



City Council Memorandum

To: Mayor Fasbender and City Council
From: John Hinzman, Community Development Director
Date: September 7, 2021
Item: Authorize Signature: Development Agreement - Vermillion Acres - Headwaters Development (1190 County Road 47)

Council Action Requested:

Authorize Signature of a Development Agreement between the City and Headwaters Development for VERMILLION ACRES, a one lot subdivision for construction of a three story, 75 unit senior housing facility consisting of 60 dependent care, and 15 memory care units. The 11.33 acre property is generally located at 1190 County Road 47. The Development Agreement shall be substantially similar to the attached agreement.

A simple majority is necessary for action.

Background Information:

The City Council approved the Final Plat of the subdivision on March 15, 2021. Approval was conditioned upon execution of a Development Agreement.

Financial Impact:

The addition of 75 senior housing units will add to the tax base and create needed housing opportunities.

Advisory Commission Discussion:

N\A

Council Committee Discussion:

N\A

Attachments:

- Development Agreement

DEVELOPMENT AGREEMENT
FOR THE PLAT OF
VERMILLION ACRES ADDITION
BY AND BETWEEN
THE CITY OF HASTINGS
AND
HASTINGS SENIOR LIVING LLC

THIS AGREEMENT, made and entered into on the _____ day of _____, 2021, by and between the City of Hastings, a Minnesota municipal corporation (“CITY”), and Hastings Senior Living LLC, a Minnesota limited liability company (“DEVELOPER”).

RECITALS:

WHEREAS, in pursuant of the DEVELOPMENT PROJECT, the DEVELOPER has applied to the CITY for approval of the DEVELOPMENT PLANS and FINAL PLAT for Vermillion Acres Addition; and

WHEREAS, in conjunction with the granting of these approvals, the CITY requires the installation and/or availability of public utilities (sewer and water), storm sewer pipes, ponds, and other facilities; and

WHEREAS, under authority granted to it, including Minnesota Statutes Chapters 412, 429, and 462, the COUNCIL approved the FINAL PLAT and DEVELOPMENT PLANS on the following conditions:

1. That the DEVELOPER enters into this DEVELOPMENT AGREEMENT, which contract defines the work which the DEVELOPER undertakes to complete; and
2. The DEVELOPER shall provide an irrevocable letter of credit and cash deposits in the amounts and with conditions satisfactory to the CITY, providing for assurance of payment for the actual construction and installation of the improvements in the DEVELOPMENT PLANS, as specified and required by the CITY.

WHEREAS, the DEVELOPMENT PLANS were prepared by a registered professional engineer and have been submitted to and approved by the CITY ENGINEER.

NOW, THEREFORE, subject to the terms and conditions of this DEVELOPMENT AGREEMENT and in reliance upon the representations, warranties and covenants of the parties herein contained, the CITY and DEVELOPER agree as follows:

ARTICLE 1
DEFINITIONS

1.1. TERMS. The following terms, unless elsewhere defined specifically in the DEVELOPMENT AGREEMENT, shall have the following meanings as set forth below.

1.2. BUILDER. “BUILDER” means an entity that will be constructing the facility on the lot in the FINAL PLAT.

1.3. CITY. “CITY” means the City of Hastings, a Minnesota municipal corporation.

1.4. CITY ENGINEER. “CITY ENGINEER” means the City Engineer of the City of Hastings or delegates.

1.5. **CITY WARRANTIES.** “CITY WARRANTIES” means all CITY WARRANTIES identified in Article 9 of this DEVELOPMENT AGREEMENT.

1.6. **COUNCIL.** “COUNCIL” means the Council of the City of Hastings.

1.7. **COUNTY.** “COUNTY” means Dakota County, Minnesota.

1.8. **DEVELOPER.** “DEVELOPER” means Hastings Senior Living LLC, a Minnesota limited liability company.

1.9. **DEVELOPER DEFAULT.** “DEVELOPER DEFAULT” means and includes, jointly and severally, any of the following or any combination thereof:

- a) failure by the DEVELOPER to timely pay the CITY any money required to be paid under the DEVELOPMENT AGREEMENT;
- b) failure by the DEVELOPER to timely construct the DEVELOPER IMPROVEMENTS according to the DEVELOPMENT PLANS and the CITY standards and specifications;
- c) failure by the DEVELOPER to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this DEVELOPMENT AGREEMENT;
- d) breach of the DEVELOPER WARRANTIES.

1.10. **DEVELOPER IMPROVEMENTS.** “DEVELOPER IMPROVEMENTS” means and includes, individually and collectively, all the improvements identified in Article 3.

1.11. **DEVELOPER WARRANTIES.** “DEVELOPER WARRANTIES” means all DEVELOPER WARRANTIES identified in Article 8 of this DEVELOPMENT AGREEMENT.

1.12. **DEVELOPMENT AGREEMENT.** “DEVELOPMENT AGREEMENT” means this agreement by and among the CITY and DEVELOPER.

1.13. **DEVELOPMENT PLANS.** “DEVELOPMENT PLANS” means all the street infrastructure, utility and grading plans, drawings, specifications, and surveys dated _____ and prepared by Artekta Architects hereby incorporated by reference and made a part of this DEVELOPMENT AGREEMENT.

1.14. **DEVELOPMENT PROJECT.** “DEVELOPMENT PROJECT” means the development of a three story, 75 unit senior housing facility that will be constructed on the DEVELOPMENT PROPERTY that is substantially in conformance with the FINAL PLAT.

1.15. DEVELOPMENT PROPERTY. “DEVELOPMENT PROPERTY” means that real property legally described on Exhibit A, attached hereto, upon which the DEVELOPMENT PROJECT will be constructed.

1.16. FINAL PLAT. “FINAL PLAT” means the FINAL PLAT, approved by the COUNCIL, attached hereto as Exhibit B.

1.17. FORCE MAJEURE. “FORCE MAJEURE” means acts of God, including, but not limited to floods, ice storms, blizzards, tornadoes, landslides, lightning and earthquakes (but not including reasonably anticipated weather conditions for the geographic area), riots, global pandemics, insurrections, war or civil disorder affecting the performance of work, blockades, power or other utility failures, and fires or explosions.

