




## FLUEGEL LAW FIRM P.A.

Donald J. Fluegel \*  
Daniel J. Fluegel  
Benjamin J. Colburn

Attorneys At Law  
999 Westview Drive, Suite 1  
Hastings, MN 55033-2432

Telephone 651-438-9777  
Facsimile 651-438-9775  
www.fluegel.com

To: Honorable Mayor and City Council  
From: Daniel J. Fluegel, City Attorney   
Date: January 30, 2020  
Item: Agreement Regarding Sewer and Water Service Lines and Waiver of Procedural Irregularity and Assessment Appeal- Glendale Heights 3rd Addition

### **Council Action Requested.**

The City Council is requested to approve the enclosed Agreement Regarding Sewer and Water Service Lines and Waiver of Procedural Irregularity and Assessment Appeal.

### **Background Information.**

Kimberly Lemons is the owner of a residential parcel in the re-platted Glendale Heights 3rd Addition located generally at 2433 Rushmore Road in the City of Hastings. As part of the re-plat, smaller lots were reconfigured into larger lots. The lots were originally platted with the belief that townhomes would be constructed on the parcels but as a result of current housing market demand, developer desired to create larger lots on which single family homes would be constructed.

As a condition of the plat approval, property owners constructing homes on the lots are required to cap the unused sewer service line servicing the parcel and to combine the unused water service line with the water service line for one of the resulting parcels. The property owner is also required to enter into an agreement whereby they would agree to undertake any work, at their expense, necessary in the future to repair or modify the unused water and sewer service lines and if they failed to undertake that work at their expense, the City would be able to undertake the work and assess the cost against one of the resulting parcels. The enclosed agreement imposes those obligations on the property owner.

### **Financial Impact.**

There should be no financial impact to the City unless some repair or reconstruction work is required in the future and the property owners refuse to undertake that work, in which case, the City would undertake that work and assess those costs against the property.

### **Attachments.**

Agreement Regarding Sewer and Water Service Lines and Waiver of Procedural Irregularity and Assessment Appeal.

DAN/ksk

**AGREEMENT REGARDING SEWER AND WATER SERVICE LINES,  
WAIVER OF PROCEDURAL IRREGULARITY AND ASSESSMENT APPEAL**

**THIS AGREEMENT**, is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, between the City of Hastings, a Minnesota Municipal Corporation (hereinafter referred to as "City") having a principle address of 101 East 4<sup>th</sup> Street, Hastings, Minnesota, 55033, and Kimberly Lemons (hereinafter referred to as "Owner") having a principle address of 10389 Kimberly Court, Cottage Grove, Minnesota 55016.

**RECITALS**

**WHEREAS**, Owner is the owner of the real estate located at generally at 2433 Rushmore Road, Hastings, Minnesota 55033 and legally described on the attached Exhibit A ("Owner's Property").

**WHEREAS**, Owner's Property and the surrounding residential development was platted and sewer and water service lines were installed contemplating the construction of townhomes or similar such that one set of sewer and water service lines were installed to service each of Lot 28 and Lot 29 comprising the Owner's Property. Owner plans to develop Owner's Property with one single family home rather than two residential structures thereon;

**WHEREAS**, Hastings City Code allows the City to impose reasonable conditions upon approval of a subdivision plat;

**WHEREAS**, the existing water and sewer utility service lines were designed and installed to service two residential structures on Owner's Property;

**WHEREAS**, to accommodate Owner's plans for development of Owner's Property and the construction of one, rather than two, residential structures thereon, Owner is required to install water tight caps on the end of the unused sanitary sewer service in the boulevard and Owner will connect and combine the unused water service line with the primary water service line behind the curb valve servicing the residential structure;

**WHEREAS**, municipal regulations provide that: (1) all owners, platters and developers are responsible for complying with City utility requirements; (2) property owners served by water and sewer utilities are responsible for installation and maintenance of all lateral sewer and water facilities from the water and sewer mains which are owned by the City; and (3) all costs related to connection of sanitary sewer service and water service to the property must be paid by the property owners;

**WHEREAS**, the process of capping the end of the unused sanitary sewer service line and connecting and combining the unused water service line to the primary water service line behind the curb valve may, potentially, lead to conditions requiring corrective action in the future which may include, but are not limited to, leaking pipes, surface settlement resulting from broken pipes, or interference with other construction projects;

**WHEREAS**, the City has approved Owner's application for construction of one single family home on Owner's Property subject to certain conditions, including the following:

- (1) Owner's agreement, on behalf of herself, her successors and assigns, to repair, at her cost, any damage to the sanitary sewer and water service lines and any damage caused by the unused sanitary sewer and water service lines and to indemnify and hold harmless the City for any resulting damage or claims, and upon Owner's failure to perform in a timely

manner, Owner's agreement that the City may complete the necessary work and assess the cost of any such work against the parcels, as provided in this agreement; and

**WHEREAS**, Owner understands that the conditions and potential problems which may result from the unused sanitary sewer and water service lines remaining connected and in place are not certain, and cannot be fully identified or described with certainty, but Owner, on behalf of herself and her successors and assigns, desires to assume all future responsibility and costs of repairing or otherwise correcting such conditions and resulting damage.

