



City Council Memorandum

To: Mayor Fasbender and City Council
From: John Hinzman, Community Development Director
Date: August 15, 2022
Item: Authorize Signature: Stormwater Facilities Maintenance Agreement - County Crossroads Center 4th Addition

Council Action Requested:

Authorize Signature of the attached Stormwater Facilities Maintenance Agreement between the City of Hastings and Current33 Apartments LLC establishing stormwater maintenance obligations and responsibilities for County Crossroads Center 4th Addition. Approval would be subject to minor changes prior to final signature. A simple majority is necessary for action

Background Information:

On March 7, 2022, the City Council approved the plat of County Crossroads Center 4th addition (along with rezoning and site plan approval) allowing Enclave Development to construct 211 apartment units south and east of 33rd and Vermillion Streets

Financial Impact:

The increase of 211 apartment units increases the land value and provides needed housing.

Advisory Commission Discussion:

N\A

Council Committee Discussion:

N\A

Attachments:

- Stormwater Facilities Maintenance Agreement

(Reserved for Recording Data)

STORMWATER MANAGEMENT FACILITIES AGREEMENT

This Stormwater Management Facilities Agreement (“Agreement”) is made, entered into and effective this ____ day of _____, 2022, by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Current33 Apartments, LLC, a Minnesota limited liability company (“Developer”).

WHEREAS, Developer is the fee owner of certain real property situated in the City of Hastings, County of Dakota, State of Minnesota legally described as follows:

Lot 1, Block 1 and Outlot A, County Crossroads Center 4th Addition, according to the recorded plat thereof.

(the “Property”); and

WHEREAS, Developer has obtained the approval of the City for the development of the Property for a Stormwater Management Facilities; and

WHEREAS, as used herein, the term “Stormwater Management Facilities” refers to the private storm sewer system (i.e. pipes, catch basins, manholes, flared end sections, etc.), private water quality and/or water quantity facilities (i.e. detention basins, retention basins, swales, pipes, oil/water separators, sand filtering devices, infiltration facilities, sump structures, etc.) which are located inside and outside the public road right-of-way and drainage and utility easements; and

WHEREAS, the City has required that the Developer make provision for the construction, maintenance and repair of the Stormwater Management Facilities as shown on the Stormwater Facilities Location Map on **Exhibit A** attached hereto; and

WHEREAS, the Stormwater Management Facilities are privately owned and maintained by Developer, as provided in this Agreement; and

WHEREAS, the City and Developer desire to set forth their understanding with respect to the construction, repair and maintenance of the Stormwater Management Facilities and the responsibility relating to the costs of the repair and maintenance of the Stormwater Management Facilities.

NOW THEREFORE, in consideration of the foregoing facts and circumstances, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Construction and Maintenance of Stormwater Management Facilities. The Developer agrees to construct the Stormwater Management Facilities according to the construction plans drawn by Sambatek dated July 15, 2022 (“Plans”) and repair and maintain the Stormwater Management Facilities at its sole cost and expense. Maintenance of the Stormwater Management Facilities shall include but is not limited to compliance with the Stormwater BMP Inspection and Maintenance Plan (“Inspection Plan”) attached as **Exhibit B**. Developer shall submit an annual inspection report that complies with the Inspection Plan by September 30th of each year. If the required annual inspection report is not submitted to the City by September 30th, the City shall have the right to enter onto the property to conduct the annual inspection. If it is determined that the Stormwater Management Facilities (1) have not been maintained; or (2) are not functioning as originally designed and intended; or (3) are in need of repair, the Developer agrees to restore the Stormwater Management Facilities so that it functions as it was designed and intended. Failure to comply with the restoration ordered by the City shall be an event of default. The Developer further agrees that it will not use the Stormwater Management Facilities for snow storage and will inform its snow removal contractors of this provision of the Agreement.

2. Developer’s Default. In the event of default by the Developer as to any of the work to be performed by it hereunder, following at least thirty (30) days prior written notice and Developer’s failure to cure such default within such time-frame, except in an emergency as determined by the City, the City may, at its option, perform the work and the Developer shall promptly, following receipt of an invoice and reasonable substantiation of such costs, reimburse the City for any reasonable out-of-pocket expense incurred by the City.

3. License, Easement, and Assessment. This Agreement is a license for the City to act when so authorized under this Agreement, and it shall not be necessary for the City to seek a Court order for permission to enter the Property. When the City does any such work, the City may, in addition to its other remedies, assess the reasonable out-of-pocket cost in whole or in part. The Developer has conveyed to the City and the public a permanent drainage and utility easement, described and depicted in more detail on the plat of County Crossroads Center 4th Addition, which is 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 Stormwater Management Facilities.

4. Changes to Site Configuration or Stormwater Management Facilities. If site configurations or Stormwater Management Facilities change, causing decreased effectiveness of Stormwater Management Facilities, new or improved Stormwater Management Facilities must be implemented to ensure the conditions for post-construction stormwater management continue to be met.

5. Terms and Conditions. This Agreement shall run with the land and shall be binding upon Developer's successors and assigns with respect to the Property. The terms and conditions of this Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective successors and assigns.