1.18. FORMAL NOTICE. “FORMAL NOTICE” means notices given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, addressed as follows:

If to CITY:	City of Hastings Attention: City Administrator 101 4th Street East Hastings, MN 55033
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If to DEVELOPER:	Hastings Senior Living LLC 7730 Laredo Drive, Unit 446 Chanhassen, MN 55317
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or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above, provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

1.19. INDIRECT COSTS. “INDIRECT COSTS” means the costs related to:

- a) Finance, administration and legal costs; and
- b) Engineering services performed by CITY Staff; and
- c) Testing and Right of Way services; and
- d) Consulting engineering services.

1.20. OTHER REGULATORY AGENCIES. “OTHER REGULATORY AGENCIES” means and includes any other regulatory or governmental agency or entity affected by or having jurisdiction over the DEVELOPER IMPROVEMENTS.

1.21. PRELIMINARY PLAT. “PRELIMINARY PLAT” means the preliminary plat approved by the COUNCIL.

1.22. PRIOR EASEMENT HOLDERS. “PRIOR EASEMENT HOLDERS” means and includes, jointly and severally, all holders of any easements or other property interests which existed prior to the grant or dedication of any public easements transferred by the FINAL PLAT or transferred pursuant to this DEVELOPMENT AGREEMENT.

1.23. UTILITY COMPANIES. “UTILITY COMPANIES” means and includes, jointly and severally, the following:

- a) Utility companies, including electric, gas, cable, and telecommunications;
- b) Pipeline companies.

ARTICLE 2
FINAL PLAT APPROVAL

2.1. FINAL PLAT APPROVAL. The COUNCIL approved the FINAL PLAT. All conditions contained in the CITY Council Resolution for the FINAL PLAT shall be considered a condition of this DEVELOPMENT AGREEMENT.

2.2. RECORDING OF FINAL PLAT. The DEVELOPER shall record the FINAL PLAT and this DEVELOPMENT AGREEMENT with the COUNTY Recorder. No building permits shall be issued unless the DEVELOPER shows evidence to the CITY that the FINAL PLAT and this DEVELOPMENT AGREEMENT have been recorded with the COUNTY Recorder and the CITY has received the financial obligations required in Article 12.

ARTICLE 3
DEVELOPER IMPROVEMENTS

3.1. DEVELOPER IMPROVEMENTS. The DEVELOPER shall install, at its own cost, the DEVELOPER IMPROVEMENTS in accordance with the DEVELOPMENT PLANS and in accordance with the approvals of the CITY Council, and all ordinances and PRELIMINARY and FINAL PLAT resolutions of the CITY or any amendments thereto and any Miscellaneous Requirements on Exhibit C, attached hereto.

3.2. GROUND MATERIAL. The DEVELOPER shall ensure that adequate and suitable ground material shall exist in the areas of public street and utility improvements and shall guarantee the removal, replacement or repair of substandard or unstable material through the warranty period. The cost of said removal, replacement or repair is the responsibility of the DEVELOPER.

3.3. GRADING/DRAINAGE PLAN, EASEMENTS AND HOURS OF CONSTRUCTION ACTIVITIES.

- a) The DEVELOPER shall construct drainage facilities adequate to serve the DEVELOPMENT PROJECT in accordance with the DEVELOPMENT PLANS. The DEVELOPER agrees to grant to the CITY all necessary easements for the preservation and maintenance of the drainage system, for drainage basins and for utility service and for utility looping. The DEVELOPER shall enter into any easement agreements and stormwater management agreements with the CITY that are deemed necessary to fulfill the obligations of this Section. The grading and drainage plan shall include lot and building elevations, drainage swales, storm sewer, catch basins, erosion control structures and ponding areas necessary to conform to the overall CITY surface water management plan. The grading of the site shall be completed in conformance with the DEVELOPMENT PLANS, subject only to such design criteria and engineering design and construction specifications as are used in the DEVELOPMENT PLANS notwithstanding any amendment or change to CITY standards for development subsequent to approval of the FINAL PLAT.
- b) DEVELOPER shall dedicate drainage and utility easements as shown on the FINAL PLAT. Additional utility and drainage easements that may be required by the CITY may be granted by an acceptable document as approved by the CITY. Prior to issuance of the Certificate of Occupancy to a BUILDER, a Certificate of Compliance by a land surveyor must be submitted to the CITY by the BUILDER reflecting conformance with the approved grading plan and confirming that the lot corner monuments are installed. DEVELOPER shall provide the CITY an as-built survey of the DEVELOPMENT PROPERTY in AUTOCAD format after the final rough grading is complete.
- c) Building construction and general construction activities are limited to Monday through Friday between the hours 7:00 AM to dusk and on Saturdays by request, but limited to the hours of 9:00 AM to dusk. Site grading/excavation and street and utility construction activities are limited to Monday through Friday between the hours 7:00 AM to dusk and on Saturdays by request, but limited to the hours of 9:00 AM to dusk.

3.4. GRADING. The DEVELOPER must grade, in accordance with the grading plan provided to and approved by the CITY, all boulevards, driveways and other public lands, if any, and other lands shown in the approved grading plan. If the DEVELOPER does not perform the work required by this paragraph, the CITY will complete all work required of the DEVELOPER. The DEVELOPER will be financially responsible for payments for this work, which will be assessed as provided in Section 13.2.

3.5. STREET SWEEPING. The DEVELOPER is responsible for the removal of all construction debris and earth materials within the public right-of-way typically resulting from their construction activities. The CITY will inspect the roadways to ensure the DEVELOPER is keeping all public roadway surfaces clean. If any portion of a public roadway surface is found in an unacceptable condition, the CITY will have appropriate equipment dispatched to the site and all costs associated with the clean-up effort will be billed to the DEVELOPER. DEVELOPER may assign

this responsibility to a BUILDER with an approved building permit for the DEVELOPMENT PROJECT.

