



City Council Memorandum

To: Mayor Fasbender and City Council
From: John Hinzman, Community Development Director
Date: April 5, 2021
Item: Villas at Pleasant - 32 Villas Homes - Simek Property Group - Northridge and Pleasant

Council Action Requested:

Consider the following actions related to development of Villas at Pleasant containing 32 villa home sites located at the northwest corner of Northridge Drive and Pleasant Drive as proposed by Simek Property Group:

- 1) **Resolution: Final Plat** - Approval to subdivide 32 villa home lots and five outlots consistent with the previous Preliminary Plat approval.
- 2) **Authorize Signature: Development Agreement** - Memorialization of terms of Final Plat approval and Developer obligations for construction.
- 3) **Authorize Signature: Long-Term Stormwater BMP Maintenance Agreement** - Establishment of stormwater maintenance obligations and responsibilities.
- 4) **Authorize Signature: Agreement Regarding Sewer and Water Service Lines, Waiver of Procedural Irregularity and Assessment Appeal** - Establishment of conditions for six individual utility service lines along Northridge Drive to remain in place.

A simple majority is necessary for all actions.

Background Information:

The City Council granted Preliminary Plat and Final Plat approval on September 21, 2020. Final Plat approval included 16 of the 32 lots and was based on the Developer's original plan to construct the subdivision in two phases. Development of all 32 lots is now proposed in a single phase. The Final Plat is consistent with the approved Preliminary Plat.

The City Council authorized signature of a Site Grading Agreement on March 15, 2021 for commencement of grading activities prior to Final Plat approval at the developer's risk.

Financial Impact:

The addition of 32 home sites will add to the tax base and create needed housing opportunities.

Advisory Commission Discussion:

The Planning Commission voted 7-0 to recommend approval of the Final Plat at the March 22, 2021 meeting with limited discussion.

Attachments:

- Resolution
- Planning Commission Staff Report - March 22, 2021
- Development Agreement
- Long-Term Stormwater BMP Maintenance Agreement
- Agreement Regarding Sewer and Water Service Lines, Waiver of Procedural Irregularity and Assessment Appeal

HASTINGS CITY COUNCIL

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HASTINGS
GRANTING FINAL PLAT APPROVAL OF VILLAS AT PLEASANT**

Council member _____ introduced the following Resolution and moved its adoption:

WHEREAS, Simek Property Group has petitioned for Final Plat approval of VILLAS AT PLEASANT, containing 32 lots and five outlots. The subject property is generally located at the northwest corner of Pleasant Drive and Northridge Drive legally described as follows:

The North 957.39 feet, as measured along the West line and the most Northerly East line of the following tract: That part of the East Half of Section 32, Township 115 North, Range 17 West, described as follows: Commencing at a point 35 rods West of the Southeast corner of the West Half of the East Half of said Section 32, running thence North 109 rods and 21 links; thence West 6 rods; thence North 73 rods; thence West 29 rods; thence South 182 rods and 21 links; thence East 35 rods to the place of beginning; Except that property lying East of the West line of Pleasant Drive as now located. And also except that part which lies northerly of the south line of Highland Hills Fourth Addition, Dakota County, Minnesota.

AND

That part of the West Half of the Southeast Quarter of Section 32, Township 115, Range 17, Dakota County, Minnesota described as follows: Commencing at the Southwest corner of the said West Half of the Southeast Quarter; thence North 00 degrees 19 minutes 54 seconds West (assumed bearing) along the West line thereof a distance of 2059.47 feet to the Northwest corner of Old Bridge First Addition, as on file and of record in the Office of the County Recorder, and the point of beginning of the land to be described; thence continuing North 00 degrees 19 minutes 54 seconds West along the West line a distance of 576.07 feet, more or less, to the Northwest corner of said West Half of the Southeast Quarter; thence South 89 degrees 04 minutes 26 seconds East along the North line thereof a distance of 162.09 feet, more or less, to a line parallel with and 1155.00 feet West, as measured along a line parallel with the South line of the West Half of the Southeast Quarter, from the east line of said West Half of the Southeast Quarter; thence South 00 degrees 02 minutes 23 seconds West along said line parallel with the East line of the West Half of the Southeast Quarter a distance of 575.88 feet, more or less, to the North line of said Old Bridge First Addition; thence North 89 degrees 07 minutes 07 seconds West along said North line a distance of 158.35 feet, more or less, to the point of beginning.

WHEREAS, on September 21, 2020 the City Council granted Preliminary Plat approval of Villas at Pleasant; and

WHEREAS, on March 22, 2021, review of the final plat was conducted before the Planning Commission of the City of Hastings, as required by state law, city charter, and city ordinance; and

WHEREAS, The Planning Commission recommended approval of the Final Plat finding it to be consistent with the approved Preliminary Plat and; and

WHEREAS, The City Council has reviewed the request and recommendation of the Planning Commission.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HASTINGS AS FOLLOWS:

That the City Council hereby approves the Final Plat as presented subject to the following conditions:

- 1) Conformance with the plans submitted with the City Council Staff Report dated April 5, 2021.
- 2) Conformance with Preliminary Plat approval.
- 3) Final approval of all Civil Plans including Grading, Drainage and Erosion Control Plan, and Utility Plan by the Public Works Director.
- 4) All disturbed areas on the property shall be stabilized with rooting vegetative cover to eliminate erosion control problems.
- 5) Execution of a Development Agreement to memorialize conditions of approval and to establish applicable escrow amounts to ensure completion of public improvements.
- 6) Execution of a stormwater access and maintenance agreement between the City and property owner prior to recording of the final plat.
- 7) Execution of a waiver of assessment appeal related to unused sanitary sewer and water lines.
- 8) A declaration of covenants, conditions and restrictions or the equivalent document shall be submitted for review and approval by the City before release of the final plat mylars to ensure maintenance of open space, median plantings, cul-de-sac plantings, common drives, and common utilities. The declaration shall include, but is not limited to, the following:

- a. A statement requiring the deeds, leases or documents of conveyance affecting buildings, units, parcels, tracts, townhouses, or apartments be subject to the terms of the declaration.
 - b. A provision for the formation of a property owners association or corporation and that all owners must be members of said association or corporation which may maintain all properties and common areas in good repair and which may assess individual property owners proportionate shares of joint or common costs. The association or corporation must remain in effect and may not be terminated or disbanded.
 - c. Membership in the association shall be mandatory for each owner and any successive buyer.
 - d. Any open space restrictions must be permanent and may not be changed or modified without city approval.
 - e. The association is responsible for liability insurance, local taxes and the maintenance of the open space facilities deeded to it.
 - f. Property owners are responsible for their pro-rata share of the cost of the association by means of an assessment to be levied by the association which meet the requirements for becoming a lien on the property in accordance with Minnesota Statutes.
 - g. The association may adjust the assessment to meet changing needs.
- 9) Submission of certification of taxes paid in full for the property prior to release of the final plat mylars for recording.
- 10) Payment of \$70,400 (\$2,200 x 32 units) to satisfy park dedication requirements prior to release of the final plat mylars for recording.
- 11) Payment of \$15,520 (\$485 x 32 units) in sewer interceptor fees prior to release of the final plat mylars for recording.
- 12) Individual mailboxes for each home are not permitted. Mailboxes must be grouped into clusters.
- 13) Developer shall plant "boulevard" trees of at least 1.5 caliper inches according to the submitted tree plan. An escrow is required for any unplanted trees before a certificate of occupancy is issued.

- 14) One front yard tree of at least 1.5 caliper inches must be planted by the builder or developer on every platted lot. An escrow is required for any unplanted trees before a certificate of occupancy is issued.
- 15) Blanket drainage and utility easements shall be recorded against all outlots, unless they are further delineated to the satisfaction of the Public Works Director.
- 16) Any uncompleted site work (including landscaping) must be escrowed for prior to issuance of a certificate of occupancy.
- 17) Approval is subject to a one year Sunset Clause; the plat must be recorded with Dakota County within one year of City Council approval or approval is null and void.

Council member _____ moved a second to this resolution and upon being put to a vote it was adopted by the Council Members present.

Adopted by the Hastings City Council on April 5, 2021 by the following vote:

Ayes:
Nays:
Absent:

ATTEST:

Mary Fasbender, Mayor

Eric Henderson,
City Clerk

(City Seal)

I HEREBY CERTIFY that the above is a true and correct copy of resolution presented to and adopted by the City of Hastings, County of Dakota, Minnesota, on the 5th day of April, 2021, as disclosed by the records of the City of Hastings on file and of record in the office.

Erica Henderson, City Clerk

(SEAL)

This instrument drafted by:
City of Hastings (JH)
101 4th St. E.
Hastings, MN 55033



Planning Commission Memorandum

To: Planning Commissioners
From: John Hinzman, Community Development Director
Date: March 22, 2021
Item: Villas at Pleasant - Final Plat #2021-10 - Simek Property Group

Planning Commission Action Requested

Recommend action on the request of Simek Property Group for the Final Plat of Villas at Pleasant containing 32 villa home sites. The 10.38 acre property consists of two parcels located at the northwest corner of Pleasant Drive and Northridge Drive.

Previous Final Plat approval was granted for the half of the site in anticipation of a two phase plat in 2020. Simek has modified plans to complete the entire 32 lot development in a single phase. The change has necessitated approval of a new Final Plat. The previous Preliminary Plat and Rezoning approvals remain valid.

BACKGROUND INFORMATION

Previous Actions

- **Planning Commission August 24, 2020 - Public Hearing & Rezoning.** Recommendation to approve rezoning. Action on the Preliminary and Final Plat was tabled to review Orchard and Melody Court cul-de-sac options.
- **Planning Commission September 14, 2020 - Preliminary and Final Plat.** Recommendation to approve Preliminary and Final Plat subject to a reduction in size for Orchard and Melody Courts.
- **City Council September 21, 2020 - Public Hearing - Rezoning, Preliminary Plat and Final Plat.** Approval of all items. Standard cul-de-sac design and reduced options presented. Council approved the standard cul-de-sac design.

Comprehensive Plan

The property is guided Low Residential within the 2040 Comprehensive Plan. Low Residential includes single family and two family housing with allowable densities of 2.5-6.0 housing units per net acre and lots sizes of at least 6,000 s.f. The proposed development plan is consistent with the Low Density designation with all lot sizes exceeding 6,000 s.f. and having a net density of 5.5 units per acre.

Zoning

The property is zoned R-3 - Medium-High Density Residence - Planned Residential Development. R-3 includes both single family and multiple family housing. Planned Residential Development allows for a deviation in minimum lot sizes and setbacks, although all lots meet minimum size and setback standards.

Existing Condition

The site is generally flat, treeless, and used for agriculture. A small grove of trees exists near the southwest corner.

Proposed Condition

Development into 32 villa home sites marketed towards senior and empty nesters. The villa homes would be detached single family homes belonging to an association to provide for grounds maintenance including landscaping and plowing.

Adjacent Zoning and Land Use

The following land uses abut the property:

| Direction | Use | Comp Plan District | Zoning District |
|------------------|---|---------------------------|------------------------|
| North | Single Family Residential | Low Density Residential | R-1 Single Family |
| East | Pleasant Drive Single Family Residential | Low Density Residential | R-1 Single Family |
| South | Northridge Drive Single Family Residential | Low Density Residential | R-1 Single Family |
| West | Single Family Residential | Low Density Residential | R-1 Single Family |

FINAL PLAT REVIEW

Request

Final Plat approval of the Villas at Pleasant containing 32 villa home lots.

Difference Between Preliminary Plat and Final Plat

Preliminary Plat approval includes the plan for future subdivision of the entire development including a review of lots, streets, grading, stormwater, utilities, public land dedication, and landscaping. Final Plat approval is the formal subdivision of all or a portion of a Preliminary Plat into lots of record for construction. The Preliminary Plat establishes the plan for development, while the Final Plat formally puts the plan into effect.

Villa Homes

All homes will be developed as Villa Homes by Simek Property Group under the design of Epcon Communities. Homes will be one story. Outdoor activity spaces for each home will be located on the side as opposed to the rear yard to offer a private courtyard space. The homes will be marketed towards empty nester and seniors. The development will include an association responsible for all outdoor maintenance including landscaping and snow removal. Please see the attached pictures for further information.

Epcon has been constructing homes since 1986 providing housing to more than 30,000 families. Specializing in constructing single-story living communities they are based in Ohio and have constructed communities in 28 states. Further information can be found at www.epconcommunities.com.

Lot Layout

Proposed lots meet the following minimum requirements of the R-3 Zoning District:

| | Minimum Requirement | Proposal |
|----------------------------|---------------------|---------------------|
| Lot Area | 5,000 s.f. | 6,000 - 14,550 s.f. |
| Front Yard Setback | 20' | 20' |
| Interior Side Yard Setback | 7' | 7' |
| Corner Side Yard Setback | 10' | 10' |
| Rear Yard Setback | 20' | 20 - 70' |

Outlots

Outlots are parcels of land that are restricted from immediate development. Development restrictions may be permanent (such as stormwater basins), or temporary (such as future phases of a development). The outlots included in the preliminary plat are designated for private stormwater basins and common open space. All outlots would be designated as open space or stormwater retention.

Streets

Development includes the extension of both Old Bridge Lane and 23rd Street. Melody Court and Orchard Court would be established to serve areas west of Old Bridge Lane. All streets would be publicly dedicated and meet minimum size requirements. Cul-de-sac lengths are less than the maximum 500 foot length limit.

