



## *City Council Memorandum*

**To:** Mayor Fasbender and City Council  
**From:** John Hinzman, Community Development Director  
**Date:** September 3, 2024  
**Item:** Authorize Signature: 3rd Amendment to Development Agreement - Heritage Ridge 3<sup>rd</sup> Addition

### **Council Action Requested:**

Authorize signature of the attached 3<sup>rd</sup> Amendment to the Development Agreement between the City and Creative Homes for the development of Heritage Ridge 3<sup>rd</sup> Addition containing 40 lots located at the northwest corner of General Sieben Drive and Fallbrooke Drive.

The amendment extends the date for installation of bituminous wear course (final course) after the first course (base course) until October 1, 2025. Approval would be subject to minor modifications by staff. A simple majority is necessary for action.

### **Background Information:**

The City Council authorized signature of the original agreement on April 18, 2022. Final Plat approval was granted on September 7, 2021 to TC Land, LLC. The assignment of TC Land's approval to Creative Homes was approved by the Council on February 7, 2022. The City Council authorized signature of the 1<sup>st</sup> Amendment on May 2, 2022. On August 21, 2023 the Council approved the 2<sup>nd</sup> Amendment extending the installation of bituminous wear course until October 31, 2024.

### **Financial Impact:**

The addition of 40 home sites will add to the tax base and create needed housing opportunities.

### **Advisory Commission Discussion:**

N/A

### **Attachments:**

- 3<sup>rd</sup> Amendment to Development Agreement

**THIRD AMENDMENT TO DEVELOPMENT AGREEMENT**

**THIS THIRD AMENDMENT TO DEVELOPMENT AGREEMENT** (this “Third Amendment”) is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Creative Home Construction Investments LLC, a Wisconsin limited liability company (“Developer”).

**RECITALS:**

**WHEREAS**, the City and Developer entered into a Development Agreement for the plat of Heritage Ridge 3<sup>rd</sup> Addition recorded as Document No. 3546022 in the Dakota County Recorder’s Office, as amended by the First Amendment to Development Agreement recorded as Document No. 3546023 in the Dakota County Recorder’s Office, as further amended by the Second Amendment to Development Agreement recorded as Document No. 3604081 (collectively “Development Agreement”), for the real property identified in the Development Agreement; and

**WHEREAS**, the Developer has requested an extension of installing the bituminous wear course; and

**WHEREAS**, the City does not object to the requested extension.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants of each to the other contained in this Third Amendment and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto do covenant and agree as follows:

1. The entire Development Agreement is hereby incorporated into this Third Amendment, except as modified below.
2. Section 4.5 of the Development Agreement shall be removed and replaced in its entirety as follows:

**4.5. INTERIM BITUMINOUS STREET.** The DEVELOPER will construct a bituminous wedge for the roadways within the FINAL PLAT. The DEVELOPER shall install the bituminous wear course of streets after the first course (base course) has

weathered a winter season, consistent with warranty requirements, but no later than October 1, 2025. A bituminous ramping wedge to protect the concrete lip from snowplow damage shall be installed with the bituminous base course. Prior to paving the bituminous wear course, the ramping wedge must be milled off. The CITY will thoroughly inspect all curb and gutter for damage prior to the installation of the bituminous wear course and may require repairs and/or replacement by DEVELOPER depending on the severity of damage. Final acceptance of the required improvements by the CITY will not be granted until all work, including final wear course, is completed.

3. Except as provided for above, the terms and provisions of the Development Agreement shall remain in full force and effect.
4. This Third Amendment and all disputes or controversies arising out of or relating to this Third Amendment or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of Minnesota, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Minnesota.
5. Nothing contained herein shall be deemed a waiver by the CITY of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by Developer or its successors or assigns, shall be subject to any governmental immunity defenses of the CITY and the maximum liability limits provided by Minnesota Statutes, Chapter 466.
6. This Third Amendment may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by the parties and delivered to the other parties.
7. This Third Amendment shall not be amended, modified or supplemented, except by a written instrument signed by an authorized representative of each party.

**[remainder of page intentionally blank]**

IN AGREEMENT, the parties hereto have hereunto set their hands as of the Effective Date.

CITY:  
CITY OF HASTINGS

By: \_\_\_\_\_  
Mary Fasbender  
Its Mayor

By: \_\_\_\_\_  
Kelly Murtaugh  
Its City Clerk

STATE OF MINNESOTA            )  
  )  
COUNTY OF WASHINGTON        )        ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Hastings, the municipality named in the foregoing instrument, and that the said instrument was signed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

\_\_\_\_\_  
Notary Public

**DEVELOPER:  
CREATIVE HOME CONSTRUCTION INVESTMENTS LLC**

By: \_\_\_\_\_  
Nicholas R. Hackworthy  
Its Manager

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me a Notary Public within and for said County, personally appeared Nicholas R. Hackworthy to me personally known, who being by me duly sworn, did say that he is the Manager of Creative Home Construction Investments LLC, a Wisconsin limited liability company, the entity named in the foregoing instrument, and that said instrument was signed on behalf of said entity and said Nicholas R. Hackworthy acknowledged said instrument to be the free act and deed of the entity.

\_\_\_\_\_  
Notary Public

**THIS INSTRUMENT DRAFTED BY AND  
AFTER RECORDING PLEASE RETURN TO:**

Korine Land, #262432  
LeVander, Gillen, & Miller, P.A.  
1305 Corporate Center Drive, Suite 300  
Eagan, MN 55121  
(651) 451-1831