

**CITY OF CHANHASSEN**  
**DEVELOPMENT CONTRACT**  
**AND**  
**PLANNED UNIT DEVELOPMENT AGREEMENT**  
**(Developer Installed Improvements)**  
**SPECIAL PROVISIONS**

**AGREEMENT** dated February 28, 1992, by and between the CITY OF CHANHASSEN, a Minnesota municipal corporation, (the "City "), and MARKET SQUARE ASSOCIATES LIMITED PARTNERSHIP, a Minnesota limited partnership, (the "Developer").

**1. Request for Approval.** The Developer has asked the City to approve a plat and planned unit development for MARKET SQUARE (referred to in this Contract as the "plat "). The land is legally described on the attached Exhibit "A".

**2. Conditions of Approval.** The City hereby approves the plat and planned unit development on condition that the Developer enter into this Contract and furnish the security required by it.

**3. Zoning.** The plat is being rezoned to Planned Unit Development. Except as specifically modified herein, the uses, requirements, and standards of the "BG", General "CBD", Central Business District, as may be amended, shall apply to the subject property.

**4. Development Plans.** The plat shall be developed in accordance with the plans described in this paragraph. With the exception of Plan A, the other plans listed in this paragraph will be prepared by Developer or its agents after the execution of this Contract. Prior to the commencement of any work in the plat, all plans covering that type of work shall be approved in writing by the City and by First Bank National Association or its assigns.

- Plan A: Plat prepared by Peters, Price & Sampson Land Surveyors, Ltd., approved by the Chanhassen City Council on July 23, 1990.
- Plan B: Grading, Drainage, and Erosion Control Plan
- Plan C: Plans and Specifications for Improvements
- Plan D: Site Plan
- Plan E: Landscaping Plan
- Plan F: Elevations Plan
- Plan G: Architectural Plan
- Plan H: Site Lighting Plan
- Plan I: Parking Plan
- Plan J: Sign Plan

**5. Developer Installed Improvements.** The Developer shall install and pay for the following:

- A. Sanitary Sewer System
- B. Water System
- C. Storm Water Drainage System
- D. Parking Lot
- E. Site Lighting
- F. Bituminous Trails and Concrete Sidewalks
- G. Site Grading
- H. underground Utilities (gas, electric, telephone, CATV)
- I. Setting of Lot and Block Monuments
- J. Surveying and Staking
- K. Landscaping
- L. Backfilling and Grading Over 72" Storm Sewer
- M. Engineering; surveying, and Inspection

**6. City Installed Improvements.** The City shall design and construct the following improvements as Improvement Projects 90 -13 and 87-2:

- A. Street Lighting along Market Boulevard, West 78<sup>th</sup> Street and Monterey Drive
- B. Auxiliary Turn lanes on West 78th Street
- C. Auxiliary Turn Lane on Market Boulevard
- D. Extension of the 72" Storm Sewer

The City shall assess the cost of the improvements together with the city's indirect costs such as capitalized interest, bonding, and engineering against the plat over a ten (10) year period with interest on the unpaid balance at a rate established by the City. The assessment shall be deemed adopted on the date this Contract is signed by the City. The Developer waives any and all procedural and substantive objections to the special assessment, including but not limited to hearing requirements and any claim that the assessment exceeds the benefit to the property. The Developer waives any appeal rights otherwise available pursuant to M.S.A. § 429.081.

**7. Time of Performance.** The Developer shall install all required improvements by November 30, 1992. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and the extended completion date.

**8. Security.** To guarantee compliance with the terms of this contract and construction of the Developer installed improvements, the Developer shall furnish the city with an alternate security agreement from a bank ("security ") for \$206,867.65. The bank issuing the security shall be subject to the approval of the City Manager. The amount of the security was calculated as 110% of the following:

Common Borrow, Backfilling and Grading for 72" Storm Sewer .....	\$ 22,500.00
Sanitary Sewer .....	\$ 9,450.00