Pedestrian Access

Pedestrian access is adequate. A trail exists on the south side of Northridge Drive and a sidewalk along the west side of Pleasant Drive. A new sidewalk is proposed along the east side of the extension of Old Bridge Lane and along the south side of 23rd Street to provide access to existing facilities.

Landscape Plan

The landscape plan identifies boulevard tree plantings every 50 lineal feet along all new right-of-ways. Additional coniferous tree plantings have been included along the cul-de-sac bulbs to buffer activities from adjoining home owners. Front yard trees will be required for every unit as part of the building permit.

Civil Plan Review - Grading, Drainage, Erosion Control, and Municipal Utilities

The site is generally flat. Existing homes adjacent to the north and west sides of the proposed development experience drainage issues at present. The developer proposes to create drainage swales along the north and west boundaries of the plat to channel drainage on site to proposed stormwater basins. The Final Plat must be constructed in conformance with the Civil Plan approvals granted by the Public Works Director.

Buffering to Existing Homes

Coniferous tree plantings have been incorporated along the north and western extents of the development to provide further separation between existing homes and new homes and streets. The trees will be six feet tall at the time of planting and will be grouped to limit visibility.

Stormwater Maintenance Agreement

The developer must execute a stormwater maintenance agreement over all private stormwater utility systems to ensure private maintenance and to allow for emergency public access prior to recording of the final plat.

Association Maintenance Agreement

A homeowner's association or similar mechanism will be required to ensure maintenance of private common infrastructure including cul-de-sac islands prior to recording of the final plat.

Park Land Dedication

On August 19, 2020 the Park and Recreation Commission recommended the payment of cash in lieu of land to satisfy park dedication requirements. Payment of \$70,400 (\$2,200 x 32 units) to satisfy park dedication requirements prior to release of the final plat mylars for recording will be required.

Interceptor Sewer Fee

Payment of sewer interceptor fees in the amount of \$15,520 (\$485 x 32 units) is required prior to release of the final plat mylars for recording.

Development Agreement

The City and developer shall enter into a Development Agreement to memorialize conditions of approval and to establish applicable escrow amounts to ensure completion of public improvements.

RECOMMENDATION - FINAL PLAT

The Final Plat is consistent with the Preliminary Plat. Approval of the Final Plat of the Villas at Pleasant is recommended subject to the following conditions:

- 1) Conformance with the plans submitted with the Planning Commission Staff Report dated March 22, 2021.
- 2) Conformance with Preliminary Plat approval.
- 3) Final approval of all Civil Plans including Grading, Drainage and Erosion Control Plan, and Utility Plan by the Public Works Director.
- 4) All disturbed areas on the property shall be stabilized with rooting vegetative cover to eliminate erosion control problems.
- 5) Execution of a Development Agreement to memorialize conditions of approval and to establish applicable escrow amounts to ensure completion of public improvements.
- 6) Execution of a stormwater access and maintenance agreement between the City and property owner prior to recording of the final plat.
- 7) Execution of a waiver of assessment appeal related to unused sanitary sewer and water lines.

- 8) A declaration of covenants, conditions and restrictions or the equivalent document shall be submitted for review and approval by the City before release of the final plat mylars to ensure maintenance of open space, median plantings, cul-de-sac plantings, common drives, and common utilities. The declaration shall include, but is not limited to, the following:
 - a. A statement requiring the deeds, leases or documents of conveyance affecting buildings, units, parcels, tracts, townhouses, or apartments be subject to the terms of the declaration.
 - b. A provision for the formation of a property owners association or corporation and that all owners must be members of said association or corporation which may maintain all properties and common areas in good repair and which may assess individual property owners proportionate shares of joint or common costs. The association or corporation must remain in effect and may not be terminated or disbanded.
 - c. Membership in the association shall be mandatory for each owner and any successive buyer.
 - d. Any open space restrictions must be permanent and may not be changed or modified without city approval.
 - e. The association is responsible for liability insurance, local taxes and the maintenance of the open space facilities deeded to it.
 - f. Property owners are responsible for their pro-rata share of the cost of the association by means of an assessment to be levied by the association which meet the requirements for becoming a lien on the property in accordance with Minnesota Statutes.
 - g. The association may adjust the assessment to meet changing needs.
- 9) Submission of certification of taxes paid in full for the property prior to release of the final plat mylars for recording.
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- 11) Payment of \$15,520 (\$485 x 32 units) in sewer interceptor fees prior to release of the final plat mylars for recording.
- 12) Individual mailboxes for each home are not permitted. Mailboxes must be grouped into clusters.
- 13) Developer shall plant "boulevard" trees of at least 1.5 caliper inches according to the submitted tree plan. An escrow is required for any unplanted trees before a certificate of occupancy is issued.
- 14) One front yard tree of at least 1.5 caliper inches must be planted by the builder or developer on every platted lot. An escrow is required for any unplanted trees before a certificate of occupancy is issued.
- 15) Blanket drainage and utility easements shall be recorded against all outlots, unless they are further delineated to the satisfaction of the Public Works Director.
- 16) Any uncompleted site work (including landscaping) must be escrowed for prior to issuance of a certificate of occupancy.
- 17) Approval is subject to a one year Sunset Clause; the plat must be recorded with Dakota County within one year of City Council approval or approval is null and void.

ATTACHMENTS

- Site Location Map
- Preliminary Plat
- Final Plat
- Application

LOCATION MAP



VILLAS AT PLEASANT

KNOW ALL PERSONS BY THESE PRESENTS: That Simek Property Group, LLC, a Minnesota limited liability company, owner of the following described property:

Parcel 1:
The North 957.39 feet, as measured along the West line and the most Northerly East line of the following tract: That part of the East Half of Section 32, Township 115 North, Range 17 West, described as follows: Commencing at a point 35 rods West of the Southeast corner of the West Half of the East Half of said Section 32, running thence North 109 rods and 21 links; thence West 6 rods; thence North 73 rods; thence West 29 rods; thence South 182 rods and 21 links; thence East 35 rods to the place of beginning; EXCEPT that property lying East of the West line of Pleasant Drive as now located. AND also except that part which lies northerly of the south line of Highland Hills Fourth Addition, Dakota County, Minnesota.

Parcel 2:
That part of the West Half of the Southeast Quarter of Section 32, Township 115, Range 17, Dakota County, Minnesota described as follows: Commencing at the Southwest corner of the said West Half of the Southeast Quarter; thence North 00 degrees 19 minutes 54 seconds West (assumed bearing) along the West line thereof a distance of 2059.47 feet to the Northwest corner of Old Bridge First Addition, as on file and of record in the Office of the County Recorder, and the point of beginning of the land to be described; thence continuing North 00 degrees 19 minutes 54 seconds West along the West line a distance of 576.07 feet, more or less, to the Northwest corner of said West Half of the Southeast Quarter; thence South 89 degrees 04 minutes 26 seconds East along the North line thereof a distance of 162.09 feet, more or less, to a line parallel with and 1155.00 feet West, as measured along a line parallel with the South line of the West Half of the Southeast Quarter, from the east line of said West Half of the Southeast Quarter; thence South 00 degrees 02 minutes 23 seconds West along said line parallel with the East line of the West Half of the Southeast Quarter a distance of 575.88 feet, more or less, to the North line of said Old Bridge First Addition; thence North 89 degrees 07 minutes 07 seconds West along said North line a distance of 158.35 feet, more or less, to the point of beginning.

Has caused the same to be surveyed and platted as VILLAS AT PLEASANT and does hereby dedicate to the public for public use the public ways and the easements for drainage and utility purposes as created by this plat.

In witness whereof said Simek Property Group, LLC, a Minnesota limited liability company, has caused these presents to be signed this _____ day of _____, 20_____.

Simek Property Group, LLC, a Minnesota limited liability company
By: Simek Property Group, LLC
a Minnesota limited liability company
Its: President

By: _____
Stuart R. Simek, President

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 20_____, by Stuart R. Simek, President of Simek Property Group, LLC a Minnesota limited liability company, on behalf of the Minnesota limited liability company.

(signed)_____

(printed)_____

Notary Public _____, County, Minnesota.
My Commission Expires_____

I Daniel L. Thurmes do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been, or will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Dated this _____ day of _____, 20_____.

Daniel L. Thurmes, Licensed Land Surveyor
Minnesota License No. 25718

STATE OF MINNESOTA
COUNTY OF WASHINGTON
This instrument was acknowledged before me this _____ day of _____, 20_____, by Daniel L. Thurmes, a Licensed Land Surveyor.

(signed)_____

(printed)_____

Notary Public _____, County, Minnesota.
My Commission Expires_____

PLANNING COMMISSION, HASTINGS, MINNESOTA
Approved by the Planning Commission of the City of Hastings, Minnesota, this _____ day of _____, 20_____.

By: _____, Chairperson

By: _____, Secretary

CITY COUNCIL, HASTINGS, MINNESOTA
This plat of VILLAS AT PLEASANT was approved and accepted by the City Council of the City of Hastings, Minnesota, at a regular meeting thereof held this _____ day of _____, 20_____, and is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

City Council of the City of Hastings, Minnesota

Signed: _____, Mayor

Signed: _____, City Clerk

COUNTY SURVEYOR, COUNTY OF DAKOTA COUNTY, STATE OF MINNESOTA
I hereby certify that in accordance with Minnesota Statutes, Section 505.021, Subd 11, this plat has been reviewed and approved this _____ day of _____, 20_____.

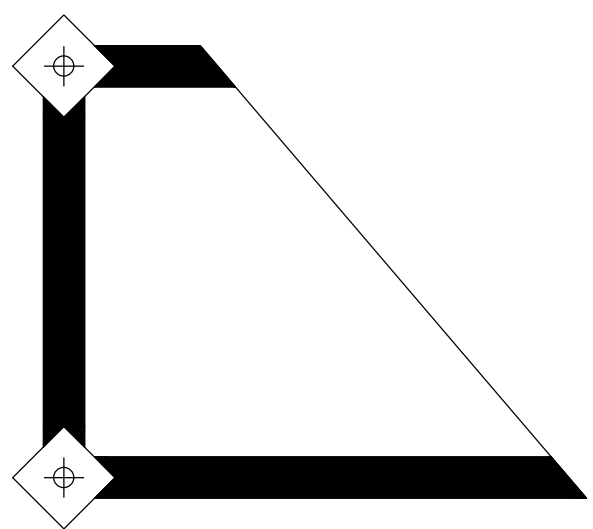
By: _____
Todd B. Tollefson, Dakota County Surveyor

DEPARTMENT OF PROPERTY TAXATION AND RECORDS, COUNTY OF DAKOTA COUNTY, STATE OF MINNESOTA
Pursuant to Minnesota Statutes, Section 505.021, Subd. 9, taxes payable in the year 20____ on the land hereinbefore described have been paid. Also pursuant to Minnesota Statutes, Section 272.12, there are no delinquent taxes and transfer entered this _____ day of _____, 20_____.

By: _____
Amy A. Koethe, Director, Department of Property Taxation and Records

COUNTY RECORDER, COUNTY OF DAKOTA COUNTY, STATE OF MINNESOTA
I hereby certify that this plat VILLAS AT PLEASANT was filed in the office of the County Recorder for public record on this _____ day of _____, 20_____, at _____ o'clock _____ .M. and was duly filed in Book _____ of Plats, Page _____ as Document No. _____.

By: _____
Amy A. Koethe, County Recorder



CORNERSTONE
LAND SURVEYING, INC.



City of Hastings
Community Development Department

Land Use Application

Address or PID of Property: 190320082013 + 190320080010

Applicant Name: Villas at Pleasant, LLC Property Owner: Same

Address: 90 Dale St S Address: _____
St. Paul, MN 55102

Phone: 651-289-1552 Phone: _____

Fax: _____ Fax: _____

Email: SSimek@simekpg.com Email: _____

Description of Request: Final plat of Sub Division

If requesting site plan review of multi-family units (three or more attached), are the units intended to be for sale or rental units? _____

| | | |
|--|---|---|
| Check Applicable Line(s) | Please Note: All Fees and Escrows are due at time of application. | |
| <input type="checkbox"/> Rezone | \$500 | <input type="checkbox"/> Minor Subdivision \$500 |
| <input checked="" type="checkbox"/> Final Plat | \$600 | <input type="checkbox"/> Special Use Permit \$500 |
| <input type="checkbox"/> Variance | \$250 | <input type="checkbox"/> Comp Plan Amend. \$500 |
| <input type="checkbox"/> Vacation | \$400 | <input type="checkbox"/> Lot Split/Lot Line Adj. \$50 |
| <input type="checkbox"/> House Move | \$500 | <input type="checkbox"/> Annexation \$500 plus legal expenses |
| <input type="checkbox"/> Prelim Plat | \$500 + escrow | <input type="checkbox"/> EAW \$500 + \$1,000 escrow |
| <input type="checkbox"/> Site Plan | \$500 + escrow | <input type="checkbox"/> Interim Use Permit \$500 |

Total Amount Due: \$ 600 Make checks payable to City of Hastings.
Credit cards also accepted.

Pd Visa 2-19-21

Please ensure that all copies of required documents are attached.