6. Developer Warranty. Developer warrants and represents the following to the City and acknowledges that this Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms. The party signing on behalf of the Developer has been duly authorized by the entity to sign the Agreement and bind the entity. Developer has been duly formed under the laws of the State of Minnesota and is in good standing under the laws of the jurisdiction in which the Property is located, is duly qualified to transact business in the jurisdiction in which the Property is located, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Developer pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by Developer pursuant hereto have each been duly authorized by all necessary action on the part of Developer and such execution, delivery and performance does and will not conflict with or result in a violation of Developer's organizational agreement or any judgment or order. The execution, delivery and performance by Developer of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Developer, or (b) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Developer is a party or by which it or any of its properties may be bound.

7. Amendment and Waiver. The parties hereto may by mutual written agreement amend this 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 Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this 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 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 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.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

9. Counterparts. This 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.

10. Consent. Developer consents to the recording of this Agreement.

11. Limitation of Liability. Notwithstanding any other provision of this Agreement, in

no event shall either party or any of their affiliates, by reason of any of their respective acts or omissions be liable whether in contract, tort, misrepresentation, warranty, negligence, strict liability or otherwise for any special, indirect, incidental or consequential damages arising out of or in connection with this Agreement, or the performance, non-performance or breach thereof.

12. Notice. Notice shall mean notices given by one party to the other if in writing and if and when delivered or tendered: (i) in person; (ii) by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, or (iii) by proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended 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:	Current33 Apartments, LLC Attn : Austin J. Morris 300 23rd Ave E, Suite 300 West Fargo, ND 58078
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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, on the third day after mailing if mailed by United States postal service as provided above, or within twenty-four (24) hours if sent via overnight courier service 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.

[The remainder of this page was intentionally left blank.]

**DEVELOPER:
CURRENT33 APARTMENTS, LLC**

By: _____
Austin J. Morris
Its Managing Member

STATE OF _____)

ss.

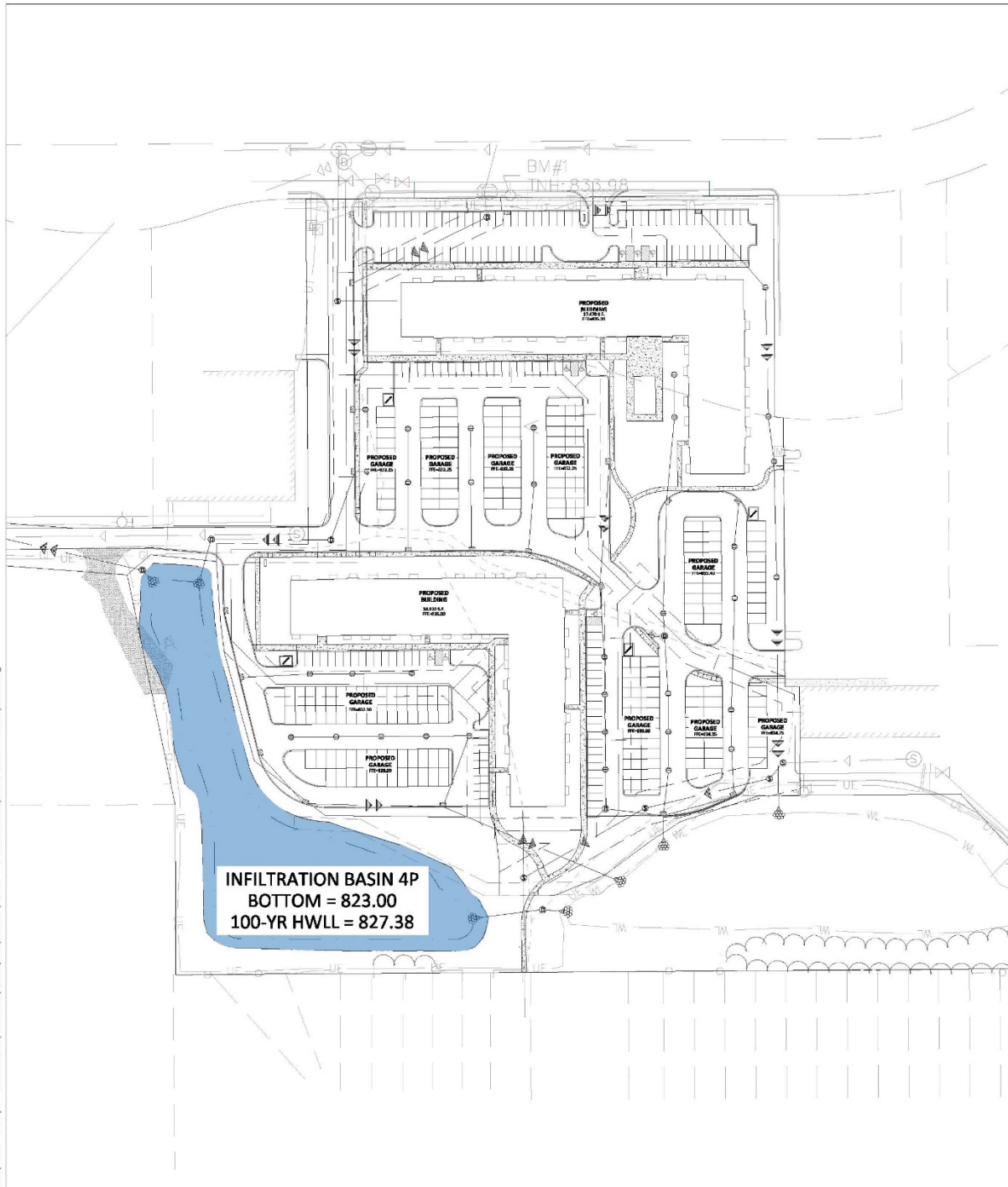
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____day of _____, 2022, by Austin J. Morris, the Managing Member of Current33 Apartments, LLC, a Minnesota limited liability company, on behalf of said limited liability company.