3.6. STREET MAINTENANCE, RESTORATION, ACCESS AND REPAIR DURING CONSTRUCTION. The DEVELOPER shall clear, on a daily basis, any soil, earth or debris from the streets and wetlands within or adjacent to the FINAL PLAT resulting from the grading or building on the land within the FINAL PLAT by the DEVELOPER or its agents, and shall restore to the CITY's specifications any gravel base contaminated by mixing construction or excavation debris, or earth in it, and repair to the CITY's specifications any damage to bituminous surfacing resulting from the use of construction equipment.

3.7. VEGETATION. The DEVELOPER shall comply with CITY ordinances and policies related to preservation of vegetation and trees and specifically shall exercise reasonable efforts in residential areas to save mature, non-diseased trees and vegetation on the subject land which do not have to be removed for reasonable installation of buildings, streets, utilities or drainage improvements, construction activities related thereto, or site grading. Prior to any excavation, the DEVELOPER shall require a certified arborist to install tree protection on all trees that are to be saved and to mark trees such trees with a red band prior to any excavation. All diseased trees shall be removed according to CITY ordinance requirements.

3.8. LANDSCAPING. The DEVELOPER is responsible for landscaping requirements as follows:

- a) Installing and maintaining all landscaping improvements shown on the DEVELOPER's approved landscape plan in a timely manner.
- b) Granting the CITY the right to trim overgrown vegetation.
- c) Installing and maintaining irrigation systems.
- d) Pay the escrow required in Exhibit E to ensure landscaping is installed and maintained.

3.9. EROSION CONTROL. The DEVELOPER shall provide and follow a plan for erosion control and pond maintenance in accord with the Best Management Practices (BMP) as delineated in the Minnesota Pollution Control Agency Construction Stormwater General Permit and a grading permit from the CITY. Such plan shall be detailed on the DEVELOPMENT PLANS and shall be subject to approval of the CITY ENGINEER. The DEVELOPER shall install and maintain such erosion control structures as appear necessary under the DEVELOPMENT PLANS and as required in Exhibit E, or as it becomes necessary subsequent thereto. The DEVELOPER shall be responsible for all damage caused as the result of grading and excavation within the FINAL PLAT including, but not limited to, restoration of existing control structures and clean-up of public right-of-way, until all lots are final graded and improvements are completed. As a portion of the erosion control plan, the DEVELOPER shall seed or sod any disturbed areas in accordance with the DEVELOPMENT PLANS. After the site is rough graded, the DEVELOPER must provide erosion control devices that are reasonably required by the CITY. The parties recognize that time is of the essence in controlling erosion. If the DEVELOPER does not provide erosion control, the CITY may,

after a twenty-four (24) hour notice, take appropriate action to control erosion. The CITY may, without notice draw upon any posted financial guarantee to pay costs incurred by the CITY in controlling erosion within the FINAL PLAT, or at the CITY's option, assess the additional costs incurred as part of the DEVELOPER IMPROVEMENTS.

3.10. WEED/GRASS MAINTENANCE. DEVELOPER must not allow or permit within the FINAL PLAT, excluding land deeded to the CITY for public purposes, any weeds, grass, brush, or other rank vegetation to a height greater than twelve (12) inches or permit any accumulation of dead weeds, grass or brush, unless such vegetation has been approved pursuant to a landscape plan that involves native grasses or plantings. In the event the DEVELOPER fails to comply with this provision, the CITY may give the DEVELOPER notice to cut or remove material in violation of this paragraph. All costs of cutting or removing incurred by the CITY must be paid by the DEVELOPER or assessed against the property that is in violation.

ARTICLE 4
PARK CONTRIBUTION REQUIREMENTS

4.1. PARK DEDICATION. The DEVELOPER shall comply with the park dedication requirements as defined in the City Code. Park dedication fees identified in Exhibit F must be paid prior to the release of the FINAL PLAT.

ARTICLE 5
PERMITS, LICENSES AND OTHER APPROVALS

5.1. PERMITS. The DEVELOPER shall obtain all necessary approvals, permits and licenses from the CITY, the OTHER REGULATORY AGENCIES and the UTILITY COMPANIES, as identified on Exhibit D, attached hereto. Major design requirements of any such entities shall be determined prior to completion and incorporated into the DEVELOPMENT PLANS. All costs incurred to obtain said approvals, permits and licenses, and also all fines or penalties levied by any agency due to the failure of the DEVELOPER to obtain or comply with conditions of such approvals, permits and licenses, shall be paid by the DEVELOPER. The DEVELOPER shall defend and hold the CITY harmless from any action initiated by the OTHER REGULATORY AGENCIES and the UTILITY COMPANIES resulting from such failures of the DEVELOPER.

ARTICLE 6
OTHER DEVELOPMENT REQUIREMENTS

6.1. MISCELLANEOUS REQUIREMENTS. Any additional requirements to approval of the FINAL PLAT and DEVELOPMENT PLANS as specified by the COUNCIL are incorporated herein and identified on Exhibit C.

6.2. COUNTY ROAD 47 IMPROVEMENTS. DEVELOPER shall pay for its portion of the cost of improvements to County Road 47 as required for the DEVELOPER IMPROVEMENTS as listed on Exhibit F.

6.3. ACCESS TO WESTERN PROPERTY BOUNDARY. DEVELOPER agrees to provide access to the western property boundary for the benefit of future development. Such access shall be granted to a future developer of the adjacent property without cost and shall be legally described in a recorded easement when the future development occurs.

ARTICLE 7
RESPONSIBILITY FOR COSTS

7.1. MISCELLANEOUS AND AREA CHARGES. The CITY imposes charges for sanitary sewer, water and storm sewer impacts (“Area Charges”) to all new developments pursuant to City Code Section 51.05(H) and the Fee Schedule. The DEVELOPER shall reimburse the CITY for all miscellaneous costs and Area Charges incurred or to be incurred by the CITY in connection with this DEVELOPMENT AGREEMENT. Such costs are identified on Exhibit F.

7.2. ENFORCEMENT COSTS. The DEVELOPER shall pay the CITY for costs incurred in the enforcement of this DEVELOPMENT AGREEMENT, including engineering costs and reasonable attorneys’ fees.