[Signature] 2-19-21
Applicant Signature Date

[Signature] 2-19-21
Owner Signature Date

Stuart R. Simek President
Applicant Name and Title - Please Print

Stuart R. Simek President
Owner Name - Please Print

OFFICIAL USE ONLY

File # _____ Rec'd By: _____ Date Rec'd: _____
Fee Paid: _____ Receipt # _____ App. Complete _____

**DEVELOPMENT AGREEMENT OF
VILLAS AT PLEASANT, DAKOTA COUNTY, MINNESOTA**

THIS AGREEMENT is made this ____ day of April, 2021, by and between the City of Hastings, a Minnesota municipal corporation (“City”) and Villas at Pleasant, LLC, a Minnesota limited liability company (“Developer”).

RECITALS

WHEREAS, Developer proposes to undertake the development and construction of a residential villa home development on property to be platted as Villas at Pleasant, Dakota County, Minnesota; and

WHEREAS, public hearings have been held providing the opportunity for input by the neighbors and other interested persons; and

WHEREAS, the Hastings City Council has approved Developer’s plat of Villas at Pleasant, subject to Developer entering into this Development Agreement and otherwise complying with all conditions of City Council approval; and

WHEREAS, Developer is signing this Development Agreement freely and voluntarily, fully expecting to bind their interests in the subject property to the extent set forth herein.

NOW THEREFORE, it is hereby agreed between the parties as follows:

1. **Application of Development Agreement.** This Development Agreement shall apply to the following property platted in the City of Hastings, Dakota County, Minnesota, legally described as:

Villas at Pleasant, according to the plat thereof, recorded in the Office of the County Recorder, Dakota County, Minnesota.

Such plat is attached hereto as Exhibit A. This property hereafter shall be referred to as “Subject Property”. All references in this Development Agreement to a lot, block or outlot, shall unless the context clearly states otherwise, refer to the corresponding lot, block or

outlot contained in the plat of Villas at Pleasant. Where a requirement is imposed herein to record or file a plat or other document, such requirement shall include the requirement to record such document in the Office of the Dakota County Recorder or to file the document in the Office of the Dakota County Registrar of Titles, or both, as necessary and applicable to ensure public record notice of the document is given for all of the Subject Property, whether it be abstract property, Torrens property, or both.

2. **Authority to Sign.** Developer warrants to the City it owns fee title to the Subject Property, free and clear of all encumbrances (except for mortgages that have been subordinated to this Development Agreement) and it has full authority to enter into this Development Agreement and perform the conditions herein contained. Developer further warrants that this Development Agreement will be recorded against the Subject Property before any of the Subject Property is transferred or further encumbered in any way.
3. **Density.** The Subject Property has been approved for thirty-two (32) villa home lots and five (5) outlots. All development of the Subject Property shall be consistent with the conditions of preliminary plat and final plat approval and shall conform with the plans submitted with the City Council Staff Report dated April 5, 2021.
4. **Park Dedication Fees.** Developer shall, prior to City's signature or release of the final plat mylars, pay \$70,400.00 (\$2,200.00 per unit x 32 units) to satisfy park land dedication requirements. Recording or filing of this Development Agreement in the real estate records of Dakota County, Minnesota shall evidence satisfaction of this obligation.
5. **Sewer Interceptor Fees.** Before the City will release the signed final plat for recording, Developer must pay to the City, sewer interceptor fees in the amount of \$15,520.00 (\$485 per unit x 32 units).
6. **Streets.**
 - A. **Grading.** Streets shall be graded to the full width of the right-of-way as approved in the Final Plat and in accordance with street grades submitted to and approved by the Public Works Department. All street grading and gravel base construction will be in accordance with specifications on file in the Public Works Department and contained in the Villas at Pleasant Civil Engineering Plan Set dated February 24, 2021 on file with the City, and all subsequent amendments or updates thereto (hereinafter referred to collectively as the "Engineering Plan Set"). Grading must be completed prior to the installation of applicable underground utilities, either private or public in nature. Gravel base construction shall be undertaken after completion of the installation of underground utilities.
 - B. **Surfacing.** Following Public Works Department approval of street grading and utility installation, streets shall be surfaced and provided with concrete curbs and gutters in accordance with the latest recommended plans and specifications prepared by the Public Works Department and on file at the City. 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 June 30, 2022. Final acceptance of the required improvements by the City will not be granted until all work, including final wear course, is completed. A bituminous ramping wedge to protect the concrete lip from snow plow 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.

- C. Perimeter Erosion & Sediment Control. Developer shall install perimeter erosion and sediment control directly behind the curb as part of the street construction process. This shall be approved by the Public Works Department prior to the development being approved for building permits.
- D. Street Maintenance During Construction. The Developer shall be responsible for all street maintenance until the streets are accepted by the City in writing. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and to direct attention to detours. If and when streets become impassable, such streets shall be barricaded and closed. Developer acknowledges that the City will not maintain (including snow and ice removal) any streets until they are paved with a hard surface and accepted by the City and to the extent the Developer receives permission to and does construct a model home in the development, no certificate of occupancy for the model home will be issued by the City until the street providing access to the model home satisfies these requirements and the Developer will need to provide all maintenance (including snow and ice removal) to accommodate access to any such model home.

7. **Site Grading, Stormwater Controls and Maintenance of Ponding Basins.**

- A. General. The entire Subject Property, including all platted lots and all outlots, shall be graded at the same time. All site grading on the Subject Property shall be completed according to the grading plan approved by the City and contained in the Engineering Plan Set. All disturbed areas on the Subject Property must be stabilized with a rooting vegetative cover within 14 days of completion of grading and initiated immediately after said completion to eliminate any erosion problems. The Subject Property shall also be maintained so as to comply with all City of Hastings property maintenance ordinances. Upon completion of site grading, the Developer shall submit to the Public Works Department for review, an as-built grading plan in a type and format specified by the Public Works Department (and available on the City website) shall include but are not limited to, the newly graded elevations at all lot corners, critical elevations in drainage ways, one foot contours at ponding and sedimentation basins, and at ponding level control points for ponding basin emergency overflow swales.
- B. Stormwater Controls and BMP's. Developer shall construct and maintain all storm

water controls and Best Management Practices (“BMP’s”) on the Subject Property in compliance with all existing erosion control plans, the Engineering Plan Set, and all City, Minnesota and federal requirements, laws and regulations. The storm water facilities (“Stormwater Facilities”) include but are not limited to Basins 1, 2, 3, 4 and 5 depicted in the grading plan, stormwater management plan and stormwater pollution prevention plan (SWPPP) contained in the Engineering Plan Set; sump catch basins; infiltration and filtration basins; drainage swales and other conveyances; and access area easements. The Stormwater Facilities will remain private and will be maintained by the Developer at its sole expense. The Developer may assign such maintenance obligations to a homeowner’s association that assumes those obligations, provided the Developer shall remain obligated if the homeowner’s association fails to satisfy the obligations. The City does not intend to accept the Stormwater Facilities as public or to maintain them.

C. Maintenance of Stormwater Controls and Ponding Basins. The Developer shall comply with all requirements of the City of Hastings Storm Water Management Ordinance, Chapter 152, which is incorporated into this Development Agreement by reference. To meet the MPCA and City ordinance requirements, the Developer shall enter into a Long-Term Stormwater BMP Maintenance Agreement in the form attached as Exhibit C (“Maintenance Agreement”). The purpose of the Maintenance Agreement is to ensure the Developer maintains the Stormwater Facilities and to give the City the right, but not the obligation, to do so if the Developer fails in its obligations. The Developer agrees to pay any costs incurred by the City in completing such maintenance and further agrees that the City may assess the Subject Property to recover any costs not paid by the Developer. The Maintenance Agreement shall be recorded against the Subject Property to run with the land in perpetuity. A drainage and utility easement shall be dedicated to the City up to the 100-Year High Water Level (HWL) for all storm water storage facilities and for reasonable maintenance access. An annual inspection maintenance report shall be submitted to the City to confirm compliance. The Maintenance Agreement shall authorize the City to enter upon any property where the Stormwater Facilities are installed to inspect the Stormwater Facilities, to notify the property owner of maintenance duties, and if necessary to conduct necessary maintenance to maintain normal functionality of the Stormwater Facilities with all costs to perform such maintenance assessed to the property owner. If the developer assigns its obligations to maintain the Stormwater Facilities to a homeowner’s association that assumes those obligations, Developer shall provide to City acceptable documentation providing that the Stormwater Facilities shall be privately maintained, and that such maintenance costs and property taxes shall be paid by a homeowner’s association and not the City. Developer shall show proof such documentation is recorded against the affected lots and outlots.

8. Permits. Developer shall obtain all necessary permits, including (to the extent applicable) but not limited to: (1) Watermain Extensions: MDH, (2) Sanitary Sewer Extensions: MPCA, MCES, (3) Stormwater Management: City of Hastings Ordinance No. 152, (4)

Erosion, Sedimentation Control: MPCA General NPDES Stormwater Permit, SWPPP, (5)
Construction Dewatering: MN Department of Natural Resources.

9. **Letter of Credit and Inspection Escrows.** Before Developer begins any grading on the Subject Property, Developer shall post with the City an irrevocable letter of credit or cash escrow in the amount of \$\$481,250 being 125% of the costs required for grading as well as \$10,000 for inspections, as required pursuant to the executed Site Grading Agreement, attached hereto as Exhibit B. In addition, before any building permits are approved, Developer shall post with the City an irrevocable letter of credit or cash escrow in the amount of \$1,050,000 for utility, and street construction, as well as for any infrastructure located within the City's rights of way and utility easements, unless the requirement is waived, in writing, by the City. Developer shall also post with the City a cash escrow in the amount of \$60,000.00 ("Inspection Escrow") to reimburse the City for inspection and administrative fees incurred by the City for development administration of utility, and street construction inspections. The City shall pay itself and its consultants for inspection and administrative fees from the Inspection Escrow as provided in Section 12. Before Developer begins any grading or utility construction, Developer shall also provide City with proof of liability insurance having policy limits of at least two million dollars. The City shall be named as an additional insured on all liability insurance policies used to satisfy the requirements of this paragraph. All letters of credit required by this Development Agreement shall be in a form acceptable to the City and issued by a company licensed to do business in Minnesota. Prior to accepting or approving any completed Developer-financed and constructed grading and/or utility improvements, the Developer must cause a minimum of 25% of the surety required under this Section 9 above (i.e. an irrevocable letter of credit or cash escrow in the amount of 125% of the costs required for grading, utility, and street construction, as well as for any infrastructure located within the City's rights of way and utility easements) to remain effective and outstanding for a period of one year after City acceptance of the improvements to ensure payment of costs associated with maintenance and warranty work necessary during that one year period.
10. **Seal Coat Escrow.** Developer shall deposit with the City a seal coat escrow in the total amount of \$14,000.00. Seal coating of the new public streets and newly resurfaced street sections within the Subject Property will be completed by the City as part of the annual street maintenance program within one (1) year of the City's acceptance of the public street. Any funds not utilized for seal coating of the public streets constructed with the development will be returned to Developer within thirty (30) days of the City's final acceptance of the sealing project.
11. **Street and Traffic Control Signage Escrow.** Developer shall deposit with the City an escrow in the total amount of \$1,500.00 to furnish and install all required street and traffic control signage for the development. Any funds not utilized for said purpose will be returned to Developer within thirty (30) days of the City's installation of all signage.
12. **Specifications - Inspections.** Unless otherwise stated, all of the required improvements for the development shall conform to engineering standards and specifications as required by the City. Such improvements shall be subject to inspection and approval, and shall be

made in sequence as determined by the Public Works Department of the City. Plans and specifications for the required improvements shall be submitted to the Public Works Department in a type and format specified by the Public Works Department for review and approval. The required improvement plan review fee as established by City Council resolution or ordinance shall be paid at that time. Developer shall retain a testing consultant, approved by the City, to complete necessary third-party testing of all materials, soil compaction and other infrastructure systems as required by City Infrastructure Specifications, and shall direct that the consultant provide copies of all test reports to the City at the same time as they are provided to the Developer. The Developer shall provide proof to the City prior to the onset of construction activities that it has a valid contract with said testing consultant. If any utility or other improvements are required as part of the City's approval process, those improvements shall be inspected by a City designated inspector for compliance with City standards and the approved improvement plans and specifications. The Public Works Director shall determine the estimated cost of inspection services. The City will pay all improvement inspection costs incurred from the Inspection Escrow. The City will also charge 10% of the consultant fees to cover City overhead and administration costs connected to the inspection services and related construction oversight efforts. Excess funds in the Inspection Escrow will be returned to the Developer upon completion and acceptance of the improvement project. If escrowed funds deposited with the City are insufficient to cover the inspection and administrative costs, the Developer shall deposit additional funds with the City to cover the estimated overage. Upon completion of the required public improvements the Developer's engineer of record shall send as-built grading and utility drawings certifying their compliance to the City's engineering standards and specifications and with those costs paid by Developer.

13. **Sidewalks, Driveways and Mailboxes.**

- A. Grading of boulevards in this development shall be accomplished so as to accommodate construction of sidewalks and trails thereon regardless of whether said boulevard is part of the Sidewalk Plan on file at City Hall. Only those sidewalks located within dedicated public rights of way shall be the property of the City. Any sidewalks constructed in this development shall be in accordance with specifications established by the Public Works Department. Sidewalks shall be installed as provided in the Engineering Plan Set and shall be a minimum of five feet in width, located one foot off the property line in the street right-of-way, and comply with ADA standards.
- B. Each and every driveway apron shall be constructed in accordance with specifications established by the Public Works Department. If a sidewalk is to be constructed, the concrete driveway apron construction shall extend through to the property line side of the walk. The remainder of the driveway shall be concrete or asphalt from the end of the concrete apron to the garage. In cases where driveways are constructed after curbing and sidewalks are in place, the sidewalk shall be reconstructed in accordance with driveway specifications for the width of the driveway.

