



## *City Council Memorandum*

**To:** Mayor Fasbender and City Council  
**From:** John Hinzman, Community Development Director  
**Date:** September 18, 2023  
**Item:** Authorize Signature: 3<sup>rd</sup> Amendment to Development Agreement - Villas at Pleasant - 32 Villas Homes - Simek Property Group - Northridge and Pleasant

**Council Action Requested:**

Authorize Signature of the attached 3<sup>rd</sup> Amendment to the Development Agreement for Villas at Pleasant, a 32 lot villa home subdivision developed by Simek Property Group northeast of Northridge and Pleasant Drives.

The amendment modifies the date for completion of wear course bituminous paving from September 15, 2023 to September 15, 2024. No other significant changes are included in the amendment. Action requires a simple majority of City Council.

**Background Information:**

The City Council granted Final Plat and Development Agreement approval on April 5, 2021. The agreement established a June 30, 2022 deadline for installation of pavement wear course and completion of public and private improvements. The 1<sup>st</sup> Amendment extended the deadline of wear course paving until October 15, 2022. The 2<sup>nd</sup> Amendment extended the deadline of wear course paving until September 15, 2023.

Wear course paving is recommended when the majority of homes in a development have been completed. Staff recommends extending the date.

**Financial Impact:**

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

**Advisory Commission Discussion:**

N/A

**Attachments:**

- 3<sup>rd</sup> Amendment to Development Agreement

**THIRD AMENDMENT TO DEVELOPMENT AGREEMENT**

**THIS THIRDA MENDMENT TO DEVELOPMENT AGREEMENT** (this “Third Amendment”) is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2023 (the “Effective Date”), by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Villas at Pleasant, LLC, a Minnesota limited liability company (“Developer”).

**RECITALS**

**Recital No. 1.** The City and Developer entered into that certain Development Agreement of Villas at Pleasant, Dakota County, Minnesota dated April 12, 2021 and recorded as Document No. 3528860 on March 10, 2022 in the Office of the County Recorder, Dakota County, Minnesota, as amended by that certain First Amendment to Development Agreement dated July 14, 2022 and recorded as Document No. 3563459 and the Second Amendment to Development Agreement dated September 6, 2022 and recorded as Document No. 3563460 in the Office of the County Recorder, Dakota County, Minnesota (collectively the “Development Agreement”), for the Subject Property identified in the Development Agreement.

**Recital No. 2.** Developer has requested the Development Agreement be amended to extend the dates of the installation of wear course.

**Recital No. 3.** The City does not object to the extension.

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

1. The entire Development Agreement is hereby incorporated into this Third Amendment, except as modified below.
2. Section 6(B) of the Development Agreement shall be removed and replaced in its entirety as follows:

- 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 September 15, 2024. 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 snowplow 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.
3. Except as provided for above, the terms and provisions of the Development Agreement shall remain in full force and effect.
  4. This Third Amendment and all disputes or controversies arising out of or relating to this Third 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.
  5. Nothing contained herein shall be deemed a waiver by the City 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 the City and the maximum liability limits provided by Minnesota Statutes, Chapter 466.
  6. This Third 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.
  7. This Third Amendment shall not be amended, modified or supplemented, except by a written instrument signed by an authorized representative of each party.

**[remainder of page intentionally blank]**

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

**CITY:**  
**CITY OF HASTINGS**

By: \_\_\_\_\_  
Mary Fasbender, Mayor

By: \_\_\_\_\_  
Kelly Murtaugh, City Clerk

STATE OF MINNESOTA   )  
                                      ) ss.  
COUNTY OF DAKOTA   )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me a Notary Public within and for said County, personally appeared Mary Fasbender and Kelly Murtaugh, to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Hastings, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

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

**DEVELOPER:  
VILLAS AT PLEASANT, LLC**

By: \_\_\_\_\_  
Stuart R. Simek, President

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF DAKOTA    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Stuart R. Simek, the President of Villas at Pleasant, LLC, a Minnesota limited liability company, on behalf of said limited liability company.

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

**THIS INSTRUMENT WAS DRAFTED BY  
AND AFTER RECORDING RETURN TO:**

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