



City Council Memorandum

To: Mayor Fasbender and City Council

From: John Hinzman, Community Development Director

Date: November 20, 2023

Item: Resolution: South Oaks of Hastings 4th Addition – Terminate Development Agreement and adopt new Development Agreement.

Council Action Requested:

Consider adoption of the attached resolution terminating the recently approved Development Agreement for South Oaks of Hastings 4th Addition and adopting a new Development Agreement. The agreement increases the number of model homes within the development from 1 to 2. There are no other changes. Action requires a simple majority of Council.

History

The City Council adopted the Plat and Development Agreement at the October 16, 2023 meeting.

Advisory Commission Review

N/A

Financial Impact:

The addition of 35 home sites will add to the tax base and create needed housing opportunities.

Attachments:

- Resolution – Terminating development agreement and adopting new development agreement
- Development Agreement

HASTINGS CITY COUNCIL RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HASTINGS
TERMINATING THE OCTOBER 16, 2023 DEVELOPMENT AGREEMENT
FOR THE PLAT OF SOUTH OAKS OF HASTINGS 4TH ADDITION AND
APPROVING A NEW DEVELOPMENT AGREEMENT FOR THE PLAT OF
SOUTH OAKS OF HASTINGS 4TH ADDITION**

Whereas, the City Council approved a Development Agreement for the Plat of South Oaks of Hastings 4th Addition with Gregory and Susan Jablonske and Greg J. Homes of Hastings for the development of a single-family residential project; and

Whereas, the Developer has requested a change to Section 4.14 to allow for two model homes to be constructed prior to a bituminous surface base access; and

WHEREAS, the City Council has reviewed the request and is not opposed to the change to the Development Agreement, however since the previously approved Development Agreement has not been recorded, for ease of recording documents, a termination of the previously approved Development Agreement and approval of the modified Development Agreement is preferred.

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

The City Council hereby approves the Development Agreement for the Plat of South Oaks of Hastings 4th Addition as presented.

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 _____, 2023, by the following vote:

Mary Fasbender, Mayor

ATTEST:

Kelly Murtaugh, City Clerk

DEVELOPMENT AGREEMENT

FOR THE PLAT OF

SOUTH OAKS OF HASTINGS 4th ADDITION

BY AND BETWEEN

THE CITY OF HASTINGS

AND

GREGORY A. JABLONSKE AND SUSAN M. JABLONSKE

AND

GREG J. HOMES OF HASTINGS, INC.

THIS DEVELOPMENT AGREEMENT is made and entered into on the _____ day of _____, 2023, by and between the City of Hastings, a Minnesota municipal corporation (“CITY”), Gregory A Jablonske and Susan M. Jablonske, husband and wife (“OWNER”), and Greg J. Homes of Hastings, Inc., a Minnesota corporation (“DEVELOPER”).

RECITALS:

WHEREAS, the OWNER is the fee simple OWNER of the DEVELOPMENT PROPERTY; and

WHEREAS, in pursuant of the DEVELOPMENT PROJECT, the DEVELOPER has applied to the CITY for approval of the DEVELOPMENT PLANS and OWNER has applied for approval of the FINAL PLAT for South Oaks of Hastings 4th Addition (“DEVELOPMENT PROJECT”); and

WHEREAS, in conjunction with the granting of these approvals, the CITY requires the installation and/or availability of public utilities, public streets, 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 set forth herein, 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 a residence on a 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 12 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 Greg J. Homes of Hastings, Inc., a Minnesota corporation.
- 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 4.
- 1.11. **DEVELOPER WARRANTIES.** “DEVELOPER WARRANTIES” means all DEVELOPER WARRANTIES identified in Article 10 of this DEVELOPMENT AGREEMENT.
- 1.12. **DEVELOPMENT AGREEMENT.** “DEVELOPMENT AGREEMENT” means this agreement by and among the CITY, OWNER and DEVELOPER.
- 1.13. **DEVELOPMENT PLANS.** “DEVELOPMENT PLANS” means all the plans, drawings, specifications, and surveys dated July 25, 2023 and prepared by J. R. Hill, Inc. as updated and approved by the City Engineer, hereby incorporated by reference and made a part of this DEVELOPMENT AGREEMENT.

