. The Developer shall not disturb, grade, fill or store materials on public property or property required to be dedicated, unless specifically approved by the City's representative. The Developer shall clean up, topsoil, seed and mulch any public property which is disturbed. The Developer shall grade, topsoil, seed and mulch all public or dedicated frontage at a 4:1 slope to meet existing grade, unless it is specified otherwise or permitted by the City's representative. The Developer shall provide and install any erosion control measures required on public property or property to be dedicated due to the grading specified in this contract.

2. Sanitary Sewer Facilities:

The Developer shall install sanitary sewer mains, sanitary sewer access structures and laterals to serve all lots within the subdivision. No construction shall commence until plans and specifications have been approved by the Madison Metropolitan Sewerage District and the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement.

3. Storm Sewer and Public Drainage System:

- a. The Developer shall install a public drainage system including all storm sewer mains, mainline structures, inlets, lateral pipes, greenways, culverts, and detention/retention basins in accordance with the plans approved by the City Engineer unless other arrangements have been approved by the City Engineer as detailed in the supplemental conditions. Any field changes by the City Engineer shall become part of the approved plan and shall be incorporated at the Developer's expense.
- b. The detention/retention basin(s) shall be over-excavated and constructed to serve as an interim sediment trap. The volume of over excavation shall be calculated to collect the anticipated sediment from the plat over a minimum period of 2-years. In general, this over-excavation will be two (2) feet minimum. In the case of a retention basin, the minimum standard depth shall be seven (7) feet as measured from the normal water level. This will result in an initial depth of nine (9) feet.

This construction and all other erosion control measures shall be installed prior to any other plat grading or utility construction. An inspection and approval by the City Engineer must be obtained prior to start of other plat improvements.

- c. Upon completion of improvements, the detention/retention basin shall be reconstructed to the original approved design prior to acceptance by the City. Prior to beginning this reconstruction the Developer shall provide an as-built to the City Engineer such that the extent of the work to be completed can be determined. This as-built shall consist of cross sections of the pond including the "safety bench" and slopes of the banks, both above and below the water surface. Additionally, sufficient random shots shall be taken on the floor of the basin to determine how much (if any) dredging shall be required. The as-built submittal must be sealed by a Professional Land Surveyor or a Professional Engineer. The other components of the stormwater system may be accepted independently of the detention / retention basin. Final acceptance of basins or greenways seeded with Prairie mix, shall be delayed a minimum of 1 year to ensure proper seeding and stabilization has been achieved.
- d. Prior to the issuance of building permits, the Developer shall submit a master storm water drainage plan to the City Engineering Division for review and approval, in accordance with the conditions of Plat approval.

The master storm water drainage plan shall be submitted to City Engineering in digital format. The digital plan shall contain, at a minimum, lot corner elevations on an overlay of the recorded plat map of the development. Other information, as needed, such as contours and cross sections may be provided in either digital or hard copy. The digital record shall be provided using the state plane coordinate system - NAD 27.

No building permits shall be issued prior to City Engineering's approval of this plan.

- e. If the Developer chooses to have the detention/retention basin and/or greenway designed by his/her engineer, the Developer shall have those plans approved and provided to City Engineering a minimum of one week before the issuance date agreed to in the contract schedule. The plans shall be sealed by a Professional Engineer and shall be on 11" x 17" sheets. Further, the plans shall be of sufficient detail to allow construction of the basin/greenway and shall include all seeding specifications (as approved by City Engineering), detail drawings and contour maps/cross sections of the basin/greenway. Plans shall not be issued until these sheets are provided and approved by City Engineering.

