

DEVELOPMENT AGREEMENT

between

CITY OF DULUTH

and

HNH, LLC

Dated as of _____, 2023

DEVELOPMENT AGREEMENT

THIS AGREEMENT, effective as of the date of attestation hereof by the City Clerk, by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota ("City"), and HNH LLC, a limited liability company created and existing under the laws of the State of Minnesota ("Developer") and the titleholders of Lot 8, Block 1, Western Woods Division, Michael E. Wilson and Kathleen M. Wilson ("Additional Owner").

RECITALS

WHEREAS, Developer proposed to create an 11.3 acre plat titled "Rearrangement of Part of Western Woods Division" consisting of the re-platting of Lots 6-17, Block 1 and all of Block 2, of the Western Woods Division plat together with a 3-acre parcel of unplatted property south of the Western Woods Division all located east of Decker Road and south of Anderson Road in Duluth, Minnesota, with the complete legal description attached hereto as Exhibit A (the "Property"); and

WHEREAS, Developer desires to conduct site development activities at the Property including installation of a public street with sidewalk and street trees accessed from Decker Road, installation of public water, sanitary sewer, storm sewer utilities connecting to Anderson Road, Decker Road, and the Sackette Addition, installation of private storm water management facilities, and certain other site improvements (the "Project") to facilitate residential development; and

WHEREAS, in furtherance of the Development, Developer has applied for and received approval of a preliminary plat (file no. PL 22-141) and has applied for a final plat to divide the Property into 15 separate lots as identified on the Plat of Rearrangement of Part of Western Woods Division (file no. PL 23-069), as hereinafter defined; and

WHEREAS, on May 9, 2023, the City Planning Commission approved the Plat (file no. PL 23-069) subject to certain conditions, one of which required Developer to enter into a Development Agreement with City; and

WHEREAS, Developer has agreed to dedicate to the public for public use the Drainage Easements and Utility Easements, shown on the Plat, to construct the Road

Improvements, Sidewalks, Boulevard Trees, and the stormwater facilities and the public utilities as described in the hereinafter-referenced MOU; and

WHEREAS, Developer has agreed to make certain other improvements to the Property and contributions to the City as a condition attached to the City's approval of the Plat;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

AGREEMENT

1. Definitions. The following term and phrases shall have the meanings hereinafter ascribed to them:

- A. Boulevard Trees: shall mean trees meeting the requirements of the City Forester and City Engineer installed along both sides of the Road Improvement from Decker Road to and including the cul du sac.
- B. Director: shall mean the Director of Planning and Economic Development or the City official designated as the Secretary to the Planning Commission.
- C. Drainage Easements: shall mean the drainage easements as shown on the Plans and Plat.
- D. Easements: shall mean, collectively, the Drainage Easement, and Utility Easements.
- E. Lots: shall mean the lots as shown and legally described on the Plat.
- F. Memorandum of Understanding or MOU: shall mean that Memorandum of Understanding entered into between the City's City Engineer and Developer for the construction and implementation of the Required Improvements.
- G. Plans: shall mean the plans and specifications for the construction and installation of all elements of the Required Improvements approved by the Director and City Engineer and incorporated into the MOU.
- H. Plat: shall mean the Plat of Rearrangement of Part of Western Woods Division approved by Planning Commission (file no. PL 23-069) and on file in the office of

the County Recorder for St. Louis County, Minnesota.

- I. Project: Shall mean the re-platting of 11.3 acres into 15 building lots, the installation of public utilities and street with sidewalk and boulevard trees as further described as the Required Improvements and as shown on the Plat and the Plans.
- J. Property: shall mean that property legally described on Exhibit A attached hereto and made a part hereof.
- K. Required Improvements: shall mean the Road Improvements, Sidewalks, Boulevard Trees, public utilities, including water and sanitary sewer, and the implementation of the Stormwater Management Plan, all in accordance with the MOU.
- L. Road Improvements: shall mean the construction of the public road, Westwood Circle from the cul du sac to Decker Road meeting City Engineering standards.
- M. Stormwater Improvements: shall mean the Stormwater Management Plan and the Drainage Easements as shown on the Plans and the Plat.
- N. Sidewalks: shall mean a public sidewalk along at least one side of the entire length of Westwood Circle from Decker Road to a point half way around the cul du sac.
- O. Stormwater Management Plan: shall mean that Plan conforming to the requirements of § 50-18.1 E of the Duluth City Code, 1959, as amended, as such plan is approved as part of the MOU.
- P. Utility Easements: shall mean the drainage easements as shown on the Plans and Plat.
- Q. Wetland Boundary Signs: shall mean the installation of permanent boundary marker signs around the perimeter of all wetlands on the Property that are not approved for impact according the approved wetland replacement plan (file no. _____).
- R. Wetland Protections – Temporary: shall mean the installation of temporary construction fencing a minimum of 3 feet tall along the perimeter of wetlands on Lots 9 and 13 in the Plat.