1.14. DEVELOPMENT PROJECT. “DEVELOPMENT PROJECT” means a residential development to be known as South Oaks of Hastings 4th Addition 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, insurrections, war or civil disorder affecting the performance of work, blockades, power or other utility failures, fires, explosions, or pandemics causing shortages of labor or materials or other such matters beyond the reasonable control of DEVELOPER.

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
If to OWNER:	Greg and Susan Jablonske

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, individually and collectively, any regulatory or governmental agency or entity affected by or having jurisdiction over the DEVELOPER IMPROVEMENTS.

1.21. OWNER. “OWNER” means Gregory A. Jablonske and Susan M. Jablonske, husband and wife.

1.22. OWNER DEFAULT. “OWNER DEFAULT” means and includes, jointly and severally, any of the following or any combination thereof:

- a) failure by the OWNER to timely pay the CITY any levied assessments required to be paid under the DEVELOPMENT AGREEMENT;
- b) failure by the OWNER to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this DEVELOPMENT AGREEMENT;
- c) breach of the OWNER WARRANTIES.

1.1. OWNER WARRANTIES. “OWNER WARRANTIES” means that the OWNER hereby warrants and represents the following:

- a) **AUTHORITY.** OWNER is the fee simple OWNER of DEVELOPMENT PROPERTY 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 OWNER to enter into and perform its obligations under this DEVELOPMENT AGREEMENT.
- b) **NO DEFAULT.** OWNER 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. OWNER 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 OWNER or prohibit any of the transactions provided for in this DEVELOPMENT AGREEMENT.
- c) **NO LITIGATION.** There is no suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending, or threatened against or affecting OWNER.
- d) **FULL DISCLOSURE.** None of the representatives and warranties made by OWNER or made in any exhibit hereto or memorandum or writing furnished or to be

furnished by OWNER or on its behalf contains or will contain any untrue statement of material fact or omit any material fact the omission of which would be misleading.

e) **FEE TITLE.** OWNER owns fee title to all the land in the FINAL PLAT.

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

1.24. **SITE IMPROVEMENTS.** “SITE IMPROVEMENTS” means and includes, individually and collectively, all the improvements identified on Exhibit C and in Article 3.

1.25. **PUBLIC UTILITIES.** “PUBLIC UTILITIES” means and includes sanitary sewer, water main, storm sewer and storm water improvements. PUBLIC UTILITIES are included in the definition of SITE IMPROVEMENTS.

1.26. **SITE IMPROVEMENTS.** “SITE IMPROVEMENTS” means and includes those improvements identified on Exhibit C.

1.27. **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 15.

ARTICLE 3 **SITE IMPROVEMENTS**

3.1. **SITE IMPROVEMENTS.** DEVELOPER shall construct and install, at its own cost, all SITE IMPROVEMENTS identified on Exhibit C in accordance with industry standards for making public improvements.

3.2. DEVELOPMENT CHARGES. The CITY imposes certain development charges for sewer, stormwater, streets and park dedication for all new developments. Such development charges are identified on Exhibit C.

ARTICLE 4 **DEVELOPER IMPROVEMENTS**

4.1. 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 COUNCIL, and all ordinances and PRELIMINARY and FINAL PLAT resolutions of the CITY or any amendments thereto and any Miscellaneous Requirements on Exhibit D, attached hereto.

4.2. 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.

4.3. GRADING/DRAINAGE PLAN AND EASEMENTS. 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 outlots and easements for the preservation and maintenance of the drainage system, for drainage basins and for utility service and for utility looping. The DEVELOPER and OWNER shall enter into any stormwater management facilities agreement with the CITY that are deemed reasonably necessary to fulfill the obligations of this Section for the DEVELOPMENT PROPERTY. 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 DEVELOPMENT PROPERTY 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.

DEVELOPER shall dedicate drainage and utility easements as shown on the FINAL PLAT. Additional utility and drainage easements that may be reasonably required by the CITY may be granted by an acceptable document as approved by the CITY. Prior to issuance of a Certificate of Occupancy to a BUILDER for any dwelling unit constructed on a lot within the subdivision, 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.

Building construction and general construction activities are limited to Monday through Friday between the hours 7:00 AM to 10:00 PM and on Saturday between the hours of 9:00 AM and 9:00 PM. Site grading/excavation and street and utility construction activities are limited to Monday through Friday between the hours 7:00 AM and 7:00 PM and on Saturdays by request, but limited to between the hours of 9:00 AM to dusk.