Watermain.....	\$ 54,631.00
Site Lighting and Signs.....	\$ 11,500.00
Erosion Control.....	\$ 2,000.00
Engineering, Surveying, and Inspection.....	\$ 17,096.54
Bituminous Trails and Concrete Sidewalk and Related Striping.....	\$ 10,884.00
Landscaping .....	\$ 60,000.00
<b>TOTAL COST OF PUBLIC IMPROVEMENTS .....</b>	<b><u>\$188,051.50</u></b>

This breakdown is for historical reference; it is not a restriction on the use of the security. The Developer shall provide the City with executed copy(ies) of the construction contract(s) for the Developer installed improvements to verify the security amount is sufficient. The Developer shall increase the security amount to address any deficiency if so noted and requested by the City. The security shall be for a term ending December 31, 1993. Individual security instruments may be for shorter terms provided they are replaced at least thirty (30) days prior to their expiration. The City may draw down the security, without notice, for any violation of the terms of this Contract or if the security is allowed to lapse prior to the end of the required term. If the required Developer installed improvements are not completed at least thirty (30) days prior to the expiration of the security, the City may also draw it down. If the security is drawn down, the proceeds shall be used to cure the default. Upon receipt of proof satisfactory to the City that work has been completed and financial obligations to the City have been satisfied, with City approval the security may be reduced from time to time. Ten percent (10 %) of the security, but not less than \$20,000, shall be retained until all Developer installed improvements as defined herein have been completed, all financial obligations to the City satisfied, and the required "as constructed" plans have been received by the City.

No security has been required for Lot 1, Block 1, Market Square for the City installed improvements listed in paragraph 6 of this Contract providing the City receives from the Developer, before the City signs the final plat, an executed "Deficiency Agreement" whereby the Developer guarantees to compensate the city and the Chanhassen Housing and Redevelopment Authority for all costs and special assessments associated with the installation of these improvements.

Before the, city signs the final plat, the Developer shall also escrow with the city a \$10,000.00 cash escrow for use by the City, to reimburse southwest Metro Transit Authority for the expense of relocating the bus shelter from Market Boulevard in accordance with the attached Escrow Agreement.

**9. Notices.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by registered mail at the following address: Market square Associates Limited Partnership, 200 West Highway 13, Burnsville, Minnesota 55337. Notices to the City shall be in writing and shall be either hand delivered to the City Manager, or mailed to the City by registered mail in care of the City Manager at the following address: Chanhassen City Hall, 690 Coulter Drive, P.O. Box 147, Chanhassen, Minnesota 55317, Telephone (612) 937 -1900. A copy of required notices shall also be sent to First Bank National Association, First Bank Place East - 9FE, Minneapolis, Minnesota, 55480, or to any assignees of First Bank National Association who have notified the City of such assignment, and to any other holder of a mortgage upon the property subject to this Contract which has given written notice of its mortgage to the city.

#### **10. Other Special Conditions.**

A. Revise proposed architectural plans as needed to:

- outdoor storage areas are to be enclosed by a rock faced block wall;
- the trash compactor is to be provided with a rock faced block screen wall and relocated to the north to provide a 24' wide drive aisle; and
- the addition of any drive-up windows will require site plan approval wherein it will be the Developer's responsibility to demonstrate that internal circulation patterns and parking provisions will not be impacted.

B. The proposed landscaping plan should be modified as follows:

- increase the size of conifers along the south property line for 6' to 12';
- remove the snow storage area along Market Boulevard and landscape the space; and
- cooperate with city staff in providing a relocation plan for the existing landscaping along Market Boulevard and West 78th Street.

C. Regulate access parking as follows:

- provide a triangular traffic island in the West 78th Street curb cut;
- a six foot wide concrete sidewalk shall be constructed by the Developer along the west side of Market Boulevard from West 78th street to the most southerly site access across from Bowling Alley Road;
- pedestrian crosswalks shall be installed on Market Boulevard at West 78th street and at Bowling Alley Road. The crosswalks shall be painted and signed in accordance with the requirements of Minnesota Manual on Traffic Controls;
- eliminate the nine northern stalls located on the east side of the supermarket expansion and modify the parking area to provide a turning space at the end of the aisle;

- all leases for the main building shall require that employee parking be located at the rear of the center;
- any restaurants proposed in the center are subject to a site plan review procedure. It will be the Developer 's responsibility to demonstrate parking adequacy if it is to be approved. The restaurant spaces illustrated in the two northern tenant spaces in the main building are exempt from this requirement; and
- all parking lot curbing shall be B-612 concrete.