2. Developer's and Additional Owner's Duty and Compliance: Developer and Additional Owner agrees to the following:

- A. Developer's Duty and Compliance: Development of the Lots must be in compliance with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota. Developer shall be responsible for obtaining all approvals and permits of any kind required to implement the Project from any governmental agency having jurisdictions with regard thereto, including but not limited to roadway access permits, wetland permits, storm water management permits, utility construction permits, fill and grading permits, erosion and sediment control permits, and building permits.
- B. Additional Owner's Duties: Additional Owner hereby agrees to the dedication of that portion of the Property owned by Additional Owner and designated on the Plat for Westwood Circle. Additional Owner further agrees to grant Developer and Developer's agents, contractors, and subcontractors a license to enter that portion of the Property owned by Additional Owner for the sole purposes of completing the Project.

3. Pre-conditions to Issuance of Permits for Site Work: Prior to the issuance of any permits needed to implement development of the Property in the Plat as permitted under the Plat and prior to the commencement of any construction work of any kind, including but not limited to site work having the purpose of implementing the development of said Lots, the following actions shall be taken by the City and the Developer:

- A. Recording of the Agreement: The City shall have caused this Agreement to have been recorded against the Property in the Office of the County Recorder and Registrar of Titles for St. Louis County, Minnesota. In order to record the Agreement all of the Property must be in the name of the Developer and Additional Owner. Developer agrees not to convey any interest in the Property

until the City has recorded the Agreement. Developer agrees to reimburse the City for any and all costs, including staff time, incurred by the City that results from the Developer's conveyances made prior to recording.

- B. Wetlands Protections - Temporary: Provide photographic evidence to the Director documenting that Developer has installed construction fencing around those parts of wetlands which are to be preserved to isolate the preserved portion from the portion permitted to be impacted by any duly issued permit under the Wetland Conservation Act. Developer shall maintain said fencing during the course of all construction that could impact said wetlands.
- C. Tree Replacement Plan: Developer shall have prepared a Tree Replacement Plan conforming to the requirements of Section 50-25.9 of the Code which shall have been completed, filed with the Director and approved by the Director.
- D. Improvement Security: Developer shall have provided financial security in the form of an irrevocable Letter of Credit, cash escrow, or such other form as is acceptable to the Director in the amount of not less than \$100,000 to guarantee completion of construction of the Required Improvements and Wetland Boundary Signs in conformance with the requirements of this Agreement and the MOU, and authorizing the Director to exercise said security and to use the proceeds to complete construction of the Required Improvements and Wetland Boundary Signs if the Developer has not completed such Public Improvements and Wetland Boundary Signs before December 31, 2024.
- E. MOU: Developer shall have entered into MOU in the form acceptable to the City Engineer committing to the design and construction of the Required Improvements. Said MOU shall specifically provide that the City will not accept as "public" any of the Required Improvements or unless all such improvements described in the MOU have been completed to the satisfaction of the City Engineer.

4. Pre-conditions to Issuance of Building Permits: Developer agrees that prior to the issuance of any building permits for the construction of any structure on the Property, the following shall have been completed:

- A. Recording of Plat: Developer to cause the recording with the St. Louis County Recorder the fully-executed Plat. Prior to Developer causing the printing of the Plat on mylar medium, Developer shall provide a copy of the Plat to the City for final review. Upon receiving final approval from the City, Developer shall provide to the City copies of the Plat for its signatures and the City agrees to sign the plat in an expeditious manner. After recording of the plat, Developer shall provide to the City Engineer two copies of Plat on mylar medium along with evidence of recording of the Plat.
- B. Wetland Boundary Signs: Developer shall install signs identifying the perimeter of wetlands on Lots 9 - 13 in the Plat and provide photographic evidence of the installation to the Director. The signs shall be permanent metallic markers on rigid metal sign posts that are installed so that the top of the sign is at an elevation of 4 feet above grade. Sign posts shall be located at all lot boundaries and at points where the wetland boundary changes direction or no more than a distance greater than 50 feet between signs, whichever is less. Marker signs shall be no less than 48 square inches, and signs on Lots 9-11 shall state "WETLAND PROTECTION AREA – GRADING OF THE LAND AND REMOVAL OF NATURAL VEGETATION BETWEEN THIS SIGN AND THE PROPERTY BOUNDARY IS PROHIBITED BY PLAT (APPROVAL FILE NUMBER PL 23-069)." Marker signs on Lots 12 and 13 shall state "WETLAND PROTECTION CORRIDOR – GRADING OF THE LAND AND REMOVAL OF NATURAL VEGETATION BETWEEN SIGNS IS PROHIBITED BY PLAT (APPROVAL FILE NUMBER PL 23-069)." Developer shall require that any subsequent owner of any lot and their successors and assigns maintain, repair, and replace, as needed, demarcation, sign posts, and signage required by this subparagraph.