4.4. GRADING OF STREETS. The DEVELOPER must grade, in accordance with the grading plan provided to and approved by the CITY, all public streets, 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 16.2.

4.5. INTERIM BITUMINOUS STREET. The DEVELOPER will construct a bituminous wedge for the roadways within the FINAL PLAT. 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, however such wear course shall be installed no later than October 1, 2025. 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. Final acceptance of the required improvements by the CITY will not be granted until all work, including final wear course, is completed.

4.6. STREET MAINTENANCE. DEVELOPER is responsible for all maintenance, upkeep and repair of all public streets contained within the FINAL PLAT from initiation of construction through final acceptance by the CITY.

4.7. 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 new home 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.

4.8. STREET SIGNS. The DEVELOPER shall be financially responsible for the installation of street identification signs, and non-mechanical and non-electrical traffic control signs. Street signs will be in conformance with the names as indicated on the FINAL PLAT and pursuant to CITY standards. The actual number and location of signs to be installed shall be determined by the CITY and actual installation shall be performed by CITY authorized personnel. DEVELOPER shall deposit an escrow identified on Exhibit C to furnish and install all required street and traffic control signage for the development, provided this cost and escrow will not cover the required Type III Barricades and Future Street Extension Sign to be installed and removed by the DEVELOPER at DEVELOPER'S expense.

4.9. SOD. The DEVELOPER agrees that the BUILDER must pay for and install cultured sod between all adjacent street curbs and between front and rear lot lines throughout each lot in the entire FINAL PLAT. For a lot where the Certificate of Occupancy is issued between August 1 and May 1 of the following year, completion of the work described in this paragraph shall be completed by the BUILDER by June 15; for a lot where the Certificate of Occupancy is issued between May 1

and July 31, completion of the work described in this paragraph shall be completed by the BUILDER by September 15.

4.10. BOULEVARD AND AREA RESTORATION. The DEVELOPER shall seed all boulevards within 30 days of the completion of street related improvements and restore all other areas disturbed by the development grading operation in accordance with the approved erosion control plan, over the entire FINAL PLAT. Upon request of the CITY ENGINEER, the DEVELOPER shall remove the silt fences after grading and construction have occurred.

4.11. LOT CORNER MONUMENTS. The DEVELOPER shall install all subdivision lot corner monumentation within one year from the date of recording the FINAL PLAT, or the monumentation shall be installed on a per lot basis at the time the building permit for the subject lot is issued, whichever occurs first. At the end of the one year period from recording of this DEVELOPMENT AGREEMENT, the DEVELOPER shall submit to CITY ENGINEER written verification by a registered land surveyor that the required monuments have been installed throughout the FINAL PLAT.

4.12. BOULEVARD TREES. The DEVELOPER or BUILDER shall contact the City Forester for the purposes of staking the location of the boulevard trees to be planted in accordance with the Boulevard Tree Planting Plan approved as part of the FINAL PLAT. The minimum size of tree to be planted in the City's Right-of-Way shall be one and half (1 ½) inch caliper, as measured by the American Association of Nurserymen. Boulevard Trees are a part of the Landscape Escrow requirements as detailed in Exhibit C.

4.13. STREET MAINTENANCE, RESTORATION, ACCESS AND REPAIR DURING CONSTRUCTION. The DEVELOPER or BUILDER shall clear, as necessary, 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 or BUILDER, 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. In the event BUILDER fails to comply with the requirements of this section, the CITY'S default remedies pursuant to Section 14.1 shall apply.

Furthermore, the DEVELOPER shall maintain reasonable access to any occupied buildings within the FINAL PLAT, including necessary street maintenance such as grading, graveling, patching and snow removal prior to permanent street surfacing. The DEVELOPER agrees to perform and assume all responsibilities relating to snow removal and ice control, if the streets have not been accepted for winter maintenance by the CITY ENGINEER by October 15, or later if approved by the CITY's Public Works Director. Completion of the work described in the paragraph shall be completed within fifteen (15) days after notice by the CITY to the DEVELOPER that repair, or restoration is required. Saturday working hours for the site grading/street and utility construction should start at 9:00 a.m.

4.14. OCCUPANCY AND ACCESS. No building permit for any lot shall be issued until the DEVELOPER has constructed a temporary access consisting of a bituminous surface base

that is acceptable in design by the CITY and the conditions on Exhibit D have been followed. Special consideration may be given for **two** model home building permits if approved by the City's Building Official and Fire Marshal and only after Class V gravel base and utilities have been installed and accepted by the City Engineer.