7.3. TIME OF PAYMENT. DEVELOPER shall pay all bills from the CITY within thirty (30) days after billing. Bills not paid within thirty (30) days shall bear interest at the rate of eight percent (8%) per year

ARTICLE 8
DEVELOPER WARRANTIES

8.1. STATEMENT OF DEVELOPER WARRANTIES. The DEVELOPER hereby warrants and represents the following:

- a) **AUTHORITY.** DEVELOPER is the fee title owner of the DEVELOPMENT PROPERTY in the FINAL PLAT and has the right, power, legal capacity and authority to enter into and perform its obligations under this DEVELOPMENT AGREEMENT, and no approvals or consents of any persons are necessary in connection with the authority of DEVELOPER to enter into and perform its obligations under this DEVELOPMENT AGREEMENT.
- b) **NO DEFAULT.** DEVELOPER is not in default under any lease, contract or agreement to which it is a party or by which it is bound which would affect performance under this DEVELOPMENT AGREEMENT. DEVELOPER is not a party to or bound by any mortgage, lien, lease, agreement, instrument, order, judgment or decree which would prohibit the execution or performance of this DEVELOPMENT AGREEMENT by DEVELOPER or prohibit any of the transactions provided for in this DEVELOPMENT AGREEMENT.
- c) **PRESENT COMPLIANCE WITH LAWS.** DEVELOPER has complied with and is not in violation of applicable federal, state or local statutes, laws, and regulations including, without limitation, permits and licenses and any applicable zoning,

environmental or other law, ordinance or regulation affecting the FINAL PLAT and the DEVELOPMENT PLANS and the DEVELOPER IMPROVEMENTS; and DEVELOPER is not aware of any pending or threatened claim of any such violation.

- d) **CONTINUING COMPLIANCE WITH LAWS.** DEVELOPER will comply with all applicable federal, state and local statutes, laws and regulations including, without limitation, permits and licenses and any applicable zoning, environmental or other law, ordinance or regulation affecting the FINAL PLAT and the DEVELOPMENT PLANS and the DEVELOPER IMPROVEMENTS.
- e) **NO LITIGATION.** There is no suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending, or threatened against or affecting DEVELOPER or the FINAL PLAT or the DEVELOPMENT PLANS or the DEVELOPER IMPROVEMENTS. DEVELOPER is not in default with respect to any order, writ, injunction or decree of any federal, state, local or foreign court, department, agency or instrumentality.
- f) **FULL DISCLOSURE.** None of the representatives and warranties made by DEVELOPER or made in any exhibit hereto or memorandum or writing furnished or to be furnished by DEVELOPER or on its behalf intentionally contains or will contain any untrue statement of material fact or intentionally omit any material fact the omission of which would be misleading. Any unintentional untrue statements or omissions shall be corrected or cured within thirty (30) days after the DEVELOPER receives FORMAL NOTICE or obtains knowledge of such error, unless an extension is granted by the CITY.
- g) **PLAT COMPLIANCE.** The FINAL PLAT and the DEVELOPMENT PLANS comply with all CITY, COUNTY, metropolitan, state and federal laws and regulations, including but not limited to, subdivision ordinances, zoning ordinances and environmental regulations.
- h) **WARRANTY ON PROPER WORK AND MATERIALS.** The DEVELOPER warrants all work required to be performed by it under this DEVELOPMENT AGREEMENT against defective material and faulty workmanship for a period of one (1) year after its completion and acceptance by the CITY. The DEVELOPER shall be solely responsible for all costs of performing repair work required by the CITY within thirty (30) days of notification. All trees, grass, and sod shall be warranted to be alive, of good quality, and disease free for one year after planting. Any replacements shall be similarly warranted for one year from the time of planting. The warranty period for street and drainage and erosion control improvements shall be for two (2) years after completion and acceptance by the CITY; the warranty for the street, drainage and erosion control improvements shall also include the obligation of the DEVELOPER to repair and correct any damage to or deficiency with respect to such improvements.

- i) **OBTAINING PERMITS.** The DEVELOPER shall obtain in a timely manner and pay for all required permits, licenses and approvals, and shall meet, in a timely manner, all requirements of all applicable, local, state and federal laws and regulations which must be obtained or met before the DEVELOPER IMPROVEMENTS may be lawfully constructed. A list of the CITY permits, licenses, and approvals required is identified on Exhibit D.

ARTICLE 9
CITY WARRANTIES

9.1. STATEMENT OF CITY WARRANTIES. The CITY hereby warrants and represents as follows:

- a) **ORGANIZATION.** CITY is a municipal corporation duly incorporated and validly existing in good standing the laws of the State of Minnesota.
- b) **AUTHORITY.** CITY has the right, power, legal capacity and authority to enter into and perform its obligations under this DEVELOPMENT AGREEMENT.

ARTICLE 10
INDEMNIFICATION OF CITY

10.1. INDEMNIFICATION OF CITY. Provided the CITY is not in DEFAULT under the DEVELOPMENT AGREEMENT with respect to the particular matter causing the claim, loss or damage, DEVELOPER shall indemnify, defend and hold the CITY, its COUNCIL, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and attorneys' fees, that the CITY incurs or suffers, which arise out of, result from or relate to:

- a) breach by the DEVELOPER of the DEVELOPER WARRANTIES;
- b) failure of the DEVELOPER to timely construct the DEVELOPER IMPROVEMENTS according to the DEVELOPMENT PLANS and the CITY ordinances, standards and specifications;
- c) failure by the DEVELOPER to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this DEVELOPMENT AGREEMENT;
- d) failure by the DEVELOPER to pay contractors, subcontractors, laborers, or materialmen;
- e) failure by the DEVELOPER to pay for materials;
- f) approval by the CITY of the FINAL PLAT;

- g) approval by the CITY of the DEVELOPMENT PLANS;
- h) failure to obtain the necessary permits and authorizations to construct the DEVELOPER IMPROVEMENTS;
- i) construction of the DEVELOPER IMPROVEMENTS;
- j) delays in construction of the DEVELOPER IMPROVEMENTS;
- k) payment by DEVELOPER for any required costs or assessments;
- l) all costs and liabilities arising because building permits were issued prior to the completion and acceptance of the DEVELOPER IMPROVEMENTS.