Notary Public

**This instrument drafted by
And after recording, please return to:**
Korine L. Land (#262432)
LeVander, Gillen & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121
651-451-1831

**EXHIBIT A
STORMWATER FACILITIES LOCATION MAP**



Jul 15, 2022 - 12:15pm - User: rmeil | L:\PROJECTS\50513\CAD\Exhibits\2022-04-25 O&M Exhibit\50513-O&M Exhibit-Update.dwg

**ENCLAVE COMPANIES
HASTINGS APARTMENTS
HASTINGS, MN
INFILTRATION BASIN EXHIBIT**

Designed: _____
 Drawn: RM
 Approved: JDB
 Issued: _____
 Rev.: _____
 Date: _____

Exhibit Number
1
 Project No. 50513

EXHIBIT B STORMWATER BMP INSPECTION AND MAINTENANCE PLAN

Hastings Apartments Operation and Maintenance Plan
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APPENDIX B: INFILTRATION BASIN

Stormwater BMP: Infiltration Basin

BMP Description: Infiltration Basin per Civil Plan – See Civil Grading Plans and Details.

System Summary

System	Location
4P	Southwest corner of site

1. Maintenance Tasks and Timelines

Tasks	Frequency and Comments
Inspections	<ol style="list-style-type: none"> 1. Inspect device monthly during the frost-free season for the first year of operation after construction. 2. Determine future inspection and maintenance schedule from findings during first year of operation. Inspect annually at a minimum.
Sediment and trash removal	Remove trash in the spring and fall while removing sediment buildup once, annually if necessary or when sediment buildup reaches 20% of design depth.
Outlet	Monitor annually and repair as needed
Storm sewer system	Monitor annually and remove sediment as needed

Infiltration Basin Maintenance Inspection Checklist - 1/2

Inspector:
Date:
Time:
Weather:
Reading from closest NOAA reporting station: _____ Rainfall over previous 2-3 days? Y / N
System Location/ID: Southwest corner of site

Mark items in the table below using the following key:

- X Needs immediate attention
- Okay
- Not applicable
- ? Clarification required

MAINTENANCE ITEM	CHECKED		MAINTENANCE NEEDED		INSPECTION FREQUENCY
	Y	N	Y	N	
DEBRIS CLEANOUT					A
Contributing drainage areas clean of trash, litter and vegetative debris					
Contributing drainage area stabilized and free of erosion					
System clear of debris/yard waste					
Inflow Pipes Clear					
Outflow pipes and Overflow spillway clear of debris					
STRUCTURE					A
Inspect all caps, lids, and covers per					
Inspect surface for any obvious cave-in type of issues					
Inspect internal components (cracking, bulging, damage, etc)					
DEWATERING AND SEDIMENTATION					A, AMS
Basin dewater 48 hour after end of storm					
No evidence of standing water					
No evidence of surface clogging					
Sedimentation no greater than 20% of basin design depth					

Inspection Frequency Key A=Annually M=Monthly AMS=After Major Storm

Infiltration Basin Maintenance Inspection Checklist - 2/2

INLETS					A
Inspect and clean all upstream catchbasins and manholes					
Structure not in need of repair					
No evidence of obstruction					
No evidence of oils					
OUTLETS/EMERGENCY OVERFLOW					A, AMS
Structure not in need of repair					
No evidence of erosion					
No evidence of blockage					

Inspection Frequency Key A=Annually M=Monthly AMS=After Major Storm

Comments:

Estimated Flow from Inlets (if applicable) _____
 Depth of Standing Water (if applicable) _____

Overall Condition of Facility

In accordance with approved design plans? Y / N

In accordance with As-Built plans? Y / N

Dimension on as built? Y / N

Field verified dimensions? Y / N

Maintenance required as detailed above? Y / N

Compliance with other consent conditions? Y / N

Dates by which maintenance must be completed: ____/____/____

Dates by which outstanding information as per consent conditions is required : ____/____/____

Inspector's signature: _____

Consent Holder/Engineer/Agent's signature: _____

Consent Holder/Engineer/Agent's name printed: _____