No temporary certificate of occupancy for any lot within the FINAL PLAT shall be issued until the DEVELOPER has constructed a permanent bituminous roadway and water and sanitary sewer improvements are available for use and all conditions of Exhibit D have been followed. No permanent certificate of occupancy for any lot within the FINAL PLAT shall be issued until all water and sanitary sewer improvements are available for use and the first lift of street pavement has been installed. Furthermore, the DEVELOPER is responsible for the construction and cost of constructing any necessary temporary bituminous roadway before the public roadway is constructed and shall maintain reasonable access to any occupied house or houses, including necessary street maintenance prior to permanent street improvements that are accepted by the CITY.

4.15. DRIVEWAYS. Upon building a residence on a lot, the BUILDER shall construct a concrete or bituminous surface driveway for the lot in accordance with CITY approved standards. For a lot for which a certificate of occupancy is issued between August 1 and May 1 of the following year, completion of the work described in this paragraph must be completed by June 15; for a lot for which a certificate of occupancy is issued between May 1 and July 31, completion of the work described in this paragraph shall be completed by September 15.

4.16. VEGETATION. The DEVELOPER or BUILDER 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 or BUILDER shall require a certified arborist to install tree protection on all trees that are to be saved and to mark such trees with a red band prior to any excavation. All diseased trees shall be removed according to CITY ordinance requirements. In the event BUILDER fails to comply with the requirements of this section, the CITY'S default remedies pursuant to Section 14.1 shall apply.

4.17. LANDSCAPING. The responsibility for landscaping requirements is as follows:

- a) The DEVELOPER is responsible for installing all landscaping improvements in accordance with the CITY'S subdivision regulations, CITY ordinances and approved landscape plan.
- b) The DEVELOPER will be financially responsible for the work outlined in Section 4.17(a), which shall be secured by a Letter of Credit described in Exhibit C.

4.18. 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 are necessary under the DEVELOPMENT PLANS or as it becomes necessary subsequent thereto. The DEVELOPER shall be responsible for all damage caused as the result of DEVELOPER's 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 areas disturbed by DEVELOPER 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 the required erosion control, the CITY may, after a forty-eight (48) hour notice, take appropriate action to control erosion. Subject to the foregoing requirement, the CITY may 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.

4.19. PROHIBITION ON TRANSFER OF RESPONSIBILITY. The DEVELOPER must not transfer or assign its responsibility to perform the requirements of Street Sweeping, Street Signs, Street Maintenance, Restoration, Access and Repair, Landscaping, and Erosion Control to any lot purchaser within the FINAL PLAT. DEVELOPER shall not transfer or assign its responsibility to perform the requirements of Street Signs to any BUILDER.

4.20. 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.

4.21. ESCROW FOR SEAL COATING OR EQUIVALENT PREVENTATIVE MAINTENANCE PRODUCT. DEVELOPER shall deposit a preventative maintenance product escrow identified on Exhibit C. Preventative maintenance of the new public streets and newly resurfaced street sections within the PLAT will be completed by the CITY as part of the annual street maintenance program.

4.22. SPECIFICATIONS - INSPECTIONS. Unless otherwise stated, all of the required improvements for the DEVELOPMENT PROJECT shall conform to engineering standards and specifications as required by the CITY. Such DEVELOPER IMPROVEMENTS shall be subject to inspection and approval and shall be made in sequence as determined by the Public Works Department. 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 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 DEVELOPMENT PLANS. The Public Works Director shall determine the estimated cost of inspection services. The CITY will pay all improvement inspection costs incurred from escrowed funds deposited with the CITY by the DEVELOPER in an amount estimated on Exhibit C, but DEVELOPER shall pay the actual amount determined by the CITY ENGINEER. The CITY will also charge an administration fee to cover the costs of the CITY'S administrative and consultant fees connected to the inspection services and related construction oversight efforts. Excess funds will be returned to the DEVELOPER upon completion and acceptance of the DEVELOPMENT PROJECT. If escrowed funds deposited with the CITY are insufficient to cover the inspection costs, the DEVELOPER shall deposit additional funds 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.