10.2. NOTICE. Within a reasonable period of time after the CITY's receipt of actual notice of any matter giving rise to a right of payment against the CITY pursuant to Section 10.1, the CITY shall give the FORMAL NOTICE in reasonable detail to the DEVELOPER. The DEVELOPER shall not be obligated to make any payment to the CITY for any such claim until the passage of thirty (30) days from the date of its receipt of FORMAL NOTICE from the CITY, during which time the DEVELOPER shall have the right to cure or remedy the event leading to such claim.

10.3. DEFENSE OF CLAIM. Provided the CITY is not in DEFAULT under the DEVELOPMENT AGREEMENT with respect to the particular matter causing the claim or demand, with respect to claims or demands asserted against the CITY by a third party of the nature covered by Section 10.1, and provided that the CITY gives FORMAL NOTICE thereof, the DEVELOPER will, at its sole expense, provide for the defense thereof with counsel of its own selection but approved by the CITY; the DEVELOPER will pay all costs and expenses including attorneys' fees incurred in so defending against such claims, provided that the CITY shall at all times also have the right to fully participate in the defense at the CITY's expense. If the DEVELOPER fails to defend, the CITY shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter, for the account of and at the risk of the DEVELOPER.

ARTICLE 11 **CITY REMEDIES UPON DEVELOPER DEFAULT**

11.1. CITY REMEDIES. If a DEVELOPER DEFAULT occurs, that is not caused by FORCE MAJEURE, the CITY shall give the DEVELOPER FORMAL NOTICE of the DEVELOPER DEFAULT and the DEVELOPER shall have thirty (30) days to cure the DEVELOPER DEFAULT. If the DEVELOPER, after FORMAL NOTICE to it by the CITY, does not cure the DEVELOPER DEFAULT, then the CITY may avail itself of any remedy afforded by law and any of the following remedies:

- a) the CITY may specifically enforce this DEVELOPMENT AGREEMENT;

- b) the CITY may suspend any work, improvement or obligation to be performed by the CITY;
- c) the CITY may collect on the irrevocable letter of credit (“LOC”) or cash deposit pursuant to Article 12 hereof;
- d) the CITY may suspend or deny building and occupancy permits for buildings within the FINAL PLAT;
- e) the CITY may, at its sole option, perform the work or improvements to be performed by the DEVELOPER, in which case the DEVELOPER shall within thirty (30) days after written billing by the CITY reimburse the CITY for any costs and expenses incurred by the CITY. In the alternative, the CITY may in whole or in part, specially assess any of the costs and expenses incurred by the CITY; and the DEVELOPER hereby waives any and all procedural and substantive objections to the installation and construction of the work and improvements and the special assessment resulting therefrom, including, but not limited to, notice and hearing requirement and any claim that the special assessments exceed benefit to the FINAL PLAT. The DEVELOPER hereby waives any appeal rights otherwise available pursuant to Minn. Stat. § 429.081.

11.2. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained in this DEVELOPMENT AGREEMENT is breached by the DEVELOPER and thereafter waived in writing by the CITY, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder. All waivers by the CITY must be in writing.

11.3. NO REMEDY EXCLUSIVE. No remedy herein conferred upon or reserved to the CITY shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the DEVELOPMENT AGREEMENT or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the CITY to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the FORMAL NOTICE.

11.4. EMERGENCY. Notwithstanding the requirement contained in Section 11.1 hereof relating to FORMAL NOTICE to the DEVELOPER in case of a DEVELOPER DEFAULT and notwithstanding the requirement contained in Section 11.1 hereof relating to giving the DEVELOPER a right to cure the DEVELOPER DEFAULT, in the event of an emergency as determined by the CITY ENGINEER, resulting from the DEVELOPER DEFAULT, the CITY may perform the work or improvement to be performed by the DEVELOPER without giving any notice or FORMAL NOTICE to the DEVELOPER and without giving the DEVELOPER the right to cure the DEVELOPER DEFAULT. In such case, the DEVELOPER shall within thirty (30) days after written billing by the CITY reimburse the CITY for any and all costs incurred by the CITY. In the alternative, the CITY may, in whole or in part, specially assess the costs and expenses incurred by the CITY; and the DEVELOPER hereby waives any and all procedural and substantive objections to the installation

and construction of the work and improvements and the special assessments resulting therefrom, including, but not limited to, notice and hearing requirements and any claim that the special assessments exceed benefit to the FINAL PLAT. The DEVELOPER hereby waives any appeal rights otherwise available pursuant to Minn. Stat. § 429.081.

ARTICLE 12
FINANCIAL OBLIGATIONS

12.1. DEVELOPER'S LETTER OF CREDIT AMOUNT. Prior to release of the FINAL PLAT for recording, the DEVELOPER shall deposit with the CITY an irrevocable LOC or cash escrow for the amounts required in Exhibits E and F.

All cost estimates shall be acceptable to the CITY ENGINEER. The bank and form of the irrevocable LOC shall be subject to approval by the CITY and shall continue to be in full force and effect until released by the CITY. The irrevocable LOC shall be for a term ending two (2) years after acceptance by the CITY. In the alternative, the LOC may be for a one year term provided it is automatically renewable for successive one year periods from the present or any future expiration dates, and further provided that the irrevocable LOC states that at least sixty (60) days prior to the expiration date the bank will notify the CITY if the bank elects not to renew for an additional period. The irrevocable LOC shall secure compliance by the DEVELOPER with the terms of this DEVELOPMENT AGREEMENT. The CITY may draw down on the irrevocable LOC or cash deposit, without any further notice than that provided in Section 11.1 relating to a DEVELOPER DEFAULT, for any of the following reasons:

- a) a DEVELOPER DEFAULT; or
- b) upon the CITY receiving notice that the irrevocable LOC will be allowed to lapse prior to two (2) years after acceptance by the CITY.