- C. All single-family homes (including villa homes), duplexes, 4-plexes, townhomes, and townhouse quadraminiums developed as part of plats approved after January 1, 1994 shall be required to have mail delivery serviced by United States Postal Service Approved Neighborhood Delivery and Collection Box units or similar City-approved grouped boxes. Individual mailboxes will be permitted only upon receiving handicap exemption status from the Hastings area office of the United States Postal Service, with appeal rights to the St. Paul district office of the United States Postal Service. Mailbox unit foundations and concrete pads shall be consistent with plans and specifications approved by the Public Works Department and on file at Hastings City Hall. The Public Works Director in consultation with the U.S. Post Office will determine the location and number of mailbox units.
14. **Electronic Copies of Required Documents.** Before the City will sign the final plat, Developer shall submit to the City electronic copies of the plat, and plan set record drawings and grading plan in an electronic format which is acceptable to the Hastings Engineering Department.
15. **Utilities.** All final storm water and utility plans must be approved by the Public Works Department.
16. **Property Monuments.** Steel monuments shall be placed at all block corners, lot corners, angle points, points of curves in streets and at intermediate points as shown on the final plat. Such installation shall be the Developer's expense and responsibility. All U.S., State, Country, or other official benchmarks, monuments, or triangulation stations in or adjacent to the Subject Property shall be preserved in precise position. The Developer shall replace all monuments displaced, damaged or removed during grading operations. The monuments shall be installed after the final grading has been completed. The Developer shall provide required certification of installation to Dakota County. A copy of this certification shall also be sent to the City.
17. **Time of Performance.** Except for those improvements that may be deferred as provided herein, Developer shall install all required public improvements and private utility and storm water improvements by June 30, 2022 subject to extension(s) due to weather and seasonal conditions. Developer may request an extension of this deadline in writing from the City for other reasons, which extension shall be granted in the City's reasonable discretion. If granted, the performance deadline extension shall be conditioned upon (a) updating the security posted by Developer to reflect any cost increases and (b) unless waived in writing by both the Developer and the City, amending this Agreement to reflect the extended performance completion date. Any such extension may also be conditioned upon certain technical accommodations that may be required by the City to allow serviceability of the development infrastructure beyond a single construction season should any public infrastructure facilities not be fully completed before winter conditions ensue.
18. **Requirements for a Building Permit.**
- A. No building permits shall be granted on the Subject Property until such time as a

certified copy of the recorded plat has been filed with the City and production of proof that all conditions of plat approval have been met.

- B. No building permits shall be granted on the Subject Property until such time as the Developer provides the City with a certified survey indicating that the entire site as shown on the preliminary and final plats has been graded pursuant to the approved elevations shown on the preliminary and final plats.
- C. No building permits shall be granted on the Subject Property until such time that all planned street and utility infrastructure systems serving the property are installed and approved by the City. As noted in Section 6(D) above, the City will not maintain (including snow and ice removal) any streets until they are paved with a hard surface and accepted by the City and to the extent the Developer receives permission to and does construct a model home in the development, no certificate of occupancy for the model home will be issued by the City until the street providing access to the model home satisfies these requirements and the Developer will need to provide all maintenance (including snow and ice removal) to accommodate access to any such model home.

19. **Building Permit Submittal Requirements.** An original certificate of survey from a licensed surveyor is required for all new development, including expansions of existing buildings. The Building Official may for accessory structures or minor additions (decks, porches, attached garages), waive the Certificate of Survey submittal requirements in favor of an approved site plan indicating the location of existing and proposed structures in relation to lot lines.

- A. The Certificate of Survey shall be prepared by a professional land surveyor licensed by the State of Minnesota.
- B. The Certificate of Survey shall reference and be based on an approved grading plan. Proposed contours of lots must match the approved grading plan.
 - i. The Certificate of Survey shall include at a minimum the following information:
 - (a.) Property boundaries.
 - (b.) Existing structures.
 - (c.) Proposed structures (including driveways, fences, decks, and utilities).
 - (d.) Existing and proposed lot corner elevations.
 - (e.) Proposed drainage flow (arrows).
 - (f.) Proposed garage floor elevation.
 - (g.) Proposed lowest floor elevation.
 - (h.) Proposed lowest foundation opening elevation and location (minimum 2ft above 100-year HWL).
 - (i.) Proposed top of foundation elevation (front and rear).

- (j.) Proposed finish grade elevations at building corners.
- (k.) Street right-of-way (to centerline).
- (l.) Existing property monuments.
- (m.) Detailed spot elevations for drainage swales based on the approved grading plan.
- (n.) Existing and proposed midpoint elevations on side lot lines.
- (o.) Existing top of curb elevations at the extension of side lot lines, midpoint of the lot, and at the proposed driveway.
- (p.) All water and sewer utility service lines with specific reference to all abandoned, unused and interconnected utility service lines. Include curb stops.
- (q.) On-site sewage treatment system location and potable well location, if applicable.
- (r.) Easements.
- (s.) North Arrow.
- (t.) Drawing Scale.
- (u.) Property Address.
- (v.) Proposed sill elevation and finish grade elevation for egress window wells.
- (w.) Emergency Overflow Elevations (EOE).
- (x.) 100-year HWL.
- (y.) Proposed grade from garage floor to top of curb (garage floor minimum 6" above top of curb).
- (z.) 30 ft. maximum driveway width (per Ordinance 155).
- (aa.) 3 ft. minimum separation of driveway to property line (per Ordinance 155).
- (bb.) Structure setback distances to property lines.
- (cc.) Labeled curb cuts, if applicable.
- (dd.) Boulevard tree and front yard tree.

C. Survey benchmarks shall be identified on the certificate of survey.

D. Field hubs shall be placed onsite by a licensed surveyor to show top of foundation elevation and setbacks.

20. **Erosion and Sediment Control Plan Requirements (May be identified on Certificate of Survey).**

- A. Perimeter Erosion & Sediment Control. All silt fence and compost logs shall be identified on the erosion control plan. The perimeter erosion and sediment controls shall be located along the front curb or behind sidewalk, along existing developed yards, and where needed for erosion control as determined by the City's Engineering Department.
- B. Rock Driveways. A rock driveway shall be identified on the erosion control plan. The rock driveway shall be constructed of CA1/CA2 Coarse Aggregate 1-2" rock -

6" deep per MPCA Manual.

- C. Inlet Protection. Inlet protection of the nearest downstream curb inlet structures which are on the same side of the street in compliance with the City's inlet protection specifications and MPCA requirements.

21. **Model Homes**

- A. Model Home Permits. Permits for the construction of model homes prior to completion of all infrastructure completion may be obtained by permission and approval of the Community Development Director and is limited to Lot 7, Block 1.
- B. Occupancy of Dwelling Units. No permanent occupancy of any dwelling unit in the Subject Property shall occur until the City has accepted all grading and utilities.

22. **Tree and Fencing Requirements.**

- A. Boulevard Trees. Developer shall ensure that all builders in the development plant "boulevard trees" according to the submitted tree plan on file at Hastings City Hall. All boulevard trees must be planted within the street right-of-way. One front yard tree shall also be planted per lot. The front yard tree lot shall be planted within 10-15 feet of the right-of-way line. All boulevard and front yard trees must be a minimum of 1.5 caliper inches at the base at the time of planting. All boulevard trees and front yard trees shall be of a species approved by the City Forester. All required boulevard trees and front yard trees shall be planted before a certificate of occupancy shall be issued, or, in the alternative, an escrow in an amount determined by the City shall be deposited with the City before a certificate of occupancy shall be issued. No trees shall be planted within any easement areas where pipes are installed or proposed as prohibited by the 2005 City of Hastings Easement Fence & Landscaping Policy.
- B. Screening of Cul-de-sac Bulb Areas. Developer shall screen the cul-de-sac bulb areas with approved evergreen trees and fencing to reduce visibility and light transmittance from the Melody Court and Orchard Court cul-de-sac areas to the existing rear lots and homes on River Shore Court. At a minimum, Developer shall install the approved trees and fencing depicted in the City Council Staff Report dated September 21, 2020. Developer shall obtain final approval of the tree and fence installation from the Community Development Director prior to any building permits being issued. Screening, including plantings that will grow and mature, changing size and encroachment over time, shall not impede right of way space necessary for maintenance of the cul-de-sac by City forces, including reasonable storage space for snow. Developer shall replace any trees that die or lose vitality such that their utility as a screening devise is unreasonably reduced. The Developer may assign such maintenance obligations to a homeowner's association that assumes those obligations, provided the Developer shall remain obligated if the homeowner's association fails to satisfy the obligations.

23. **Successors and Assigns.** This Development Agreement shall be binding upon the successors and assigns of the parties hereto and all rights and obligations thereunder shall run with the land.
24. **Recording of Agreement.** An original executed copy of this Development Agreement shall be recorded in the Office of the County Recorder, Dakota County, Minnesota at Developer's expense, which shall give notice to all subsequent purchasers of the property within the Subject Property of the provisions of this Development Agreement.
25. **Recording of Final Plat.** The final plat of the Subject Property, as approved by the City, shall be recorded with the Office of the County Recorder, Dakota County, Minnesota, before any building permit is issued.
26. **Right to Proceed.** The Developer may not grade or construct any improvements or any building on the Subject Property until all of the following conditions precedent have been satisfied:
 - A. The final plat of Villas at Pleasant has been recorded in the Office of the Office of the County Recorder, Dakota County, Minnesota.
 - B. This Agreement has been executed by the Developer and the City and has been recorded in the Office of the County Recorder, Dakota County, Minnesota.
 - C. All required escrows and letters of credit have been received by the City from or on behalf of the Developer.
 - D. Final engineering and construction plans in electronic format have been submitted by the Developer and approved by the Public Works Department.
 - E. The Developer has reimbursed the City for all third-party or outside legal, engineering, and administrative expense incurred to date by the City regarding Developer's development of the Subject Property.
 - F. The Maintenance Agreement in substantially the form attached hereto as Exhibit C has been executed by the Developer and the City and has been recorded in the Office of the County Recorder, Dakota County, Minnesota.
 - G. All required erosion control measures are in place or otherwise approved by the City.
 - H. The Developer has paid all fees, including the park dedication fees, as required by this Agreement.
 - I. The Developer and/or its engineer and contractor(s) have initiated and attended a preconstruction meeting with the City Engineer and staff.

- J. The Developer shall have secured all permits required under this Agreement.
- K. The City has issued a notice that all conditions precedent have been satisfied and that the Developer is authorized to proceed.

27. **Other Conditions.** Nothing in this Development Agreement shall limit or modify in any way the conditions imposed by the Hastings City Council as part of its approval of the preliminary plat and final plat of the Subject Property, which conditions are on file at Hastings City Hall. All punch list items identified by the City shall be corrected or otherwise completed within sixty (60) days after final paving of the streets in the development.

28. **Miscellaneous.**

- A. It is agreed that any breach of the terms of this Development Agreement shall be grounds for the denial of any building permit, certificate of occupancy or any other required City approvals with respect to the Subject Property. Developer shall be provided with notice of any breach of the terms of this Development Agreement in accordance with the notice provision hereafter and shall be provided a period of 30 days in which to cure the breach. During this 30-day notice period, the City shall be allowed to withhold any required permits, certificates of occupancy or any other City approvals, unless the City is given assurances in an amount and a form deemed appropriate in the sole discretion of the City that the breach will be eliminated.
- B. If any portion of this Development Agreement is held invalid for any reason, that decision shall not affect the validity of the remaining portions of this Development Agreement.
- C. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Development Agreement. All amendments or waivers to this Development Agreement must be in writing, signed by all parties and approved by written resolution of the City Council.
- D. All parties to the Development Agreement have participated freely in the negotiations and preparation hereof. Accordingly, this Development Agreement shall not be construed more strictly against any one of the parties as a result hereof.
- E. Any notice required by this Development Agreement shall be sent to the parties as follows:

TO THE CITY: City of Hastings
Attn: City Administrator
101 E. Fourth Street
Hastings MN 55033

TO THE DEVELOPER: Villas at Pleasant, LLC

577 High Ridge Circle
Mendota Heights, MN 55118

- F. Developer shall indemnify and hold harmless the City, its agents and contractors from liability for damages, injury or death that may arise from the direct or indirect operations of the Developer, its agents, employees, contractors and subcontractors which relate to the development of the Subject Property. If any indemnified claim is brought against the City, Developer shall pay the costs of the City's legal defense through an attorney reasonably acceptable to the City.

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EXHIBIT B
SITE GRADING AGREEMENT

**SITE GRADING AGREEMENT FOR
VILLAS AT PLEASANT, DAKOTA COUNTY, MINNESOTA**

THIS SITE GRADING AGREEMENT ("Agreement") is made this 23rd day of March, 2021, by and between the City of Hastings, a Minnesota municipal corporation ("City") and Villas at Pleasant, LLC, a Minnesota limited liability company ("Developer") (collectively the "Parties").