**NOW THEREFORE IN CONSIDERATION** of the City's willingness to approve the Owner's application for building approval, the parties make the following agreement:

1. Owner hereby confirms the parcel identification number (PIN) assigned by Dakota County to the tax parcel comprising all of Owner's property is 19-29702-02-291.
2. Owner shall cause a water tight cap/plug to be installed on the end of the unused sanitary sewer service in the boulevard and shall connect the unused water service line to the primary water service line which will service the residential structure, behind the curb valve; all as depicted on the attached Exhibit A. All such installation shall be completed in a good and workman like manner approved by the City. Both curb stop valves shall remain in place on the water service lines. The connections between water services shall be on the house side of the curb stops using a City approved and plumbing code compliant 1"x1"x1" fitting. Owner may use Pex or a plumbing code equivalent from the fitting to the residential structure. Prior to backfilling the trench where such work is completed, Owner and her contractor shall provide City an opportunity to inspect and approve the installation.
3. Upon written demand by City identifying repairs to the unused sanitary sewer or the interconnected water service lines deemed necessary, in the sole discretion of the Public Works

Director for the City of Hastings, Owner, or her successors and assigns as to Owner's Property shall at her costs repair the unused sanitary sewer service lines or the water service lines, as the case may be, and after undertaking such work, shall reasonably restore any disturbed areas to their original conditions. If Owner, her successors or assigns as to Owner's Property fail to perform as required herein, City may undertake all work necessary to repair the unused sanitary sewer service lines or the unused water service lines, as the case may be, and Owner, her successors or assigns as to Owner's Property shall immediately reimburse the City for all costs incurred.

4. If Owner, her successors or assigns as to Owner's Property fails to timely reimburse City for all such costs, Owner, for herself, her successors and assigns as to Owner's Property agrees to have Owner's Property assessed for the full amount expended by City to repair the unused sanitary sewer lines or the water service lines, as the case may be, and to restore the area to its original condition. The exact amount of this assessment is unknown at this time but will be determined by the City in its reasonable discretion.

5. If the full amount expended by City to repair the sanitary sewer line or water service line and to restore the area to its original condition is \$10,000.00 or less, any assessments shall be paid over a period of five years but if the amount to be assessed is over \$10,000.00, the assessment shall be paid over a ten year period. In addition, interest shall accrue on the unpaid assessment at a rate equal to the interest rate applied by the City of Hastings for other assessments in the year the work is performed. If no such assessments are certified for other properties in the City of Hastings during that year, the interest rate shall be equal to the interest rate imposed on the most recent assessment certified by the City of Hastings. Owner, for herself, her successors and assigns as to Owner's Property agrees that City can assess an additional \$5.00

per year (\$25.00 for a five-year assessment period or \$50.00 for a ten year assessment) which represents the annual assessment fee imposed by Dakota County for this assessment.

6. Owner, for herself, her successors and assigns as to Owner's Property agrees that City can certify this assessment to Dakota County for collection with the real estate taxes without the necessity of the City complying with any of the procedural or notice requirements outlined in Minnesota Statutes Chapter 429, or amendments thereto.

7. In further consideration of City granting subdivision approval, Owner, for herself, her successors and assigns as to Owner's Property, grants to City, a perpetual easement over and across any portion of Owner's Property wherein the unused water and sanitary service lines may be located, and ten (10) feet on either side thereof, for the sole purpose of accessing the unused water and service lines in the event removal, repair or replacement of such lines becomes necessary pursuant to the terms of this agreement.

8. In further consideration of City granting subdivision approval, Owner, for herself, her successors and assigns as to Owner's Property also agrees to waive any right to appeal the amount assessed against Owner's Property for these repair costs, whether the basis for the appeal is that the assessment exceeds the benefits to Owner's Property or on any other basis whatsoever.

9. Where reference is made herein to Owner, reference shall be to Owner, her successors and assigns as to Owner's Property, and the rights and obligations hereunder shall run with the land and shall burden Owner's Property, and all subsequent owners thereof.

10. Owner shall indemnify and hold harmless City for any damages or claims resulting from the unused sanitary sewer lines and the combined water service lines remaining connected and in place pursuant to this agreement.

11. Owner further agrees, on behalf of her successors and assigns, that Owner's Property shall not be further subdivided, and shall forever remain one single lot and tax parcel, unless such subdivision is approved by the written consent and approval of the City. This covenant shall run with the land in perpetuity and shall burden Owner's Property and all subsequent owners thereof, and shall benefit the City. The City may enforce the provisions of this covenant in any manner allowed by law or equity, including by containing injunctive relief.

The City and Owner enter and sign this agreement with full understanding of their legal rights and acknowledge they have had sufficient opportunity to discuss this matter with an attorney of their choosing.

Dated: \_\_\_\_\_, 2020

**CITY OF HASTINGS,  
A Minnesota Municipal Corporation**

By: \_\_\_\_\_  
Mary D. Fasbender, It's Mayor

*(SEAL)*

By: \_\_\_\_\_  
Julie A. Flaten, City Clerk

**ACKNOWLEDGMENT**

**STATE OF MINNESOTA)**  
**) ss.**  
**COUNTY OF DAKOTA )**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Mary D. Fasbender and Julie A. Flaten, the Mayor and City Clerk of the City of Hastings, a Minnesota Municipal Corporation.

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

Dated: \_\_\_\_\_, 2020

**OWNER**

By: \_\_\_\_\_  
Kimberly Lemons

**ACKNOWLEDGMENT**

**STATE OF MINNESOTA )**  
**) ss.**  
**COUNTY OF DAKOTA )**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2020 by Kimberly Lemons, Owner.

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



**EXHIBIT A  
LEGAL DESCRIPTION**

Lot 28 and 29, Block 2, Glendale Heights 3<sup>rd</sup> Addition, according to the recorded plat thereof,  
City of Hastings, Dakota County, Minnesota.

**THIS INSTRUMENT DRAFTED BY AND RETURN TO:**  
**FLUEGEL LAW FIRM P.A.**  
999 Westview Drive, Suite #1  
Hastings, MN 55033  
651-438-9777  
(DAN/ksk)