4. Water Mains and Water Service Laterals:

- a. The Developer shall install water mains, including pipe, hydrants, tees, valves, crosses and related appurtenances and water service laterals to serve all lots within the subdivision and as required by the plans and specifications prepared by the Water Utility and approved by the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement. All water service laterals two (2) inches in diameter and smaller shall be completed with a curb stop and box. All water service laterals three (3) inches and larger shall be completed with a controlling valve box. All materials used shall conform to City of Madison Standard Specifications For Public Works Construction. The City Water Utility will furnish all pipes and fittings over ten (10) inches in diameter and the Developer will furnish all other required materials.
- b. Prior to acceptance of the water main by the City, the Developer shall grant to the City a public water main easement as shown on the approved water main plan, if required. The easement shall include, but not be limited to, the right of ingress and egress thereon and the right to excavate, operate, repair, replace, or maintain the City water system, including the water main, and to perform all work incidental thereto. In addition, the Developer shall also provide the City with a legal description and sketch of this public water main easement. No buildings or structures of any kind shall be built over said public water main easement without the written permission of the Madison Water Utility. The water main easement shall be graded to final grade prior to installation of the water main. After installation of the water main, there shall be no grade change in excess of one foot without written permission from the Madison Water Utility.
- c. After final acceptance of the water main by the City, the Developer shall provide, to City of Madison Engineering, a list of all water hydrant locations with benchmark elevations provided for each. The elevations provided shall be for the 'top nut' of each hydrant, and shall be to City of Madison datum. The elevations shall be determined in accordance with accepted surveying techniques for establishing vertical control to the nearest hundredth of a foot.

5. Streets and Sidewalks:

The Developer shall install Madison Standard One Course Concrete, Curb and Gutter and other types of curb and gutter as specified, Madison Standard Sidewalk with Madison Standard Crosswalks, and the specified Standard Pavement on all streets within the subdivision.

The Developer shall install Madison Standard Sidewalk with Madison Standard Crosswalks on all streets abutting the subdivision (on the one side of the street abutting the plat).

6. Runoff Control Structures:

The Developer shall install the runoff control structures including related storm sewers required by the Erosion Control and Stormwater Management Permit and the plans and specifications approved by the City Engineer.

7. Signs:

The Developer shall pay all costs associated with the installation of all traffic signs and structures as required by the plans and specifications prepared by the City Traffic Engineering Division, including City furnished materials, labor, inspection and engineering. The Developer following the provisions in the Standard Specifications for Public Works Construction may install temporary street name signs.

8. Pavement Markings:

The Developer shall pay all costs associated with the installation of all pavement markings as required by the plans and specifications prepared by the City Traffic Engineering Division, including City furnished materials, labor, inspection, and engineering.

9. Street Lights

The Developer shall pay all costs associated with the installation of street lighting, conduit and structures as required by the plans and specifications prepared by the City Traffic Engineering Division including City furnished materials, labor, inspection and engineering.

M. Fees Payable Prior to Construction

The Developer agrees to pay the City the following charges prior to construction beginning:

1. All outstanding area charges levied against lots within the subdivision by the City and the Madison Metropolitan Sewerage District for the construction of downstream sanitary sewer facilities.
2. An amount determined by the City Water Utility to reflect the cost to the Water Utility of furnishing water mains and fittings whose diameter is in excess of ten (10) inches. Said amount shall be based upon the cost of furnishing ten (10) inch diameter pipe and fittings, irrespective of the size of the pipe actually furnished by the Water Utility, it being the intent of the Water Utility to pay the difference in cost between ten (10) inch diameter pipe and the pipe and fittings actually furnished.

N. Developer to Reimburse the City for Costs Sustained

1. The Developer shall reimburse the City for its actual cost of design, inspection, testing, construction, and associated legal and real estate expenses for the required public improvements for the subdivision. The City's expenses shall be determined as follows:
 - a. The cost of City employees' time engaged in the required public improvements based on the hourly rate paid to the employee multiplied by a factor determined by the respective Division/Department to represent the City's cost for statutory expense benefits, insurance, sick leave, holidays, vacation and similar benefits, overhead and supervision, said factor not to exceed 2.25.
 - b. The cost of City equipment employed.
 - c. The actual costs of City materials incorporated into the work including transportation costs plus a restocking and/or handling fee not to exceed 20% of the cost of the materials.
 - d. All consultant fees associated with the subdivision at the invoiced amount plus 10% for administration.