RECITALS

WHEREAS, on September 21, 2020, Developer received Preliminary Plat approval in Resolution 09-10-20 for a residential development project for 32 single-family lots identified as Villas at Pleasant ("Preliminary Plat") on property legally described on Exhibit A, attached hereto and incorporated herein ("Property"); and

WHEREAS, on September 21, 2020, Developer received Final Plat approval in Resolution 09-11-20 for the first phase of the Preliminary Plat which included the development of 16 lots ("First Phase Final Plat"); and

WHEREAS, following Preliminary Plat and the First Phase Final Plat approval but prior to recording the First Phase Final Plat, Developer determined to submit a revised Final Plat for the Villas at Pleasant that involved development in one phase; and

WHEREAS, Developer has submitted an application for a revised Final Plat for development of all 32 lots in one phase ("New Final Plat") that will be considered by the Planning Commission and the City Council at upcoming meetings, which, if approved, as a condition of approval will rescind, terminate and revoke the prior Resolution 09-11-20 for the First Phase Final Plat, as well as all conditions of approval related to it; and

WHEREAS, a draft of such New Final Plat is attached hereto and incorporated herein as Exhibit B ("New Final Plat"); and

WHEREAS, Developer has asked the City for permission to begin mass site grading at the Property prior to New Final Plat approval; and

WHEREAS, the City is willing to grant permits for mass site grading on the Property, subject to the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, which is hereby acknowledged, the Parties agree as follows:

1. **CONDITIONAL MASS SITE GRADING APPROVAL.** The City hereby permits the mass site grading on the Property subject to the terms and conditions in this Agreement for the New Final Plat Property. Nothing herein shall be deemed as permission to undertake utility, street construction or other such activities on the Property. The Developer acknowledges that at this time, there remain many submission, review and approval requirements that must be successfully completed, including but not limited to the satisfaction of all conditions of Preliminary Plat approval before the City will be in a position to consider and potentially approve the Developer's application for New Final Plat. There is a risk that the City will not approve the New Final Plat, either in its current proposed form or in its entirety, and in that event, the Developer will have expended considerable funds to complete the grading and other work allowed under this Agreement without the ability to proceed with development of the Property, either in its current proposed layout or in its entirety. These circumstances may potentially require the Developer to re-grade portions or all of the Property to satisfy conditions of New Final Plat approval or any other development project on the Property. Nothing in this Agreement, or the fact that the City is willing to enter into this Agreement, shall be construed or deemed to imply or obligate the City to approve the Developer's application for New Final Plat approval, and the Developer acknowledges that it is not acting in reliance upon any assurances or promises that the City will approve the New Final Plat in whole or in part.
2. **PRECONSTRUCTION MEETING AND RIGHT TO PROCEED.** The Developer may not grade or otherwise disturb the earth or remove trees or any structures or in any other way proceed with mass site grading until all the following conditions have been satisfied: (1) this Agreement has been fully executed by both Parties and filed with the City Clerk; (2) the securities required in Sections 6 and 19 have been received by the City; and (3) the City's Public Works Director has issued and delivered to the Developer a letter confirming that all conditions have been satisfied, a preconstruction meeting has been held, and that the Developer may proceed. The preconstruction meeting required prior to initiation of the grading activity shall include the City Engineer, City Inspector, or their designees, as well as the Developer's engineer and general contractor, and any subcontractors the City determines are necessary for the meeting. The preconstruction meeting shall be held onsite no less than one week prior to utility and street construction. The Developer's representatives must be prepared at the preconstruction meeting with a construction schedule, scope of work and required submittals and permits for construction.
3. **DEVELOPMENT LIMITATIONS.** Approval to initiate mass site grading is only valid for the work covered by this Agreement and within the construction limits identified in the Site Grading, Drainage, and Erosion Control Plans dated February 24, 2021, attached hereto as Exhibit C (the "Grading Plans"). The City may refuse to approve New Final Plat of the current phase, or of subsequent phases, if the Developer has breached any of its obligations under this Agreement and the breach has not been remedied to the reasonable

satisfaction of the City. Absolutely no further infrastructure construction, including installation of utilities or streets, shall take place unless and until New Final Plat approval is granted by the City and all conditions of Preliminary Plat and New Final Plat approval satisfied, including but not limited to the execution, delivery and recording of the Development Agreement and Stormwater BMP Maintenance Agreement, recording of the Utility Abandonment Agreement, submission of all required sureties, final approval of all infrastructure construction plans by the Public Works Department.

4. **GRADING AND EROSION CONTROL PLANS.** The Property shall be developed and graded in accordance with the approved Grading Plans, and at the Developer's sole risk and expense. If the plans vary from the written terms of this Agreement, the written terms of this Agreement shall control. The plan shall conform to Engineering Design and Construction Standards Manual. All grading shall be completed prior to the preparation and submittal of the as-constructed grading plan.

Within thirty (30) days after completion of the grading, the Developer shall provide the City with a "record" grading plan certified by a registered land surveyor or engineer licensed by the State of Minnesota depicting the locations of all ponds, swales, and ditches. The "record" plan shall contain site grades and field verified elevations of the following: (1) cross sections of ponds; (2) location and elevations along all swales, emergency overflows, wetlands, wetland mitigation areas if any, ditches, locations, and dimensions of borrow areas/stockpiles; (3) lot corner elevations and house pads; and (4) top and bottom of retaining walls. A complete list of the record grading plan requirements can be obtained on the City Website under Resources of the Engineering Department. The Developer acknowledges that the City will not issue any building permits unless and until New Final Plat approval is granted and all conditions of preliminary and New Final Plat approval are deemed satisfied and approved in writing by the City, and all necessary infrastructure has been completed and in a state of City acceptance to support the home. The conditions upon which the Developer may construct model homes on the Property shall be addressed in a development agreement which shall be a condition of New Final Plat approval.

5. **IMPROVEMENTS.** The grading shall be undertaken and the storm water improvements shall be installed in accordance with the City's Subdivision Ordinance and the City's Engineering Design and Construction Standards Manual and pursuant to the direction of the City Engineer. The Developer shall submit plans and specifications which have been prepared by a competent professional engineer licensed by the State of Minnesota to the City for approval by the City Engineer. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the approved City standards as a condition of City acceptance. Specifically, the Developer shall ensure its geotechnical engineers will be onsite to: (1) confirm soil stability assumptions at the bottom of all road subcuts; (2) confirm bottom of basin assumptions for infiltration; (3) confirm and test liner specifications; and (4) test for compaction and suitable material to be used for fill areas. In addition, the City may, at the City's discretion and at the Developer's expense, have one or more City inspectors and a soil engineer inspect the work on a full or part-time basis. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between

the Developer and the Developer's contractor. The Developer or his engineer shall schedule a preconstruction meeting, as described in more detail above to review the program for the construction work

No grading work may commence until all site sediment and erosion control measures are in place per the SWPPP documented in the Plans. The City must be contacted for an inspection 48 hours in advance and must provide written acknowledgement that the site is compliant before any construction activity occurs. All labor and work shall be done and performed in the best and most workmanlike manner and in strict conformance with the approved plans and specifications. No deviations from the approved plans and specifications will be permitted unless approved in writing by the City Engineer. The Developer agrees to furnish to the City a list of contractors being considered for retention by the Developer for the performance of the work required by this Agreement. The Developer shall not do any work or furnish any materials not covered by the Grading Plans and specifications and special conditions of this Agreement unless the design deviation for such work is first prepared by the Developer's engineer and approved in writing by the City Engineer.

6. **CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION OBSERVATION ESCROW.** The Developer shall submit an escrow for mass grading administration and construction observation in the amount of Ten Thousand and no/100 Dollars (\$10,000.00) which shall be in addition to the other financial security provided under this Agreement described in Section 19 below. The City shall draw down the escrow for the administration and construction observation costs. When the balance is reduced to \$2,000, the Developer shall replenish the escrow to its full amount. Mass grading administration will include staff or consultant time for monitoring of construction progress and construction observation, consultation with Developer and its engineer on status or problems regarding the project, coordination for testing, project monitoring, and processing of requests for reduction in security. Construction observation may be performed by the City staff or a consulting engineer. Construction observation will be provided at the discretion of the City.

The direction and review provided through the inspection of the improvements should not be considered a substitute for the Developer-required management of the development. Developer will cause the contractor(s) to furnish the City with a schedule of proposed operations at least five (5) days prior to the work. City shall inspect all Developer-installed improvements during and after construction for compliance with approved plans and specifications. Developer will notify the City Engineer at such times during construction as the City Engineer requires for inspection purposes. Such inspection is pursuant to the City's governmental authority, and no agency or joint venture relationship between the City and Developer is thereby created.

7. **MAINTENANCE OF STORM WATER FACILITIES.** The Parties contemplate the Developer will submit all additional information necessary for consideration of its pending application for New Final Plat approval. One of the conditions for New Final Plat approval will be to require the Developer to enter into a Development Agreement and a Stormwater BMP Maintenance Agreement that will provide for perpetual inspection, operation and maintenance by the Developer or a homeowner's association of all storm water BMP's and

facilities constructed on the Property. Notwithstanding those requirements, the Developer shall be obligated to provide for the inspection, operation and maintenance of all storm water BMP's and facilities constructed on the Property, whether permanent or temporary in nature, until such time as the permanent obligations for inspection, operation and maintenance of storm water BMP's and facilities constructed on the Property are memorialized in the Development Agreement and a Stormwater BMP Maintenance Agreement.

The Developer shall maintain a log sheet documenting all required inspections and maintenance by qualified individuals that shall include at a minimum the date and time the periodic inspection or maintenance is performed, the person completing the maintenance, a description of the inspection or maintenance performed, and any observations reasonably suggesting the storm water facilities may have failed or may require modification or additional maintenance to adequately perform the purposes for which they were installed (the "Inspection and Maintenance Log"). The Inspection and Maintenance Log shall be made available for periodic inspection at all reasonable times by the City. In the event Developer fails to maintain the storm water BMP's and facilities in good working order as required by this Agreement, or if the Developer fails to maintain the Inspection and Maintenance Log documenting that required inspection and maintenance are being performed as required, the City, with at least ten (10) day written notice in the event of a non-emergency, or reasonable notice in the event of emergency, may enter the Property and take whatever reasonable maintenance and repair action it reasonably determines is necessary to return the storm water BMP's and facilities to good working order. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in the performance of said work for the labor, use of equipment, supplies, materials, or the like, (the "Maintenance Charges") the Developer shall reimburse the City within thirty (30) days of issuance of an invoice thereof to the Developer for all the reasonable costs incurred by the City hereunder. If not paid within the prescribed time period, the City may pay those costs by drawing on the security as provided in Section 19 of this Agreement.

8. **PERMITS.** The Developer shall obtain or require its contractors and subcontractors to obtain all necessary permits to complete the work covered by this Agreement, including but not limited to a NPDES Construction Storm Water Permit from the MPCA which must be obtained, and written documentation presented to the City Engineer before commencement of any grading.
9. **LICENSE.** The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with plat development and including but not limited to maintenance or repairs of storm water BMP's and facilities required under this Agreement if the Developer fails to undertake those maintenance and repairs in a timely manner.
10. **CONSTRUCTION ACCESS.** Construction traffic access and egress for the work covered under this Agreement is restricted to access the subdivision via Northridge Drive and Pleasant Drive at the location of a planned intersection or intersections as shown in the

Grading Plan and identified by a rock construction entrance(s) on the SWPPP. No construction traffic is permitted on other adjacent local streets.

11. **CONSTRUCTION SEQUENCE AND COMPLIANCE.** The City will require the Developer to supervise and coordinate all construction activities and must notify the City in writing stating when the work is ready for the inspection.
12. **EROSION CONTROL.** Prior to initiating site grading, the erosion control plan shall be implemented by the Developer and inspected and approved by the City. Erosion control practices must comply with the approved plans and specifications, the City's Engineering Design and Construction Standards Manual, with all watershed district permits and with Minnesota Pollution Control Agency's Best Management Practices. The City may impose additional erosion control requirements as deemed necessary. The Parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder.
13. **WETLAND MITIGATION.** No wetlands have been identified on the Property.
14. **RESPONSIBILITY FOR COSTS.**
 - A. Except as otherwise specified herein, the Developer shall pay all costs incurred by it or the City in conjunction with the development of the Property, including but not limited to legal, planning, engineering and inspection expenses incurred in connection with approval and acceptance of the plat, the preparation of this Agreement, review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting development of the plat. All amounts incurred and due at the time, must be fully paid prior to execution and release of the New Final Plat for recording.
 - B. The Developer shall hold the City and its public officials, officers, employees, contractors and agents harmless from claims made by itself and third Parties for damages sustained or costs incurred resulting from the development. The Developer shall indemnify the City and its public officials, officers, employees, contractors and agents for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees.
 - C. The Developer shall reimburse the City for costs incurred in the enforcement of this Agreement, including reasonable engineering and attorneys' fees.
 - D. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within thirty (30) days after receipt. Bills not paid within thirty (30) days shall be assessed a late fee per the Hastings adopted Fee Schedule. Upon request, the City will provide copies of detailed invoices of the work performed.