ARTICLE 5 **PARK CONTRIBUTION REQUIREMENTS**

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

ARTICLE 6 **PERMITS, LICENSES AND OTHER APPROVALS**

6.1. 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 E, 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 OTHER REGULATORY AGENCIES 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 7 **OTHER DEVELOPMENT REQUIREMENTS**

7.1. MISCELLANEOUS REQUIREMENTS. Any additional requirements for approval of the FINAL PLAT and DEVELOPMENT PLANS as specified by the COUNCIL prior to the date hereof are incorporated herein and identified on Exhibit D.

7.2. **CONVEYANCE OF OUTLOTS.** DEVELOPER shall convey Outlots A, B and C to the adjacent property owners of South Oaks of Hastings 2nd Addition, and submit appropriate documentation to Dakota County to combine the outlots with the parent parcel, as provided on Exhibit D.

ARTICLE 8 **PUBLIC UTILITIES**

8.1. **PUBLIC UTILITIES.** DEVELOPER shall install sanitary sewer, water main, storm sewer and storm water improvements by August 1, 2024, subject to extension(s) due to weather and seasonal conditions. DEVELOPER may request an extension of this deadline in writing from the City Engineer for other reasons, which extensions 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.

ARTICLE 9 **RESPONSIBILITY FOR COSTS**

9.1. **DEVELOPER AND SITE IMPROVEMENT COSTS.** Except as otherwise provided herein, the DEVELOPER shall pay for the DEVELOPER IMPROVEMENTS and SITE IMPROVEMENTS; that is, all costs of persons doing work or furnishing skills, tools, machinery or materials, or insurance premiums or equipment or supplies and all just claims for the same; and the CITY shall be under no obligation to pay the contractor or any subcontractor any sum whatsoever on account thereof, whether or not the CITY shall have approved the contract or subcontract. Such site improvements are identified on Exhibit C.

The DEVELOPER is responsible for contracting and paying for the street and utility testing costs. The CITY's designated inspector on the DEVELOPMENT PROJECT will coordinate the street and utility testing activities. All testing reports shall be sent to the CITY with a copy to the DEVELOPER.

If deductions are owed on the street and utility construction pursuant to the MNDOT standards for construction, then these deductions will be paid by DEVELOPER to CITY within thirty (30) days after DEVELOPER receives notices of such deductions.

9.2. **MISCELLANEOUS CHARGES.** The DEVELOPER shall reimburse the CITY for all miscellaneous costs and charges reasonably incurred or to be incurred by the CITY in connection with this DEVELOPMENT AGREEMENT, including administrative and consultant fees.

9.3. 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.

9.4. 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 10 **DEVELOPER WARRANTIES**

10.1. 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 to DEVELOPER'S knowledge 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, except for the infiltration basin improvements as described below. 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 (1) year after planting. Any replacements shall be similarly warranted for one (1) year from the time of planting. The warranty period for the infiltration basin improvements on Outlot D shall be for three (3) years after conveyance of Outlot D to the CITY; the warranty for the infiltration basin improvements shall also include the obligation of the DEVELOPER to repair and correct any damage to or deficiency with respect to such improvements on Outlot D.
- 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 E.

ARTICLE 11 **OWNER WARRANTIES**

11.1. STATEMENT OF OWNER WARRANTIES. The OWNER hereby makes and states the OWNER WARRANTIES.

ARTICLE 12
CITY WARRANTIES

12.1. 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 13
INDEMNIFICATION OF CITY

13.1. INDEMNIFICATION OF CITY. Provided the CITY is not in DEFAULT under this 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 reasonable 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.

13.2. 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 13.1, the CITY shall give the FORMAL NOTICE in reasonable detail to the DEVELOPER and/or OWNER. The DEVELOPER and/or OWNER 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 and/or OWNER shall have the right to cure or remedy the event leading to such claim.

13.3. 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 13.1, and provided that the CITY gives FORMAL NOTICE thereof and the DEVELOPER and/or OWNER fails to cure or remedy the event leading to such claim within the required thirty (30) day period, 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 and/or OWNER will pay all costs and expenses including reasonable 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 and/or OWNER 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 and/or OWNER.

13.4. INDEMNIFICATION OF CITY BY OWNER. Provided the CITY is not in DEFAULT under the DEVELOPMENT AGREEMENT with respect to the particular matter causing the claim, loss or damage, OWNER 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 breach by the OWNER of the OWNER WARRANTIES.