D. Provide final grading and drainage plans for approval. The plans must incorporate the following:

- storm sewers shall be sized for a ten year storm. Revised drainage calculations shall be submitted to the City Engineer for approval;
- grading over the City's 72" storm sewer improvements;
- common borrow for use in backfilling the 72" storm sewer will be "on -site" material to be supplied by the Developer at no cost to the City at a site location to be agreed upon. The site location shall be proximate to the storm sewer installation so that trucking or hauling of the material will not be required by the public contractor;
- final backfilling over the 72" pipe, grading and shaping around the storm structure, grading and shaping over the pipe and within the railroad ditch shall be the responsibility of the developer. Final shaping of the railroad ditches shall provide for positive drainage and shall be approved by the City Engineer;
- work within the railroad right-of-way will require a Railroad Permit. The Developer shall be responsible for applying for and obtaining any and all permits and/or agreements from the appropriate railroad authority. All costs associated with the railroad approval shall be the responsibility of the Developer;
- Any delays in the project schedule resulting from delays in permit issuances shall not be the responsibility of the City;
- the city will proceed with the improvements upon receipt of all necessary approvals, receipt of all security instruments and amounts by the Developer, and final approval and execution of the development contract by the City and the Developer;
- the Developer shall provide at no cost to the City all necessary construction easements or right-of-entry permits to allow construction of the City contract to be completed;
- the city will reasonably allow building permits to be issued with the understanding that the 72" storm sewer, together with the other public roadway and utility improvements, will be installed simultaneously with the construction of the buildings providing no construction conflicts occur or interruptions to the City's utility service;
- the existing catch basin adjacent to Manhole 21 in Market Boulevard should be relocated into the new curb radius;

- project approval by the Watershed District is required prior to building permit issuance;
  - an erosion control plan acceptable to the City should be submitted prior to requesting building permits; and
  - with the exception of the 72” storm sewer, all on-site storm drainage facilities shall be owned and maintained by the Developer, its successors and assigns.
- E. Provide final roadway and utility plans for approval. The existing 10” PVC sanitary sewer shall be placed in an oversized ductile iron casing acceptable to the City. Existing watermains to be abandoned shall be removed, but not until a new watermain loop is in service and approved by the City Engineer. The Developer shall submit detailed construction plans and specifications for approval by the City Engineer and provide as-built mylar plans upon completion of construction.
- F. The Sign plan shall be submitted for approval in accordance with paragraph 4 or this Agreement.
- G. The site lighting plan shall be submitted for approval by the City. It shall incorporate existing and proposed boulevard/street lighting along Monterey Drive, West 76th Street, and Market Boulevard. As a part of the City's turn lane improvements along West 78th street and Market Boulevard, the City shall relocate two existing Type 'B' decorative lights from the bowling alley entrance off Market Boulevard and move to the proposed entrance to Market Square on West 78th Street. In addition, the City shall install four Type 'A' street lights at the following locations:
- southwest corner of the southerly entrance to Market Square on Market Boulevard
  - southwest and northwest corner of the northerly entrance to Market Square on Market Boulevard
  - northeast corner of the northerly entrance to Market Square on Monterey Drive.

Costs associated with these lighting improvements shall be the responsibility of the Developer.

- H. All conditions must be completed as a part of the general construction of the project and shall not be left to tenants, i.e. rear outdoor storage areas, etc.
- I. The Developer shall construct and dedicate trails/sidewalks along West 78th Street and Market Boulevard in accordance with plans and specifications to be approved by the City Engineer. The trails/sidewalks shall be constructed when street improvements are constructed.
- J. The Developer shall be responsible for adjustment of all existing and proposed utilities to final grade, i.e. sanitary manholes, catch basins, hydrants, and gate

valves.