15. **INSURANCE.** Before Developer begins any mass site grading, Developer shall provide City with proof of liability insurance having policy limits of at least two million dollars (\$2,000,000). The City shall be named as an additional insured on all liability insurance policies used to satisfy the requirements of this paragraph.
16. **MISCELLANEOUS.**
- A. The Developer may not assign this Agreement without the written permission of the City Council, such consent to be granted or withheld in the sole discretion of the City. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire Property, or any part of it.
 - B. Any retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved plans and specifications. All retaining walls identified on the development plans or by special conditions referred to in this Agreement shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.
 - C. Third Parties shall have no recourse against the City under this Agreement.
 - D. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
 - E. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the Parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
 - F. This Agreement shall run with the land and may be recorded against the Property.
17. **EVENTS OF DEFAULT.** The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:
- A. Subject to unavoidable delays, failure by Developer to commence and complete construction of the work pursuant to the terms, conditions and limitations of this Agreement.
 - B. Failure by Developers to substantially observe or perform any material covenant, condition, obligation or agreement on their part to be observed or performed under this Agreement.

- 18. **REMEDIES ON DEFAULT.** Whenever any Event of Default occurs, the City, subject to any rights of third Parties agreed to by the City pursuant to this Agreement, or otherwise by written, executed instrument of the City, may take any one or more of the following:
 - A. The City may suspend its performance under the Agreement until it receives assurances from Developer, deemed adequate by the City, that Developer will cure their default and continue their performance under the Agreement. Suspension of performance includes the right of the City to withhold permits including, but not limited to, building permits.
 - B. The City may initiate such action, including legal or administrative action, as is necessary for the City to secure performance of any provision of this Agreement or recover any amounts due under this Agreement from Developer, or immediately draw on the escrow or Letter of Credit, as set forth in this Agreement.

- 19. **SUMMARY OF SECURITY REQUIREMENTS.** To guarantee compliance with the terms of this Agreement and construction of all work included, the Developer shall furnish the City, in addition to the amounts escrowed hereunder for City Engineering Administration and Construction Observation costs, with an irrevocable letter of credit issued from a bank with a branch in Dakota County, Minnesota, cash escrow or a combination cash escrow and letter of credit ("security") for \$481,250. The amount of the security was calculated based on 125% of the estimated grading and erosion control costs of \$385,000 provided by the Developer. The bank and form of the letter of credit shall be subject to the approval of the Finance Director. The City may draw down the security, without notice, for any violation of the terms of this Agreement or if the security is allowed to lapse prior to the end of the required term. If the required public 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.

- 20. **REDUCTION OF SECURITY.** Upon written request by the Developer and upon receipt of proof satisfactory to the City Engineer that work has been completed to the satisfaction of the City including all corrective work for any identified punch list items, all record grading plans and been submitted and approved by the City Engineer, and financial obligations to the City have been satisfied, with City Engineer approval the security may be released upon completion. No partial release will be considered.

- 21. **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 as follows:

| | |
|------------------|---|
| If to Developer: | Villas at Pleasant, LLC Attn: Stuart Simek 90 Dale Street S. St. Paul, MN 55102. |
| If to City: | Hastings City Hall Attn: City Administrator |

101 E. Fourth Street
Hastings, MN 55033.

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DEVELOPER:
VILLAS AT PLEASANT, LLC

By: *[Signature]*
Stuart Simek, President

STATE OF MINNESOTA)
) ss.
COUNTY OF Ramsey)

On this 23rd day of March, 2021, before me a Notary Public within and for said County, personally appeared Stuart Simek to me personally known, who being by me duly sworn, did say that he is the President of Villas at Pleasant, LLC, a Minnesota limited liability company, the entity named in the foregoing instrument, and that said instrument was signed on behalf of said entity by authority of its Board of Governors and said President acknowledged said instrument to be the free act and deed of the entity.

[Signature]
Notary Public



**THIS INSTRUMENT DRAFTED BY
AND RETURN TO:**
Korine L. Land (#262432)
LeVander, Gillen & Miller, P.A.
633 Concord Street, Suite 400
South St. Paul, MN 55075

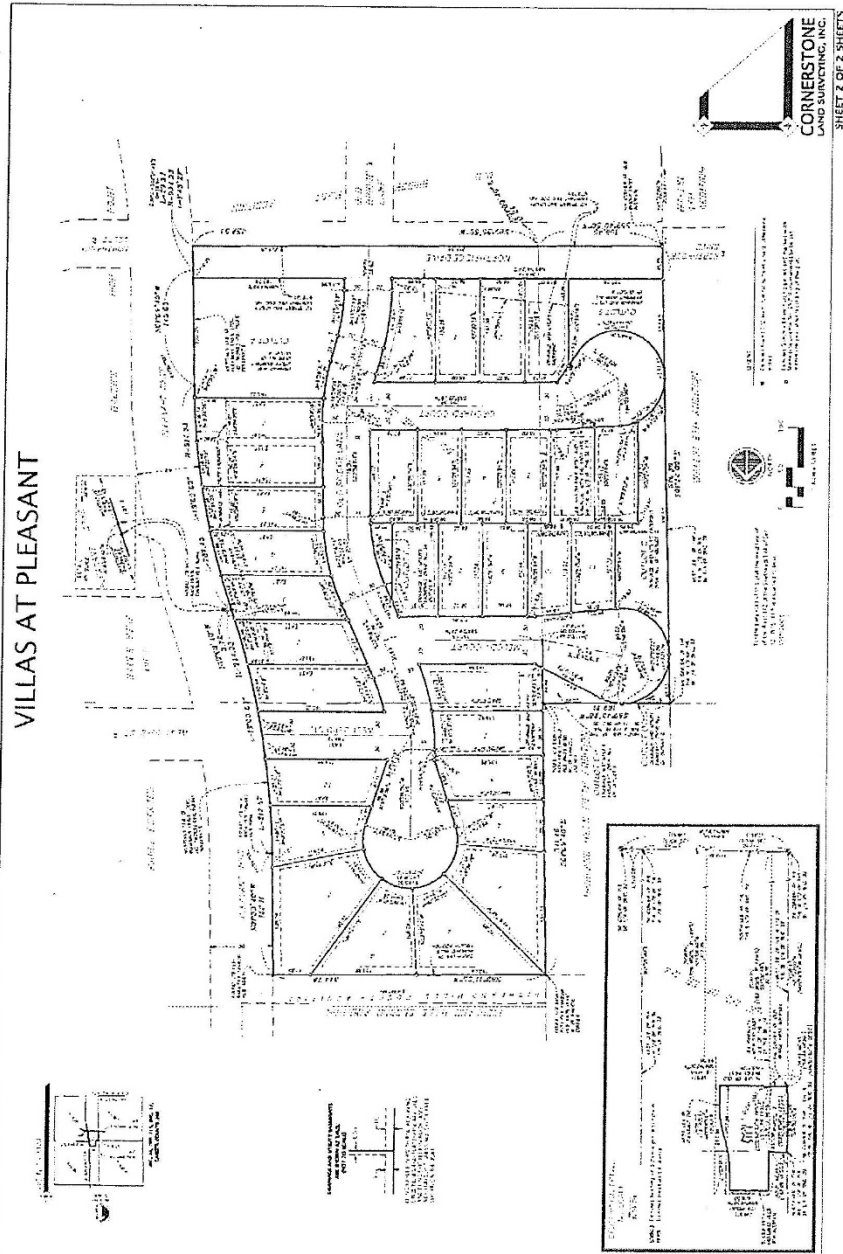
EXHIBIT A
LEGAL DESCRIPTION

PARCEL 1:

The North 957.39 feet, as measured along the West line and the most Northerly East line of the following tract: That part of the East Half of Section 32, Township 115 North, Range 17 West, described as follows: Commencing at a point 35 rods West of the Southeast Corner of the West Half of the East Half of said Section 32, running thence North 109 rods and 21 links; thence West 6 rods; thence North 73 rods; thence West 29 rods; thence South 182 rods and 21 links; thence East 35 rods to the place of beginning; EXCEPT that property lying East of the West line of Pleasant Drive as now located. AND also except that part which lies northerly of the south line of Highland Hills Fourth Addition, Dakota County, Minnesota.

PARCEL 2:

That part of the West Half of the Southeast Quarter of Section 32, Township 115, Range 17, Dakota County, Minnesota described as follows: Commencing at the Southwest corner of the said West Half of the Southeast Quarter; thence North 00 degrees 19 minutes 54 seconds West (assumed bearing) along the West line thereof a distance of 2059.47 feet to the Northwest corner of Old Bridge First Addition, as on file and of record in the Office of the County Recorder, and the point of beginning of the land to be described; thence continuing North 00 degrees 19 minutes 54 seconds West along the West line a distance of 576.07 feet, more or less, to the northwest corner of said West Half of the Southeast Quarter; thence South 89 degrees 04 minutes 26 seconds East along the North line thereof a distance of 162.09 feet; more or less, to a line parallel with and 1155.00 feet West, as measured along a line parallel with the South line of the West Half of the Southeast Quarter, from the east line of said West Half of the Southeast Quarter; thence South 00 degrees 02 minutes 23 seconds West along said line parallel with the East line of the West Half of the Southeast Quarter a distance of 575.88, more or less, to the North line of said Old Bridge first Addition; thence North 89 degrees 07 minutes 07 seconds West along said North line a distance of 158.35 feet, more or less, to the point of beginning.



B-2

B-14

**EXHIBIT C
GRADING PLAN**

See attached Grading Plan

EXHIBIT C
MAINTENANCE AGREEMENT

LONG-TERM STORMWATER BMP MAINTENANCE AGREEMENT
VILLAS AT PLEASANT, DAKOTA COUNTY, MINNESOTA

This Long-Term Stormwater BMP Maintenance Agreement (“Agreement”) is made on the ____ day of April 2021, by and between the City of Hastings, a Minnesota municipal corporation with a business address of 101 East 4th Street, Hastings, MN 55033 (“City”), and Villas at Pleasant, LLC, a Minnesota limited liability company with a business address of 577 High Ridge Circle, Mendota Heights, MN 55118, as the owner of the subject property, its successors and assigns (collectively the “Owner”).

RECITALS

- A. The Municipal Separate Storm Sewer System (MS4) general permit is mandated by the federal regulations under the Clean Water Act and is administered by the Minnesota Pollution Control Agency. The MS4 permitting program gives owners or operators of municipal separate storm sewer systems approval to discharge stormwater to lakes, rivers and wetlands in Minnesota.

- B. The City of Hastings, as owner and operator of an MS4, is required to create a Stormwater Pollution Prevention Program (SWPPP) with various components, including regulatory mechanisms to ensure long-term maintenance of structural stormwater Best Management Practices (BMP’s) within its jurisdiction. Specifically, the City must provide for the establishment of legal mechanism(s) between the City and owners or operators responsible for the long-term maintenance of structural stormwater BMP’s implemented to meet the conditions of post-construction stormwater management required under the MS4 permitting program and the SWPPP which must include, at a minimum, provisions that: (1) allow the City to inspect the BMP’s and to perform necessary maintenance and assess the costs if the owner/operator has not conducted the required maintenance; (2) preserve the City’s right to ensure maintenance responsibility when those responsibilities are transferred to another party; and (3) include conditions designed to protect and preserve the BMP’s and site features implemented to comply with the SWPPP if site configurations or BMP’s change, thereby decreasing the effectiveness of the BMP’s, requiring implementation of new or improved BMP’s to ensure the conditions for post-construction stormwater management under the SWPPP continue to be met (collectively the “Maintenance Agreement Requirements”).

- C. The City has adopted as part of its municipal ordinances Chapter 152: Stormwater Management, which provides in Hastings City Code §152.08(F)(3) that as a condition to City approval of any development or re-development projects with land disturbance of one acre or more, the responsible party shall enter into an agreement complying with the Maintenance Agreement Requirements.

- D. The Owner has received from the City preliminary and final plat approval for the plat of

Villas at Pleasant, Dakota County, Minnesota subject to certain conditions, including that the Owner enter into a long-term maintenance agreement for stormwater BMP's as required under City Code §152.08(F)(3). The agreement shall apply to the real property legally described as Villas at Pleasant, Dakota County, Minnesota (hereinafter referred to as "the Subject Property").

- E. The Owner has submitted, in addition to its stormwater pollution prevention plan, a stormwater facilities location map ("Stormwater Facilities Location Map") and a stormwater BMP inspection and maintenance plan ("Stormwater BMP Inspection and Maintenance Plan"), copies of which are attached hereto as Exhibit A, collectively identifying all structural stormwater BMP's to be installed on the Subject Property requiring long-term maintenance by the Owner (the "Facilities"), the Stormwater Access Easements (as defined below) providing access to the Facilities, and the minimum recommended inspection and maintenance requirements for the Facilities. The Facilities include but are not limited to all infiltration basins, filtration basin, multiple swales, catch basins sumps, drainage conveyances, and access area easements installed as part of the Stormwater BMP Inspection and Maintenance Plan.
- F. The final plat of Villas at Pleasant contains certain storm water infiltration and filtration basins, drainage conveyances, swales, catch basin sumps, and access area easements, depicted in more detail on the plat, which are dedicated to the public for the purpose of providing perpetual access to the City, or its successors responsible hereunder, for purposes of inspecting and performing any necessary maintenance to the Facilities (the "Stormwater Access Easements").
- G. The parties agree that the health, safety and welfare of the citizens of the City require that the Facilities be constructed and properly maintained and as such they desire to enter into a long-term maintenance agreement to satisfy the above referenced conditions of preliminary and final plat approval of Villas at Pleasant and City Code §152.08(F)(3).

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

Section 1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference to the same extent as if they were repeated here.