The CITY shall use the LOC proceeds to reimburse the CITY for its costs and to cause the DEVELOPER IMPROVEMENTS to be constructed to the extent practicable; if the CITY ENGINEER determines that such DEVELOPER IMPROVEMENTS have been constructed and after retaining 10% of the proceeds for later distribution pursuant to Section 12.2, the remaining proceeds shall be distributed to the DEVELOPER.

With CITY approval, the irrevocable LOC may be reduced pursuant to Section 12.2 from time to time as financial obligations are paid.

12.2. ESCROW RELEASE AND ESCROW INCREASE; DEVELOPER IMPROVEMENTS. The DEVELOPER may request that the LOC or cash deposits required by the DEVELOPMENT AGREEMENT be reduced proportionately at the following milestones:

- a) Substantial completion of the mass site grading activities;
- b) Final completion of the mass site grading activities;

- c) Substantial completion of the sanitary sewer, water main, and storm sewer installation;
- d) Substantial completion of the streets and streetlights;
- e) Final completion of the initial public improvements.

The LOC or cash deposits may be administratively reduced by the CITY ENGINEER by 50% after full installation or completion of the aforementioned items, pending verification of as-builts. Upon verification of as-builts that confirm the location and construction of the aforementioned items, the DEVELOPER may request the LOC or cash deposits be reduced by 75% of the original amounts. The balance shall be retained by the CITY until the expiration of the 1-year warranty period.

If it is determined by the CITY that the DEVELOPMENT PLANS were not strictly adhered to, or that work was done without CITY inspection, the CITY may require, as a condition of acceptance, that the DEVELOPER post an irrevocable LOC, or cash deposit equal to 125% of the estimated amount necessary to correct the deficiency or to protect against deficiencies arising therefrom. In the event that work, which is concealed, was done without permitting CITY inspection, then the CITY may, in the alternative, require the concealed condition to be exposed for inspection purposes.

12.3. DEVELOPER'S CASH FEES AND CASH ESCROW REQUIREMENTS. At the time that the DEVELOPMENT AGREEMENT is approved, DEVELOPER shall deposit cash and cash escrows with the CITY for those items and in the amounts required in Exhibit F.

ARTICLE 13 **MISCELLANEOUS**

13.1. CITY'S DUTIES. The terms of this DEVELOPMENT AGREEMENT shall not be considered an affirmative duty upon the CITY to complete any DEVELOPER IMPROVEMENTS.

13.2. ADDITIONAL IMPROVEMENTS. If the DEVELOPER fails to construct the DEVELOPER IMPROVEMENTS, the CITY at its option, may install and construct the DEVELOPER IMPROVEMENTS. In such case, the CITY, at its option, may specially assess the cost wholly or in part therefore under Minnesota Statutes Chapter 429, or may draw on the irrevocable LOC or cash deposit. If the CITY specially assesses the cost of any portion thereof, then the DEVELOPER hereby waives any and all procedural and substantive objections to the installation of the improvements and the special assessments, including, but not limited to, notice and hearing requirements and any claim that the special assessments exceed the benefit to the FINAL PLAT. The DEVELOPER waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The DEVELOPER acknowledges that the benefit from the improvements equal or exceed the amount of the special assessments.

13.3. NO THIRD PARTY RECOURSE. Third parties shall have no recourse against the CITY under this DEVELOPMENT AGREEMENT.

13.4. VALIDITY. If any portion, section, subsection, sentence, clause, paragraph or phrase of this DEVELOPMENT AGREEMENT is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this DEVELOPMENT AGREEMENT.

13.5. BINDING AGREEMENT. The parties mutually recognize and agree that all terms and conditions of this recordable DEVELOPMENT AGREEMENT shall run with the land in the FINAL PLAT, and shall be binding upon the successors and assigns of the DEVELOPER. This DEVELOPMENT AGREEMENT shall also run with and be binding upon any after acquired interest of the DEVELOPER in the land made the subject of the FINAL PLAT.

13.6. CONTRACT ASSIGNMENT. The DEVELOPER may not assign this DEVELOPMENT AGREEMENT without the prior written consent of the COUNCIL, which approval will not be unreasonably withheld. In such case, the third-party buyer will be required to accept and assume all contractual and financial responsibilities provided in this DEVELOPMENT AGREEMENT. Upon satisfaction of such requirements by such third-party buyer, the DEVELOPER's obligations hereunder shall terminate. Absent approval of the Council, the DEVELOPER's obligations hereunder shall continue in full force and effect, even if the DEVELOPER sells one or more lots, the entire PLAT, or any part of it.

13.7. AMENDMENT AND WAIVER. The parties hereto may by mutual written agreement amend this DEVELOPMENT AGREEMENT in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this DEVELOPMENT AGREEMENT or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this DEVELOPMENT AGREEMENT, waive compliance by another with any of the covenants contained in this DEVELOPMENT AGREEMENT, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this DEVELOPMENT AGREEMENT. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this DEVELOPMENT AGREEMENT shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

13.8. GOVERNING LAW. This DEVELOPMENT AGREEMENT shall be governed by and construed in accordance with the laws of the State of Minnesota.

13.9. COUNTERPARTS. This DEVELOPMENT AGREEMENT may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

13.10. HEADINGS. The subject headings of the paragraphs and subparagraphs of this DEVELOPMENT AGREEMENT are included for purposes of convenience only and shall not affect the construction of interpretation of any of its provisions.

13.11. INCONSISTENCY. If the DEVELOPMENT PLANS are inconsistent with the words of this DEVELOPMENT AGREEMENT or if the obligation imposed hereunder upon the

DEVELOPER are inconsistent, then that provision or term which imposes a greater and more demanding obligation on the DEVELOPER shall prevail.

13.12. ACCESS. The DEVELOPER hereby grants to the CITY, its agents, employees, officers, and contractors a license and right of entry to enter the DEVELOPMENT PROPERTY to perform all work and inspections deemed appropriate by the CITY during the installation of DEVELOPER IMPROVEMENTS and SITE IMPROVEMENTS.

[The remainder of this page has been intentionally left blank.]