K. The following section of the General Conditions (Exhibit "B ") shall not apply in this development contract:

- Item No. 11 (Landscaping)
- Item No. 26 (Street signs)

L. Installation and type of erosion control shall be coordinated with the City improvements along Market Boulevard and the extension of the 72" storm sewer. Specific placement shall be determined by City staff in the field.

M. If construction activities continue beyond freeze-up, special modifications to construction practices shall be incorporated as directed by the City Engineer, i.e. full depth select granular material for trench backfill, etc., at no cost to the City.

N. Outlot A shall not be developed until it is replatted. Any buildings on Lots 2, 3, 4, and Outlot A shall be designed with proper building materials so as to be architecturally compatible with the shopping center. No additional access shall be provided to serve Lots 2, 3, 4 and Outlot A. Only one additional monument sign shall be allowed when Lot 4 is developed, and the sign must be identical to monument signage allowed elsewhere in the Planned Unit Development. Developer shall establish suitable ground cover, and keep it well maintained, until Lots 2, 3, 4, and Outlot A develop. Parking requirements for the development shall be satisfied within the boundaries of said Lots 2, 3, 4 and outlot A.

O. Except for the utility easement on the plat described as follows:

That certain utility easement twenty feet in width which extends from the westerly boundary line of Lot 1, Block 1, Market Square, to the easterly boundary line of said Lot 1, and the center line of said utility easement intersects said westerly boundary line of said Lot 1 at approximately the point of intersection of the center line of Picha Drive (as platted and dedicated in the plat of Burdick park, Carver County, Minnesota) now vacated with the said westerly boundary line of said Lot 1,

the final plat shall be amended to reflect the proposed utility easements as both drainage and utility easements.

P. All materials hauled off site shall follow an approved haul route to be designated by the city.

Q. The city's zoning ordinance site plan review requirements shall apply to all new construction and to any material changes of approved buildings within the plat.

**11. General Conditions.** The general conditions of this Contract are attached as Exhibit "B" and incorporated herein.

CITY OF CHANHASSEN

BY: \_\_\_\_\_  
Donald J. Chmiel, Mayor

AND: \_\_\_\_\_  
Don Ashworth, City Manager

DEVELOPER:  
MARKET SQUARE ASSOCIATES  
LIMITED PARTNERSHIP

BY: 78th Square Partnership,  
a general partner

BY: \_\_\_\_\_  
Timothy L. Menning,  
a general partner

STATE OF MINNESOTA )  
( ss.  
COUNTY OF CARVER )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of February, 1992, by Donald J. Chmiel, Mayor, and by Don Ashworth, City Manager, of the City of Chanhassen, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

\_\_\_\_\_  
NOTARY PUBLIC



STATE OF MINNESOTA )  
( ss.  
COUNTY OF Hennepin )

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of February, 1992,  
by Timothy L. Menning, a general partner of 78<sup>th</sup> Square Partnership as general partner of  
Market Square Associates Limited Partnership, a Minnesota limited partnership, on its behalf.

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NOTARY PUBLIC

DRAFTED BY:  
Campbell, Knutson, Scott & Fuchs, P.A.  
317 Eagandale Office Center  
1380 Corporate Center Curve  
Eagan, Minnesota 55121  
(612) 452-5000

CONSENT

BLOOMBERG COMPANIES INCORPORATED, a Minnesota corporation, fee owner of all or part of the subject property, the development of which is governed by the foregoing Development Contract, affirm and consent to the provisions thereof and agree to be bound by the provisions as the same may apply to that portion of the subject property owned by it.

Dated this 27<sup>th</sup> day of February, 1992.

BLOOMBERG COMPANIES INCORPORATED

BY: \_\_\_\_\_  
HERBERT N. BLOOMBERG

STATE OF MINNESOTA    )  
  (ss.  
COUNTY OF Hennepin    )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of February, 1992, by Herbert N. Bloomberg, the President of Bloomberg Companies Incorporated, a Minnesota corporation, on behalf of the corporation

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
Campbell, Knutson, Scott & Fuchs, P.A.  
317 Eagandale Office Center  
1380 Corporate Center Curve  
Eagan, Minnesota 55121  
(612) 452-5000

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