Section 2. Long-Term Maintenance Obligations. The Owner, its successors and assigns as to the Subject Property shall in perpetuity or until this Agreement is terminated as provided in Section 9, regularly inspect and maintain the Facilities in good working order and condition acceptable to the City and in accordance with the long-term maintenance requirements described on the Stormwater BMP Inspection and Maintenance Plan. Sediment accumulation resulting from the normal operation of the Facilities must be properly removed and disposed of off-site by the Owner. City shall only be responsible for regular maintenance and upkeep of stormwater facilities that are within the public rights of way or which convey stormwater from a point in a right of way to a treatment BMP as delineated in the Stormwater

Facilities Location Map. The City will not be obligated to perform maintenance or repair when the facilities are “first run” conveyances from green space on private property. The Owner shall maintain a log sheet documenting all required inspections and maintenance by qualified individuals that shall include at a minimum the date and time the periodic inspection or maintenance is performed, the person completing the maintenance, a description of the inspection or maintenance performed, and any observations reasonably suggesting the Facilities may have failed or may require modification or additional maintenance to adequately perform the purposes for which they were installed (the “Inspection and Maintenance Log”). The Inspection and Maintenance Log shall be made available for periodic inspection at all reasonable times by the City.

Section 3. Grant of Access to City for Inspection and Maintenance. The Owner hereby grants permission and a license to the City, its authorized agents and employees, to enter upon the Subject Property for the purposes of inspecting and maintaining the Facilities when deemed necessary by the City. Whenever reasonably possible, the City shall provide advance notice prior to entry and shall enter during normal business hours for the City. To the extent the City may gain sufficient access to inspect the Facilities via the Stormwater Access Easements, then the City shall limit its access on the Subject Property to those easement areas but if access to other portions of the Subject Property is needed for the City to perform the inspections authorized hereunder, as determined in the sole and exclusive, but reasonable, determination of the City, then the City may access those additional areas of the Subject Property for which access is reasonably necessary for the inspections upon advance notice to the Owner. All Stormwater Access Easements shall be maintained by the Owner to allow reasonable, unrestricted access to the Facilities.

Section 4. City Authorized to Perform Necessary Maintenance. In the event Owner fails to maintain the Facilities in good working order as required by this Agreement, or if the Owner fails to maintain the Inspection and Maintenance Log documenting that required inspection and maintenance are being performed as required, the City, with at least ten (10) day written notice in the event of a non-emergency, or reasonable notice in the event of emergency, may enter the Subject Property and take whatever reasonable maintenance and repair action it reasonably determines is necessary to return the Facilities to good working order. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the Subject Property. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Facilities or grounds and property disturbed or damaged as a result of the City gaining access to the Facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.

Section 5. Payment of Costs; Assessment. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in the performance of said work for the labor, use of equipment, supplies, materials, or the like, (the “Maintenance Charges”) the Owner shall reimburse the City within thirty (30) days of issuance of

an invoice thereof to the Owner for all the reasonable costs incurred by the City hereunder. If not paid within the prescribed time period, the Owner, for itself, its successors and assigns as to the Subject Property, agrees to have the Subject Property assessed for the full amount of the unpaid Maintenance Charges and with the entire assessed amount due and payable with the real estate taxes in the year following the certification of the assessment. Owner, for itself, its successors and assigns, agrees to waive any right to appeal the amount assessed against the Subject Property for the Maintenance Charges, whether the basis for the appeal is that the assessment exceeds the benefits to the Subject Property or on any other basis whatsoever. Owner, for itself, its successors and assigns, agrees that City can certify this assessment to Dakota County for collection with the real estate taxes without the necessity of City complying with any of the procedural or notice requirements outlined in Minnesota Statutes Chapter 429, or amendments thereto.

Section 6. Restrictions on Modification or Removal of Facilities. The Owner may not modify or remove the Facilities without the prior written consent of the City, such consent to be granted or withheld in the reasonable discretion of the City. If with the consent of the City the Owner modifies or removes the Facilities, or if the site configuration of the Subject Property is changed, causing decreased stormwater BMP effectiveness, the Owner, at its cost, must install and implement new or improved structural stormwater BMP's to ensure the conditions for stormwater management required under the MS4 permitting program and the SWPPP, and for which the Facilities were originally installed, continue to be met.

Section 7. Liability and Indemnification of City. It is the intent of the parties that this Agreement shall ensure the proper maintenance of the Facilities by the Owner provided, however, that this Agreement shall not be deemed to create any additional liability of any party for damage alleged to result from or be caused by storm water runoff. The Owner shall indemnify and hold the City, its employees, agents, and elected officials ("City Indemnified Parties") harmless from and against any and all liability for personal injuries, property damage, or for loss of life or property resulting from, or in any way connected with, the condition, construction, presence, existence, maintenance or use of the Facilities by the Owner or the City when the City acts in accordance with this Agreement, including any means of ingress or egress from the Subject Property, except liability for personal injuries, property damages, or loss of life or property caused by the negligence or willful misconduct of the City, its employees or agents. If a claim is asserted against any or all of the City Indemnified Parties, the City shall promptly notify the Owner and the Owner shall defend at its own expense any suit based on such claim or claims. If any judgment or claims against any or all of the City Indemnified Parties shall be allowed, the Owner shall pay any such judgment or claim and all costs and expenses incurred by the City Indemnified Parties in connection therewith except as otherwise provided herein.

Section 8. Successors and Assigns; Recording of Agreement. This Agreement shall be

recorded upon the public records in the Office of the Dakota County Recorder for any portion of the Subject Property that is abstract property, and shall be filed upon the public records in the Office of the Dakota County Registrar of Titles for any portion of the Subject Property that is Torrens property, and shall constitute a covenant running with the land and shall be binding on the Owner, its successors and assigns as to the Subject Property and any portion thereof. Where reference is made herein to Owner, reference shall be to Owner, its successors and assigns as to the Subject Property. Upon any conveyance of the Subject Property or any portion thereof by the Owner which, by agreement, assignment or operation of law the Owner transfers its rights or obligations under this Agreement to a third-party, including a homeowner's association, the Owner shall give written notice of such transfer to the City along with the current contact information of the transferee and no such transfer of the Owner's obligations hereunder shall be effective until the identified transferee signs a copy of this Agreement expressly assuming the obligations of the Owner hereunder. Upon any successive transfer or transfers of obligations hereunder, the transferring party shall give written notice of such transfer to the City along with the current contact information of the transferee and no such transfer shall be effective until the identified transferee signs a copy of this Agreement expressly assuming the obligations of the transferring party hereunder.

- Section 9.** **Termination.** This Agreement may be terminated only with the written consent of the parties when it is determined the Facilities are no longer necessary to maintain the conditions for stormwater management required under the MS4 permitting program and the SWPPP which may include removal or demolition of the structure to be constructed by the Owner and contemplated by the Stormwater BMP Inspection and Maintenance Plan.
- Section 10.** **Governing Law.** This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota. Any action to enforce or interpret this Agreement shall be venued in the Dakota County District Court in Minnesota.
- Section 11.** **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties and any prior understanding where representation of any kind proceeding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.
- Section 12.** **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.
- Section 13.** **Notices.** Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this

Agreement or, in the case of assignment, to an address provided by the assigning party, by certified or registered mail, to the opposite party, at least ten days prior to the date of such notice.

Section 14. **Attorney Fees.** If any lawsuit is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all these sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees.

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EXHIBIT A
STORMWATER FACILITIES LOCATION MAP AND
STORMWATER BMP INSPECTION AND MAINTENANCE PLAN

See Attached Plan

**LONG-TERM STORMWATER BMP MAINTENANCE AGREEMENT
VILLAS AT PLEASANT, DAKOTA COUNTY, MINNESOTA**

This Long-Term Stormwater BMP Maintenance Agreement (“Agreement”) is made on the ____ day of April 2021, by and between the City of Hastings, a Minnesota municipal corporation with a business address of 101 East 4th Street, Hastings, MN 55033 (“City”), and Villas at Pleasant, LLC, a Minnesota limited liability company with a business address of 577 High Ridge Circle, Mendota Heights, MN 55118, as the owner of the subject property, its successors and assigns (collectively the “Owner”).

RECITALS

- A. The Municipal Separate Storm Sewer System (MS4) general permit is mandated by the federal regulations under the Clean Water Act and is administered by the Minnesota Pollution Control Agency. The MS4 permitting program gives owners or operators of municipal separate storm sewer systems approval to discharge stormwater to lakes, rivers and wetlands in Minnesota.

- B. The City of Hastings, as owner and operator of an MS4, is required to create a Stormwater Pollution Prevention Program (SWPPP) with various components, including regulatory mechanisms to ensure long-term maintenance of structural stormwater Best Management Practices (BMP’s) within its jurisdiction. Specifically, the City must provide for the establishment of legal mechanism(s) between the City and owners or operators responsible for the long-term maintenance of structural stormwater BMP’s implemented to meet the conditions of post-construction stormwater management required under the MS4 permitting program and the SWPPP which must include, at a minimum, provisions that: (1) allow the City to inspect the BMP’s and to perform necessary maintenance and assess the costs if the owner/operator has not conducted the required maintenance; (2) preserve the City’s right to ensure maintenance responsibility when those responsibilities are transferred to another party; and (3) include conditions designed to protect and preserve the BMP’s and site features implemented to comply with the SWPPP if site configurations or BMP’s change, thereby decreasing the effectiveness of the BMP’s, requiring implementation of new or improved BMP’s to ensure the conditions for post-construction stormwater management under the SWPPP continue to be met (collectively the “Maintenance Agreement Requirements”).

- C. The City has adopted as part of its municipal ordinances Chapter 152: Stormwater Management, which provides in Hastings City Code §152.08(F)(3) that as a condition to City approval of any development or re-development projects with land disturbance of one acre or more, the responsible party shall enter into an agreement complying with the Maintenance Agreement Requirements.
- D. The Owner has received from the City preliminary and final plat approval for the plat of Villas at Pleasant, Dakota County, Minnesota subject to certain conditions, including that the Owner enter into a long-term maintenance agreement for stormwater BMP's as required under City Code City Code §152.08(F)(3). The agreement shall apply to the real property legally described as Villas at Pleasant, Dakota County, Minnesota (hereinafter referred to as "the Subject Property").
- E. The Owner has submitted, in addition to its stormwater pollution prevention plan, a stormwater facilities location map ("Stormwater Facilities Location Map") and a stormwater BMP inspection and maintenance plan ("Stormwater BMP Inspection and Maintenance Plan"), copies of which are attached hereto as Exhibit A, collectively identifying all structural stormwater BMP's to be installed on the Subject Property requiring long-term maintenance by the Owner (the "Facilities"), the Stormwater Access Easements (as defined below) providing access to the Facilities, and the minimum recommended inspection and maintenance requirements for the Facilities. The Facilities include but are not limited to all infiltration basins, filtration basin, multiple swales, catch basins sumps, drainage conveyances, and access area easements installed as part of the Stormwater BMP Inspection and Maintenance Plan.
- F. The final plat of Villas at Pleasant contains certain storm water infiltration and filtration basins, drainage conveyances, swales, catch basin sumps, and access area easements, depicted in more detail on the plat, which are dedicated to the public for the purpose of providing perpetual access to the City, or its successors responsible hereunder, for purposes of inspecting and performing any necessary maintenance to the Facilities (the "Stormwater Access Easements").
- G. The parties agree that the health, safety and welfare of the citizens of the City require that the Facilities be constructed and properly maintained and as such they desire to enter into a long-term maintenance agreement to satisfy the above referenced conditions of preliminary and final plat approval of Villas at Pleasant and City Code §152.08(F)(3).

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

Section 1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference to the same extent as if they were repeated here.

Section 2. Long-Term Maintenance Obligations. The Owner, its successors and assigns as to the Subject Property shall in perpetuity or until this Agreement is terminated as provided in Section 9, regularly inspect and maintain the Facilities in good

working order and condition acceptable to the City and in accordance with the long-term maintenance requirements described on the Stormwater BMP Inspection and Maintenance Plan. Sediment accumulation resulting from the normal operation of the Facilities must be properly removed and disposed of off-site by the Owner. City shall only be responsible for regular maintenance and upkeep of stormwater facilities that are within the public rights of way or which convey stormwater from a point in a right of way to a treatment BMP as delineated in the Stormwater Facilities Location Map. The City will not be obligated to perform maintenance or repair when the facilities are “first run” conveyances from green space on private property. The Owner shall maintain a log sheet documenting all required inspections and maintenance by qualified individuals that shall include at a minimum the date and time the periodic inspection or maintenance is performed, the person completing the maintenance, a description of the inspection or maintenance performed, and any observations reasonably suggesting the Facilities may have failed or may require modification or additional maintenance to adequately perform the purposes for which they were installed (the “Inspection and Maintenance Log”). The Inspection and Maintenance Log shall be made available for periodic inspection at all reasonable times by the City.

Section 3. Grant of Access to City for Inspection and Maintenance. The Owner hereby grants permission and a license to the City, its authorized agents and employees, to enter upon the Subject Property for the purposes of inspecting and maintaining the Facilities when deemed necessary by the City. Whenever reasonably possible, the City shall provide advance notice prior to entry and shall enter during normal business hours for the City. To the extent the City may gain sufficient access to inspect the Facilities via the Stormwater Access Easements, then the City shall limit its access on the Subject Property to those easement areas but if access to other portions of the Subject Property is needed for the City to perform the inspections authorized hereunder, as determined in the sole and exclusive, but reasonable, determination of the City, then the City may access those additional areas of the Subject Property for which access is reasonably necessary for the inspections upon advance notice to the Owner. All Stormwater Access Easements shall be maintained by the Owner to allow reasonable, unrestricted access to the Facilities.