ARTICLE 14
CITY REMEDIES UPON DEVELOPER DEFAULT

14.1. CITY REMEDIES. If a DEVELOPER or OWNER DEFAULT occurs, that is not caused by FORCE MAJEURE, the CITY shall give the DEVELOPER and OWNER FORMAL NOTICE of the DEFAULT and the DEVELOPER and/or OWNER shall have thirty (30) days to cure the DEFAULT. If the DEVELOPER and/or OWNER, after FORMAL NOTICE to it by the CITY, does not cure the 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 15 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 reasonably incurred by the CITY. In the alternative, the CITY may in whole or in part, specially assess any of the costs and expenses reasonably 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.

14.2. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained in this DEVELOPMENT AGREEMENT is breached by the DEVELOPER or OWNER 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.

14.3. 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.

14.4. EMERGENCY. Notwithstanding the requirement contained in Section 14.1 hereof relating to FORMAL NOTICE to the DEVELOPER and OWNER in case of a DEFAULT and notwithstanding the requirement contained in Section 14.1 hereof relating to giving the DEVELOPER and/or OWNER a right to cure the DEFAULT, in the event of an emergency as determined by the CITY ENGINEER, resulting from the 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 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 reasonably incurred by the CITY. In the alternative, the CITY may, in whole or in part, specially assess the costs and expenses reasonably incurred by the CITY; and the DEVELOPER and OWNER hereby waive 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 and OWNER hereby waive any appeal rights otherwise available pursuant to Minn. Stat. § 429.081.

ARTICLE 15 **FINANCIAL OBLIGATIONS**

15.1. DEVELOPER'S LETTER OF CREDIT AMOUNT. Prior to release of the FINAL PLAT for recording, the DEVELOPER shall submit certification of real estate taxes paid in full for the DEVELOPMENT PROPERTY. DEVELOPER shall also deposit with the CITY an irrevocable LOC for the amounts required in Exhibit C. In lieu of an irrevocable LOC, DEVELOPER may deposit cash or other security acceptable to CITY.

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. The irrevocable LOC shall 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 14.1 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, without renewal as required above, prior to one (1) year after acceptance by the CITY.

In such event, 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 15.2, the remaining proceeds shall be distributed to the DEVELOPER.

With CITY approval, the irrevocable LOC may be reduced pursuant to Section 15.2 from time to time as financial obligations are paid.

15.2. ESCROW RELEASE AND ESCROW INCREASE; DEVELOPER IMPROVEMENTS. The DEVELOPER may request that the LOC or cash deposits required by this DEVELOPMENT AGREEMENT be reduced proportionally at the following intervals:

- 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 and completion of punch list items. Upon verification of as-builts that confirm the location and construction of the aforementioned items and completion of punch list 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.

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

15.4. BUILDER'S CASH FEES AND CASH ESCROW REQUIREMENTS. DEVELOPER shall notify each BUILDER that certain building permit fees and an escrow shall be required prior to the issuance of a building permit for each lot for items identified in the CITY'S Fee Schedule and any requirements of the CITY'S Building Official.

ARTICLE 16
MISCELLANEOUS

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

16.2. ADDITIONAL IMPROVEMENTS. Subject to the requirements contained in Section 14.1 hereof, 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.

16.3. COMPLETION DATES. Except for those improvements that may be deferred as provided herein all DEVELOPER IMPROVEMENTS and PUBLIC IMPROVEMENTS shall be installed no later than October 1, 2025, subject to extension(s) due to weather and seasonal conditions. DEVELOPER may request an extension of this deadline in writing from the City Engineer for other reasons, which extensions 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.

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

16.5. 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.

16.6. RECORDING. The DEVELOPMENT AGREEMENT and PLAT shall be recorded with the COUNTY Recorder and the OWNER shall provide and execute any and all documents necessary to implement the recording.

16.7. 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 and

OWNER. This DEVELOPMENT AGREEMENT shall also run with and be binding upon any after acquired interest of the DEVELOPER and OWNER in the land made the subject of the FINAL PLAT.

16.8. 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.

16.9. 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.

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

16.11. 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.

16.12. 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.

16.13. 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.

16.14. CERTIFICATE OF COMPLETION. Upon request by DEVELOPER, the CITY covenants to provide a recordable Certificate of Completion within a reasonable period of time following the request, upon the completion of the DEVELOPER IMPROVEMENTS and SITE IMPROVEMENTS required herein, payment of all costs and fees required and compliance with all terms of this DEVELOPMENT AGREEMENT.