2. The Developer shall advance to the City an amount equal to an estimate of the City's expenses, as prepared by the participating City Divisions/Departments, at the time the Developer files a Contract For Subdivision Improvements. At the conclusion of the project, the respective agencies shall bill the actual cost to the Developer. In the event that the actual cost is calculated to be less than the advanced amount, the difference shall be refunded to the Developer. In the event the advance is less than the actual amount, the Developer shall be billed the difference and payment shall be a condition precedent to acceptance of any major components of construction. The estimated cost of services to be performed by the City is as follows:
 - a. City Engineering Division \$16,600.00 (Make check payable to City of Madison).
 - b. Madison Water Utility \$11,000.00 (Make check payable to Madison Water Utility).
 - c. City Traffic Engineering Division ~~*\$8,700.00~~ ^{4,800.00} (Make check payable to City of Madison). *Street Lighting ~~\$7,700.00~~ ^{5,800.00} Signing and Marking \$1,000.00

3. Charges for services performed for the construction of improvements in subsequent construction phases shall be on the basis of charges for such services in effect at the time of construction of said Subsequent Construction Phases, the estimated cost being deposited with the participating City Divisions/Departments prior to construction.

O. Surety

1. The Developer agrees to furnish the City with corporate bond, certified check, official check or irrevocable letter of credit in the amount of \$282,000.00 to secure performance of this contract.

2. The Developer agrees that prior to any land surface disturbances or construction commencing within the subdivision associated with subsequent construction phases, that a Contract For Subdivision Improvements will be executed by the Developer and the City, and the Developer will furnish the City with a corporate bond, certified check, official check or irrevocable letter of credit in the amount of the estimate of the City Engineer, sufficient to secure performance of said contract.

3. Upon acceptance by the City Common Council of the improvements constructed as part of this agreement, the City agrees to reduce the surety to an amount equal to an estimate of the City Engineer to secure performance of the guarantee described in this agreement.
4. If the Developer provides a certified or official check to secure performance of this contract, the Developer agrees that the City may deposit the check in an interest bearing account and retain all interest accruing to such a deposit."

P. Developer's Designated Project Coordinator

The Developer hereby appoints D'Onofrio, Kottke and Associates (Ron Klaas) @ 833-7530 as the Project Coordinator, said individual who shall act as the Developer's representative during the Construction Phase of the installation of these improvements.

ARTICLE II - SUPPLEMENTAL CONDITIONS

- A. The Developer shall construct public sanitary sewer facilities, storm sewer and drainage system, including storm water detention facilities, water mains and water service laterals to serve the Northport Commons Plat.
- B. The Developer shall construct Madison Standard Street Improvements, including sidewalk, on the following streets:

Cordelia Crescent from Kennedy Road to Moose Trail
Moose Trail from Cordelia Crescent to Kennedy Road
- C. The Developer shall construction Madison Standard Street Improvements, without sidewalk, on the following street:

Tenley Lane from Cordelia Crescent to Moose Trail
- D. The Developer shall construct Madison Standard concrete sidewalk on the north side of Northport Drive from Kennedy Road to the west plat line of the Northport Commons Plat and on Kennedy Road adjacent to the plat as required.
- E. The Developer shall construct a concrete bus boarding pad on the west side of Kennedy Road in accordance with plans approved by the City Engineer and Madison Metro Transit.
- F. The Developer shall remove the existing sidewalk flume on Kennedy Road at the northeast corner of the plat. After removal, a standard terrace shall be constructed.
- G. Prior to release of building permits, the Developer shall record a maintenance agreement for the stormwater management easement, to be maintained by the owner's association.