EXHIBIT A
DEVELOPMENT PROPERTY

Real property situated in the City of Hastings, County of Dakota, State of Minnesota, legally described as:

Lot 1, Block 1, Vermillion Acres Addition

Abstract Property

EXHIBIT B
FINAL PLAT

VERMILLION ACRES ADDITION

KNOW ALL PERSONS BY THESE PRESENTS: That Hastings Senior Living LLC, a Minnesota Corporation, owner of the following described property: That part of the East Half of the Southwest Quarter (E 1/2 of SW 1/4 of SW 1/4) of Section Thirty Three (33) in Township One Hundred Fifteen (115) Range Seven West (17) Twp North of the Road, containing 11.80 acres, according to the Government Survey thereof, Dakota County, Minnesota.

Has caused the same to be surveyed and platted as VERMILLION ACRES ADDITION and does hereby dedicate to the public for public use the drainage and utility easements as created by this plat.

In witness whereof said Hastings Senior Living LLC, a Minnesota Corporation, has caused these presents to be signed by its proper officer this _____ day of _____, 20____.

Hastings Senior Living LLC

Signed: _____

Michael Hoagberg

STATE OF MINNESOTA
COUNTY OF _____
This instrument was acknowledged before me on this _____ day of _____, 20____, by Michael Hoagberg, Hastings Senior Living LLC on behalf of said corporation.

Notary Public, _____
My Commission expires _____

SURVEYORS CERTIFICATE

I, Mitchell A. Scofield 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 survey data as shown on the original survey plat and that I have personally examined the same and find that the same are correct and that the same have been or will be shown to the public with one year from the date of recording of this plat as required by Minnesota Statutes, Section 565.03, Subd. 3, and of the case of this certificate the same and labeled on this plat, and all public ways are shown and labeled on this plat.

Dated this _____ day of _____, 20____.

Mitchell A. Scofield, Licensed Land Surveyor
Minnesota License No. 48624

STATE OF MINNESOTA
COUNTY OF _____

This instrument was acknowledged before me on this _____ day of _____, 20____, by Mitchell A. Scofield, Licensed Land Surveyor.

Notary Public, _____
My Commission expires _____

CITY COUNCIL, CITY OF HASTING, MINNESOTA

This plat of VERMILLION ACRES ADDITION, 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 said plat is in compliance with the provisions of Minnesota Statutes, Section 565.03, Subd. 2.

City Council, City of Hastings

Signed _____

Mayor

Signed _____

City Clerk

CITY PLANNING COMMISSION

Approved by the Planning Commission of the City of Hastings, Minnesota, at a regular meeting thereof, on this _____ day of _____, 20____.

Planning Commission, City of Hastings.

Signed _____

Chairperson

Signed _____

Secretary

COUNTY SURVEYOR, COUNTY OF DAKOTA, STATE OF MINNESOTA

I hereby certify that in accordance with Minnesota Statutes, Section 565.021, Subd. 11, the plat has been reviewed and approved this _____ day of _____, 20____.

Todd B. Tollefson, Dakota County Surveyor

COUNTY BOARD, COUNTY OF DAKOTA, STATE OF MINNESOTA

We do hereby certify that on this _____ day of _____, 20____, the Board of Commissioners of Dakota County, Minnesota, approved the plat of VERMILLION ACRES ADDITION, and said plat is in compliance with the provisions of Minnesota Statutes, Section 565.03, Subd. 2 and pursuant to the recommendation of the Dakota County Plat Commission.

Chair, County Board _____ County Treasurer/Auditor _____

DEPARTMENT OF TAXATION AND RECORDS, COUNTY OF DAKOTA, STATE OF MINNESOTA

Pursuant to Minnesota Statutes, Section 565.021, taxes payable in the year 20____ on this land heretofore described have been paid. Also, pursuant to Minnesota Statutes, Subd. 9 and Section 272.12, there are no delinquent taxes and transfer has been entered on this _____ day of _____, 20____.

Amy A. Koelle

Department of Property Taxation and Records

COUNTY RECORDER, COUNTY OF DAKOTA, STATE OF MINNESOTA

I hereby certify that this plat of VERMILLION ACRES ADDITION 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 Number _____.

