

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “First Amendment”) is entered into as of _____, 2022 (the “Effective Date”), by and between the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized under the laws of Minnesota (“HEDRA”), the City of Hastings, a Minnesota municipal corporation (“City”), and NJS Development LLC, a South Dakota limited liability company (“Developer”).

RECITALS

Recital No. 1. HEDRA, City and Developer entered into a Development Agreement dated November 11, 2021, recorded as Document No. _____ on _____ in the Dakota County Recorder’s Office (“Development Agreement”), for the purchase and sale of real property identified in the Development Agreement.

Recital No. 2. Developer has requested the Development Agreement be amended to extend the Closing Date to allow additional time to submit the Construction Plans.

Recital No. 3. HEDRA and City do not object to the extension.

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

1. Section 1(E) of the Development Agreement shall be removed and replaced in its entirety as follows:

1(E). “Closing Date” means on or before sixty (60) days following Developer obtaining all Land Use Entitlements, but no later than June 9, 2022, unless otherwise agreed to by the parties.
2. Section 1(W) shall be added to the Development Agreement as follows:

1(W). “Land Use Entitlements” means planning applications, including but not limited to, plat, site plan, and rezoning approvals, obtained by Developer for the Minimum Improvements.

3. Section 6.1(A)(6) of the Development Agreement shall be removed and replaced in its entirety as follows:

6.1(A)(3). On or before the Contingency Date, Developer shall have obtained all appropriate approvals and permits necessary for the Proposed Use on the Property, which approvals may include, without limitation, access permits, signage permits, building permits, required licenses (the “Approvals”). All costs and expenses related to the preparation of any documentation necessary to create any plans, specifications or the like shall be the responsibility of the Developer.

4. Section 6.1(A)(16) shall be added to the Development Agreement as follows:

6.1(A)(16). On or before Contingency Date, Developer shall have obtained all Land Use Entitlements.

5. Section 10.1 of the Development Agreement shall be removed and replaced in its entirety as follows:

10.1. Construction of Minimum Improvements. No later than thirty (30) days before the Closing Date, Developer shall submit Construction Plans to the City. The Construction Plans shall provide for the construction of Minimum Improvements. All Minimum Improvements constructed on the Property shall be constructed, operated and maintained in accordance with the terms of the Construction Plans, this Agreement, the Comprehensive Plan, and all local, Minnesota and federal laws and regulations (including, but not limited to, Environmental Controls and Land Use Regulations). Developer will use commercially reasonable efforts to obtain, or cause to be obtained, in a timely manner, all required permits, licenses and approvals, and will use commercially reasonable efforts to meet, in a timely manner, the requirements of applicable Environmental Controls and Land Use Regulations which must be met before Developer’s Minimum Improvements may be lawfully constructed.

6. Section 10.6 of the Development Agreement shall be removed and replaced in its entirety as follows:

10.6 Commencement and Completion of Construction. Subject to Unavoidable Delays, Developer shall commence construction of the Minimum Improvements no later than June 15, 2022. “Commence Construction” shall mean the start of site grading and installation of utilities. Subject to Unavoidable Delays, Developer shall have substantially completed the construction of the Minimum Improvements no later than December 31, 2023. All work with respect to the Minimum Improvements to be constructed or provided by Developer on the Property shall be in substantial conformity with the Construction Plans and Developer will not modify the size or exterior

appearance of the Minimum Improvements without the consent of HEDRA and the City, which consent shall not be unreasonably withheld.

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

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

**HEDRA:
HASTINGS ECONOMIC
DEVELOPMENT AND
REDEVELOPMENT AUTHORITY**

By _____

Its President

By _____
Eric Maass
Its Secretary

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____ and Eric Maass, the President and Secretary respectively, of the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic organized and existing under the Constitution and laws of Minnesota, on behalf of HEDRA.

Notary Public