Section 4. City Authorized to Perform Necessary Maintenance. In the event Owner fails to maintain the Facilities in good working order as required by this Agreement, or if the Owner fails to maintain the Inspection and Maintenance Log documenting that required inspection and maintenance are being performed as required, the City, with at least ten (10) day written notice in the event of a non-emergency, or reasonable notice in the event of emergency, may enter the Subject Property and take whatever reasonable maintenance and repair action it reasonably determines is necessary to return the Facilities to good working order. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the Subject Property. It is expressly understood and agreed that the City is under

no obligation to maintain or repair the Facilities or grounds and property disturbed or damaged as a result of the City gaining access to the Facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.

Section 5. Payment of Costs; Assessment. In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in the performance of said work for the labor, use of equipment, supplies, materials, or the like, (the “Maintenance Charges”) the Owner shall reimburse the City within thirty (30) days of issuance of an invoice thereof to the Owner for all the reasonable costs incurred by the City hereunder. If not paid within the prescribed time period, the Owner, for itself, its successors and assigns as to the Subject Property, agrees to have the Subject Property assessed for the full amount of the unpaid Maintenance Charges and with the entire assessed amount due and payable with the real estate taxes in the year following the certification of the assessment. Owner, for itself, its successors and assigns, agrees to waive any right to appeal the amount assessed against the Subject Property for the Maintenance Charges, whether the basis for the appeal is that the assessment exceeds the benefits to the Subject Property or on any other basis whatsoever. Owner, for itself, its successors and assigns, agrees that City can certify this assessment to Dakota County for collection with the real estate taxes without the necessity of City complying with any of the procedural or notice requirements outlined in Minnesota Statutes Chapter 429, or amendments thereto.

Section 6. Restrictions on Modification or Removal of Facilities. The Owner may not modify or remove the Facilities without the prior written consent of the City, such consent to be granted or withheld in the reasonable discretion of the City. If with the consent of the City the Owner modifies or removes the Facilities, or if the site configuration of the Subject Property is changed, causing decreased stormwater BMP effectiveness, the Owner, at its cost, must install and implement new or improved structural stormwater BMP’s to ensure the conditions for stormwater management required under the MS4 permitting program and the SWPPP, and for which the Facilities were originally installed, continue to be met.

Section 7. Liability and Indemnification of City. It is the intent of the parties that this Agreement shall ensure the proper maintenance of the Facilities by the Owner provided, however, that this Agreement shall not be deemed to create any additional liability of any party for damage alleged to result from or be caused by storm water runoff. The Owner shall indemnify and hold the City, its employees, agents, and elected officials (“City Indemnified Parties”) harmless from and against any and all liability for personal injuries, property damage, or for loss of life or property resulting from, or in any way connected with, the condition, construction, presence, existence, maintenance or use of the Facilities by the Owner or the City when the City acts in accordance with this Agreement, including any means of ingress or egress from the Subject Property, except liability for personal injuries, property damages, or loss of life or property caused by the negligence or willful misconduct of the City, its employees or agents. If a

claim is asserted against any or all of the City Indemnified Parties, the City shall promptly notify the Owner and the Owner shall defend at its own expense any suit based on such claim or claims. If any judgment or claims against any or all of the City Indemnified Parties shall be allowed, the Owner shall pay any such judgment or claim and all costs and expenses incurred by the City Indemnified Parties in connection therewith except as otherwise provided herein.

Section 8. Successors and Assigns; Recording of Agreement. This Agreement shall be recorded upon the public records in the Office of the Dakota County Recorder for any portion of the Subject Property that is abstract property, and shall be filed upon the public records in the Office of the Dakota County Registrar of Titles for any portion of the Subject Property that is Torrens property, and shall constitute a covenant running with the land and shall be binding on the Owner, its successors and assigns as to the Subject Property and any portion thereof. Where reference is made herein to Owner, reference shall be to Owner, its successors and assigns as to the Subject Property. Upon any conveyance of the Subject Property or any portion thereof by the Owner which, by agreement, assignment or operation of law the Owner transfers its rights or obligations under this Agreement to a third-party, including a homeowner's association, the Owner shall give written notice of such transfer to the City along with the current contact information of the transferee and no such transfer of the Owner's obligations hereunder shall be effective until the identified transferee signs a copy of this Agreement expressly assuming the obligations of the Owner hereunder. Upon any successive transfer or transfers of obligations hereunder, the transferring party shall give written notice of such transfer to the City along with the current contact information of the transferee and no such transfer shall be effective until the identified transferee signs a copy of this Agreement expressly assuming the obligations of the transferring party hereunder.

Section 9. Termination. This Agreement may be terminated only with the written consent of the parties when it is determined the Facilities are no longer necessary to maintain the conditions for stormwater management required under the MS4 permitting program and the SWPPP which may include removal or demolition of the structure to be constructed by the Owner and contemplated by the Stormwater BMP Inspection and Maintenance Plan.

Section 10. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota. Any action to enforce or interpret this Agreement shall be venued in the Dakota County District Court in Minnesota.

Section 11. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and any prior understanding where representation of any kind proceeding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

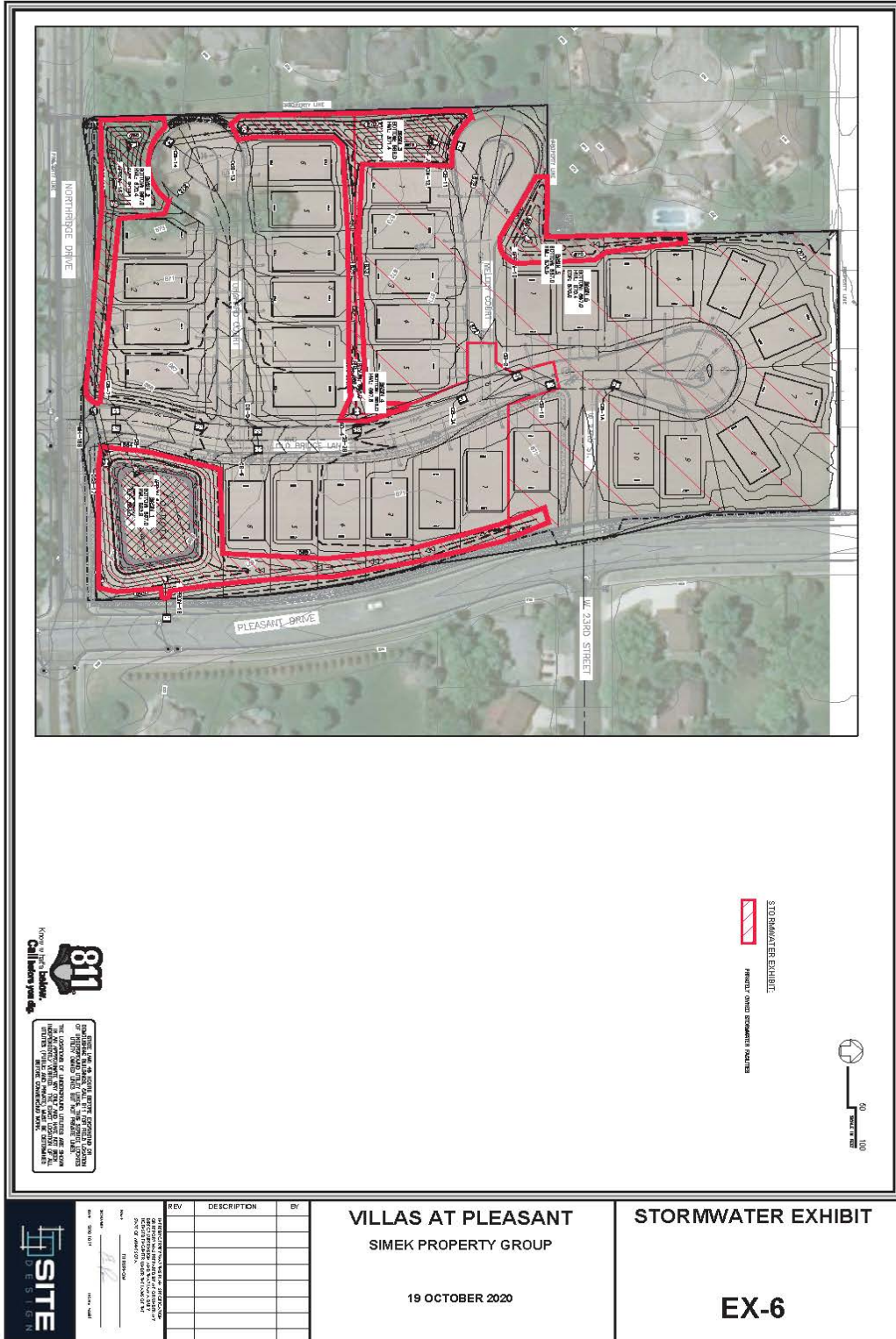
Section 12. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

Section 13. Notices. Any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement or, in the case of assignment, to an address provided by the assigning party, by certified or registered mail, to the opposite party, at least ten days prior to the date of such notice.

Section 14. Attorney Fees. If any lawsuit is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all these sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees.

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EXHIBIT A
STORMWATER FACILITIES LOCATION MAP AND
STORMWATER BMP INSPECTION AND MAINTENANCE PLAN



811
 Know what's below.
 Call before you dig.

CALLING 811 WILL PROVIDE YOU WITH A LIST OF ALL THE UTILITIES LOCATED UNDERGROUND AT YOUR LOCATION. THIS SERVICE IS FREE OF CHARGE. THE SERVICE IS AVAILABLE 24 HOURS A DAY, 7 DAYS A WEEK. FOR MORE INFORMATION, VISIT US AT WWW.CALLBEFOREYODIG.COM.

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VILLAS AT PLEASANT
 SIMEK PROPERTY GROUP

19 OCTOBER 2020

STORMWATER EXHIBIT

EX-6

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

THIS AGREEMENT, is made this _____ day of April, 2021, between the City of Hastings, a Minnesota municipal corporation (“City”) having a principle address of 101 East 4th Street, Hastings, Minnesota, 55033, and Villas at Pleasant, LLC, a Minnesota limited liability company (“Owner”) having a principle address of 577 High Ridge Circle, Mendota Heights, Minnesota, 55118.

RECITALS

WHEREAS, Owner is the owner of the real estate located generally at the intersection of Northridge Drive and Pleasant Drive in the City of Hastings, Minnesota and legally described as Villas at Pleasant, Dakota County, Minnesota (“Owner’s Property”); and

WHEREAS, Owner platted Owner’s Property, which, as a result of prior planned development, is serviced by multiple water and utility service lines that will not be utilized for Owner’s development of Owner’s Property; and

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

WHEREAS, the existing water and sewer utility service lines were designed and installed to service structures on Owner’s Property which will not be constructed and instead, residential structures in a different configuration will be constructed on Owner’s Property; and

WHEREAS, to accommodate Owner’s plans for development of Owner’s Property and the construction of differently configured residential structures thereon, the existing six (6) sanitary sewer and water services off Northridge Drive (see attached Exhibit A for the location of these services) will not be utilized to connect the future properties to City service. Rather, Owner is required to furnish and install sanitary sewer and water services per the approved Utility Plan dated October 19, 2020, in accordance with the Development Agreement to be executed for the Villas at Pleasant; and

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; and

WHEREAS, City policy generally requires that unused lateral sewer and water service lines be disconnected from water and sewer mains as part of new development but in this case, the process of disconnecting the unused lateral sewer and water service lines from the mains beneath Northridge Drive, a newly resurfaced street, will result in some damage and loss of integrity to the surface and base of Northridge Drive; and

WHEREAS, leaving unused sanitary sewer and water service lines in place and connected to the water and sewer mains 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; and

WHEREAS, a waiver of Owner's obligations to remove the unused lateral sewer and water service lines from the mains beneath Northridge Drive will allow the Owner to avoid considerable costs of that work and reconstruction and repair of Northridge Drive; and

WHEREAS, the City previously approved Owner's application for subdivision plat approval subject to certain conditions, including Owner's agreement, on behalf of itself, its successors and assigns, to repair, at its cost, any damage to the unused 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 itself and its 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 subdivision approval and to waive the obligation that the unused lateral sewer and water service lines be disconnected from the mains beneath Northridge Drive, the parties make the following agreement:

1. All of the foregoing recitals are incorporated herein to the same extent as if they were repeated here.
2. The existing six (6) sanitary sewer and water services off Northridge Drive (see attached Exhibit A for the location of these services) will not be utilized to connect the future properties to City service. Rather, Owner is required to furnish and install sanitary sewer and water services per the approved Utility Plan dated October 19, 2020, in accordance with the Development Agreement to be executed for the Villas at Pleasant.

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 its successors and assigns as to Owner's Property shall at its 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, its 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, its successors or assigns as to Owner's Property shall immediately reimburse the City for all costs incurred.
4. If Owner, its successors or assigns as to Owner's Property fails to timely reimburse City for all such costs, Owner, for itself, its 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 itself, its 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 itself, its 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 itself, its 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 itself, its 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, its 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, including a homeowner's association.
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 its successors and assigns, that Owner's Property shall not be further subdivided, 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.

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**EXHIBIT A
SANITARY SEWER AND WATER SERVICES**

See attached depiction of sanitary sewer and water services