IN WITNESS WHEREOF, the parties hereto have set their hand(s) at Madison, Wisconsin, this 1 day of July, 2004.

WITNESS:

[Signature]
Robert B. Schwarz

C-CAP, LLC.

BY: [Signature]
BY: Scott C. Fergus, Manager

WITNESS:

[Signature]
[Signature]

CITY OF MADISON, WISCONSIN

[Signature]
David J. Cieslewicz, Mayor
[Signature]
Ray Fisher, City Clerk

APPROVED AS TO FORM:

[Signature]
Michael May, City Attorney

COUNTERSIGNED

[Signature]
Dean Brassler, City Comptroller

COPY



JOHNSON

BANK

IRREVOCABLE STANDBY NO. SLC-8832

IN FAVOR OF THE CITY OF MADISON

July 6, 2004

SUBDIVISION/PROJECT NAME: Northport Commons
CONTRACT NO.: 1982
DEVELOPER'S NAME: C-Cap, LLC
TO: Mayor & Common Council, City of Madison, Wisconsin (the "City")

ATTENTION: LARRY D. NELSON, CITY ENGINEER

We hereby issue our irrevocable standby in favor of the City of Madison, a Municipal Corporation located at Madison, Wisconsin available by your drafts at sight on Johnson Bank, Madison, WI ("the Bank") for a sum or sums not to exceed a total amount of USD282,000.00 (Two Hundred Eighty Two Thousand and 00/100 U.S. Dollars) for the account of C-Cap, LLC, 259 W. Broadway, Suite 100 Waukesha, WI 53186 (the "Developer").

Drafts will be honored by the Bank within five (5) days or our receipt of the original of this standby, any amendments hereto and the City's signed statement certifying either:

1. That an official demand by the City of Madison has been made to have Developer complete certain work and/or to pay certain costs to Contractors, Subcontractors, Laborers or Suppliers for work and/or materials furnished; **OR**
2. That Developer has failed, refused or is unable to complete certain work and/or to pay Contractors, Subcontractors, Laborers or Suppliers; **OR**
3. That Developer has failed, refused or is unable to pay for engineering, inspection, and testing services in accordance with the attached Contract for Subdivision Improvements dated July 1, 2004.

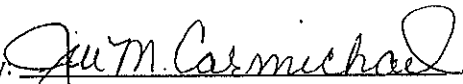
Drawings under this standby must be received at Johnson Bank, 5133 West Terrace Drive, Madison, WI 53718 no later than January 1, 2006 ; provided, however, that this credit shall not expire unless the Bank shall have given sixty (60) days' prior notice in writing to the City Attorney, 210 Martin Luther King, Jr. Boulevard, Madison, WI 53703-3340, as agent for the City.

We hereby agree with you that all drawings made under and in compliance with the terms and conditions of this standby will be duly honored upon presentation and delivery to us of the documents specified above. Each drawing hereunder must reference this standby by date and number.

This credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amplified or limited by reference to any document, instrument or agreement referred to in this standby, except only International Standby Practices referred to herein, and any such reference shall not be deemed to incorporate herein any such document, instrument or agreement.

Except to the extent otherwise expressly stated herein, this instrument is subject to the International Standby Practices (ISP98), International Chamber of Commerce Publication No. 590, and as to matters not governed by ISP 98 shall be construed and enforced in accordance with the laws of the state of Wisconsin. In the event of inconsistency, the latter shall take precedence.

JOHNSON BANK

By: 
Title: International Banking Officer

* Date 18 months from date of Contract for Subdivision Improvements

MEMBER JOHNSON FINANCIAL GROUP
an SC Johnson family company

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EAST: 5133 WEST TERRACE DRIVE P.O. BOX 8636 MADISON, WI 53708-8636 PHONE: 608/249-7800 FAX: 608/249-7830
WEST: 525 JUNCTION ROAD MADISON, WI 53717 PHONE: 608/245-6510 FAX: 608/245-6575