Amy A. Koelle

County Recorder



**EXHIBIT B
FINAL PLAT
CONT.**

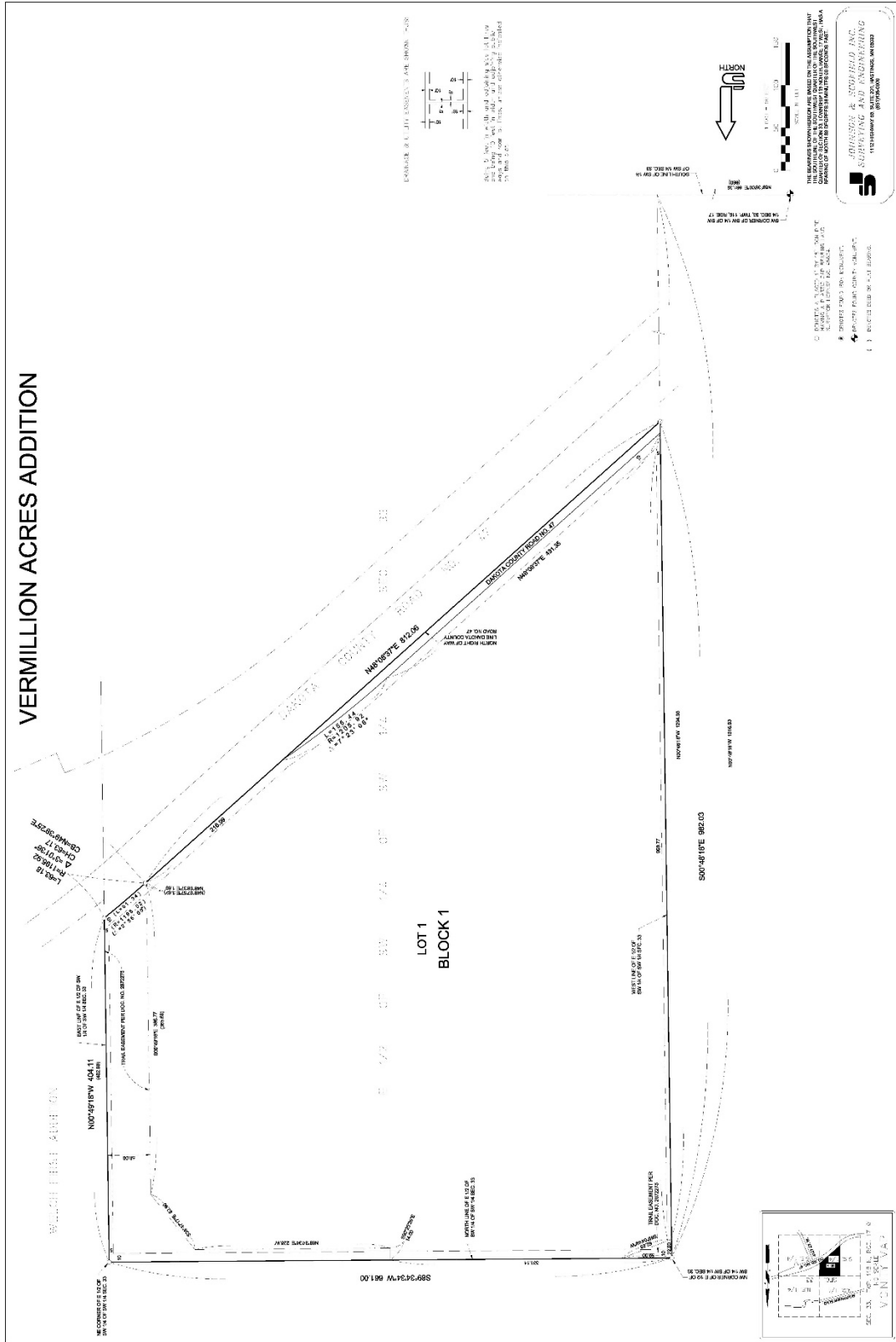


EXHIBIT C
MISCELLANEOUS REQUIREMENTS AND CONDITIONS
IMPOSED BY THE CITY

- 1) **CONDITIONS TO BE SATISFIED BEFORE CITY RELEASES THE FINAL PLAT TO BE RECORDED.**
 - a) Letter of Credit. DEVELOPER must provide the LOC for the amounts required in this DEVELOPMENT AGREEMENT.
 - b) All Cash Deposits. DEVELOPER must pay all cash deposits required in this DEVELOPMENT AGREEMENT.
 - c) Planning Fees. DEVELOPER must fully pay the CITY all planning, engineering review and legal fees that have been incurred up to the date of approval of this DEVELOPMENT AGREEMENT.
 - d) Park Fee and Credits Relating Thereto. DEVELOPER must pay park dedication fees as required in Exhibit F.
 - e) Sewer Interceptor Fees. DEVELOPER must pay sewer interceptor fees as required in Exhibit F.

- 2) **BUILDING PERMITS.** No building permits may be obtained until:
 - a) All the conditions in Paragraph 1 of this Exhibit C have been met;
 - b) All storm water ponds and associated drainage features including storm sewer and drainage swales have been installed;
 - c) The following documents have been recorded:
 - Final Plat
 - Development Agreement
 - Stormwater Maintenance Agreement

- 3) **CERTIFICATES OF OCCUPANCY.** Prior to issuance of any certificate of occupancy, all the following conditions must be satisfied:
 - a) All the conditions listed in Paragraphs 1 and 2 of this Exhibit C must be satisfied.
 - b) The utilities have been installed.
 - c) As built surveys have been received by the CITY.

- 4) **CLEAN UP OF CONSTRUCTION DEBRIS ON STREETS AND ADJOINING PROPERTY.** The escrow amount stated on Exhibit F shall include an appropriate amount as determined by the Director of Public Works to ensure that the DEVELOPER removes any construction debris from streets adjoining the FINAL PLAT and from private properties that adjoin the FINAL PLAT. During the construction of the improvements within the FINAL PLAT, the DEVELOPER is responsible for removing any construction debris (including roofing materials, paper wrappings, construction material and other waste products resulting from construction) that may be blown from the construction site into adjoining private properties or into CITY streets or that may fall from delivery trucks onto adjoining private properties or CITY streets. Further, during construction, the DEVELOPER must clear the CITY streets of any dirt or other earthen material that may fall onto the CITY streets from the delivery trucks that are being used in the excavation and grading of the site.

EXHIBIT D
PERMITS, LICENSES AND OTHER APPROVALS

1. Any licenses or permits required by the Minnesota Department of Health.
2. NPDES Construction Stormwater Permit from the MPCA.
3. Any contractor licenses from the CITY or the State of Minnesota.
4. Building Permits from the CITY.
5. Electrical Permits from the CITY.
6. Utility permits that may be required from the CITY, State of Minnesota or any utility company.
7. Access permits and construction permits as required by Dakota County.

EXHIBIT E
DEVELOPER'S LETTER OF CREDIT ESCROW REQUIREMENTS FOR
SITE PUBLIC INFRASTRUCTURE SYSTEMS ITEMS AND LANDSCAPING

PUBLIC INFRASTRUCTURE SYSTEMS

Grading LOC	Total
Total Public Infrastructure Construction Costs*	
X 125%	
Inspection Escrow	\$10,000
Total Grading Escrow	\$

**As approved by CITY*

LANDSCAPING

Landscape LOC	Total
Landscaping Cost	
X 125%	
Total Escrow:	

EXHIBIT F
DEVELOPER'S CASH REQUIREMENTS AND
INDIRECT COST CASH ESCROW

CASH REQUIREMENTS

City Fees	Unit Cost	Qty	Total
County Road 47 Improvements		1	TBD
Park Dedication Fees	\$1,100/unit	75 units	\$ 82,500
Sewer Interceptor Fees	\$485/unit	75 units	\$36,375
Right-of-way Permit Fee			
Sanitary Area Charge			
Water Area Charge			
Storm Area Charge	\$77.67/acre	11.33 acres	\$880
Total Fees			\$

CASH ESCROW

Engineering Escrow	Total
Public Infrastructure Construction Inspections	
Total Escrow:	