16.15. ACCESS. The DEVELOPER and OWNER hereby grant 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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this DEVELOPMENT AGREEMENT.

CITY:
CITY OF HASTINGS

By: _____
Mary Fasbender
Its Mayor

By: _____
Kelly Murtaugh
Its City Clerk

STATE OF MINNESOTA)
)
COUNTY OF WASHINGTON) ss.

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 said instrument was signed 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

OWNER:

Gregory A. Jablonske

Susan M. Jablonske

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

The foregoing instrument was acknowledged before me on _____ day of _____, 2023, by Gregory A. Jablonske and Susan M. Jablonske, husband and wife.

Notary Public

**DEVELOPER:
GREG J. HOMES OF HASTINGS, INC.**

By: Greg Jablonske

Its: _____

STATE OF MINNESOTA)

) ss.

COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me on _____ day of _____, 2023, by Greg Jablonske, the _____ of Greg J. Homes of Hastings, Inc., a Minnesota corporation, on behalf of said corporation.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Korine Land, #262432
LeVander, Gillen, & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121

EXHIBIT A
DEVELOPMENT PROPERTY

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

Lots 1-10, Block 1, South Oaks of Hastings 4th Addition
Lots 1-12, Block 2, South Oaks of Hastings 4th Addition
Lots 1-13, Block 3, South Oaks of Hastings 4th Addition
Outlots A-D, South Oaks of Hastings 4th Addition

Abstract

EXHIBIT B
FINAL PLAT

SOUTH OAKS OF HASTINGS 4TH ADDITION

NOTICE TO THE PUBLIC: The Gregory A. Jablonka and Susan M. Jablonka, husband and wife, owners of the following described property:

That part of Block A, South Oaks of Hastings 2nd Addition, except that part zoned as South Oaks of Hastings 2nd Addition, according to the recording plat thereof in Hennepin County, Minnesota.

has caused this plat to be prepared and recorded in Hennepin County, Minnesota, for the purpose of dividing the above described property into lots and parcels as shown on this plat.

In witness whereof, Gregory A. Jablonka and Susan M. Jablonka, husband and wife, have hereunto set their hands this _____ day of _____, 20____.

By: _____ Printed Name _____

County, Minnesota Printed Name _____

The instrument was acknowledged before me on _____ day of _____, 20____, by _____, _____ of _____, Minnesota.

This instrument was acknowledged before me on _____ day of _____, 20____, by _____, _____ of _____, Minnesota.

Dated this _____ day of _____, 20____.

MINNEAPOLIS, MINNESOTA, CLERK AND SURVEYOR, HENNEPIN COUNTY, MINN.

STATE OF MINNESOTA
COUNTY OF _____

My commission expires January _____, 20____.

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

City of Hastings, Minnesota
City Council, City of Hastings, Minnesota

The plat of SOUTH OAKS OF HASTINGS 4TH ADDITION was approved and accepted by the City Council of the City of Hastings, Minnesota at a regular meeting held on the _____ day of _____, 20____, at _____, Minnesota, and the same was filed for record in Hennepin County, Minnesota, on the _____ day of _____, 20____.

DAKOTA COUNTY SHERIFF
I hereby certify that this plat of SOUTH OAKS OF HASTINGS 4TH ADDITION was filed in the office of the Recorder of Hennepin County, Minnesota, on the _____ day of _____, 20____, and that the same is a correct and true copy of the original as the same appears on the records of the County of Hennepin, Minnesota.

By: _____ Sheriff, Dakota County, Minnesota

DAKOTA COUNTY DEPARTMENT OF PROPERTY TAXATION AND RECORDS
I hereby certify that this plat of SOUTH OAKS OF HASTINGS 4TH ADDITION was filed in the office of the Recorder of Hennepin County, Minnesota, on the _____ day of _____, 20____, and that the same is a correct and true copy of the original as the same appears on the records of the County of Hennepin, Minnesota.

By: _____ Director, Dakota County, Minnesota

Recorder of Hennepin County, Minnesota
Document Number _____

Register of Titles _____ Deputy

SCALE: 1" = 40'

VICINITY MAP

DRAWINGS AND FIELD EXAMINATIONS BEING MADE TO DETERMINE THE ACCURACY OF THE INDICATED DIMENSIONS, LOT LINES AND CORNERS. ANY DISCREPANCIES BETWEEN THE FIELD EXAMINATIONS AND THE DIMENSIONS SHOWN ON THIS PLAT WILL BE CORRECTED TO CONFORM WITH THE FIELD EXAMINATIONS.

NOTICE: NO DIMENSIONS SHOWN ON ANY EXEMPTED AREAS ARE TO BE USED TO DETERMINE THE LOCATION OF ANY CORNER OR POINT UNLESS SHOWN OTHERWISE ON THIS PLAT. POINTS ARE ASSIGNED TO THE CORNER POINTS OF THE PLAT.

JAMES R. HILL, INC.

EXHIBIT C
DEVELOPER'S LETTER OF CREDIT AND CASH ESCROWS AND CASH
REQUIREMENTS FOR SITE IMPROVEMENTS

LETTERS OF CREDIT

	Est. Construction Cost
Sanitary Sewer	\$140,806.60
Watermain	\$213,653.25
Storm Sewer	\$120,098.39
Streets/Trails/Sidewalks	\$196,044.50
Grading	\$ 56,610.50
Subtotal:	\$727,213.24
X 125%	
TOTAL SITE IMPROVEMENT LOC:	\$909,016.55

CASH ESCROWS

Seal Coat or Preventative Maintenance Product Escrow	\$6,000
Street & Traffic Control Signage Escrow	\$2,000
Estimated Construction Inspection & Administration Escrow for Grading and Public Infrastructure*	\$50,000

*Final amount to be determined by the CITY Engineer

	Total
Landscaping Cost	\$7,200
X 125%	
Total Landscaping Escrow:	\$9,000

CASH REQUIREMENTS

	Unit Cost	Qty	Total
Park Dedication Fees	\$2,200/unit	35 units	\$77,000.00
Sewer Interceptor Fees	\$485/unit	35 units	\$16,975.00
Total Cash Fees			\$93,975.00

EXHIBIT D
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 and Escrow Deposits. DEVELOPER must pay all cash and escrow 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 Dedication Fee. DEVELOPER must pay park dedication fees as required in Exhibit C.
 - e) Sewer Interceptor Fees. DEVELOPER must pay sewer interceptor fees as required in Exhibit C.
 - f) Outlot D. DEVELOPER has executed a warranty deed to the CITY for Outlot D for Stormwater Maintenance Facility.
 - g) Outlots A, B and C. DEVELOPER has executed quit claim deeds of Outlots A, B and C to the immediately adjacent property owners of South Oaks of Hasting 2nd Addition.
 - h) Vacation of all existing permanent easements.
- 2) **BUILDING PERMITS.** Except for any model home permits allowed pursuant to Section 4.14, no building permits may be obtained until:
- a) All the conditions in Paragraph 1 of this Exhibit D have been met;
 - b) All storm water ponds and associated drainage features including storm sewer and drainage swales have been installed;
 - c) The concrete curb and gutter and base course of bituminous for the streets serving the lot must be constructed by the DEVELOPER and approved by the CITY and determined by the CITY to be available for use;
 - d) The utilities have been installed;

- e) Record Drawings have been received and approved by the CITY;
- f) The following documents have been recorded:
- Final Plat
 - Development Agreement
 - Deed for Outlot D to the CITY
 - Deeds for Outlots A, B and C to the adjacent property owners of South Oaks of Hastings 2nd Addition
- 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 D must be satisfied.
- b) All storm water ponds and associated drainage features including storm sewer and drainage swales have been completed and accepted by the City Engineer.
- 4) **SUBDIVISION EROSION CONTROL.** DEVELOPER is responsible for erosion control throughout the FINAL PLAT pursuant to the NPDES permit until all lots in the FINAL PLAT are built upon and until turf is established in each of the individual lots in the FINAL PLAT.
- 5) **CLEAN UP OF CONSTRUCTION DEBRIS ON STREETS AND ADJOINING PROPERTY.** The escrow amount stated on Exhibit C 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 residences and other 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.
- 6) **MAILBOXES.** The DEVELOPER is responsible for the placement of a mailbox for all the lots within the DEVELOPMENT PROJECT and must comply with the United States Postal Service's mailbox design and placement requirements. The mailboxes must all be of similar design and color within the DEVELOPMENT PROJECT.

EXHIBIT E
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.
8. Sanitary Sewer Extension Permit by MPCA.