C. Plans: Developer shall present to the Director Plans for approval as to compliance with this Agreement and applicable City ordinances.

5. Tree Planting

A. Boulevard Trees No later than the date of the issuance by the City Building Official of the Certificate of Occupancy, as provided for in the Minnesota State Building Code, for the first housing unit constructed in the Plat, the Developer shall have completed planting of the Boulevard Trees in accordance with the Plan. Developer further agrees that, in the event that any Boulevard Trees do not survive at least two years after planting, Developer will replace any such trees with similar trees at its own cost.

6. Financing. Developer assumes all risks and agrees to bear all costs and fees related to the design and construction of all roads, sidewalks, utilities including implementation of the storm water management plan, pathways and other public improvements as shown on the Plat.

7. Inspections. All Required Improvements shall be made in accordance with applicable City construction design standards and specifications and shall be subject to the inspection by and approval of the City. Developer hereby grants City, its agents, employees and contractors a limited license to enter the Property and perform all inspections which the Director in the exercise of his or her reasonable discretion deems appropriate in connection with this Agreement.

8. Developer's Default. In the event Developer fails to comply with or perform any terms, conditions, undertakings, or obligations under this Agreement, which is not cured following thirty (30) days' written notice from the City, or such longer period of time as may be reasonably required to cure such default provided Developer is proceeding with diligence to cure such default, the parties hereto agree that no award of damages to City could constitute an adequate remedy for such default, Therefore, City may, in

addition to and not in lieu of any other remedies or rights available to it by law or equity:

- A. Institute an action for specific enforcement to compel Developer to perform any or all of its obligations under this Agreement. Developer acknowledges that the rights of City to performance of the obligations of Developer pursuant to this Agreement are special and unique, and that, in the event Developer violates, fails or refuses to perform any condition, agreement or provision herein, City may be without an adequate remedy at law.
- B. At its option, draw on the security described in Section 4D above and perform the work described in Section 8 above, provided the Developer is first given written notice of the default not less than seven (7) days in advance. This Agreement is a limited license for the City to enter onto any portion of the Property necessary to perform said work, and it shall not be necessary for the City to seek a Court order for permission to enter the land.
- C. Refuse to issue building permits for construction on the Project.
- D. Exercise any other remedy available to the City in law or in equity. No remedy conferred in this Development Agreement is intended to be exclusive. The election of any one or more remedies shall not constitute a waiver of any other remedy. City may, but is not obligated to, exercise any of the remedies referred to in this paragraph.

9. Insurance. Developer agrees to purchase and maintain, during the term of this Agreement, insurance in the form of Workers Compensation and Employers Liability, Commercial General Liability and Automobile Liability covering operations associated with the Required Improvements and the Project, and Property insurance covering real and personal property interests at or near the Property, with the following limits:

Workers' Compensation	Statutory (MN)
Employers' Liability	\$1,500,000

Auto Liability (owned, hired and non-owned)	\$1,500,000
Commercial General Liability (including Contractual Liability)	
Each Occurrence	\$2,000,000
Aggregate	\$4,000,000
Property Insurance	To Replacement Value

Prior to commencement of construction, Developer agrees to deliver to the City a Certificate of Insurance, naming the City as an Additional Insured, as evidence that the above coverages are in full force and effect.

10. General Indemnity. Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of City or Developer, by reason of death of or injury to person or persons or the loss of or damage to property arising out of Developer's performance of its obligations under this Agreement, except to the extent caused exclusively by the willful misconduct or negligence of the City, or someone acting on its behalf, or a breach of this Agreement by the City. On ten (10) days written notice from City, Developer will appear and defend all lawsuits against City relating to or arising from such injuries or damage.

11. Environmental Indemnity. Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against any liability, loss, damage, fine, judgment, penalty, fee, cost, interest, or expense arising out of any condition existing on the Property prior to commencement of construction of the Required Improvements or the Project relating in any way to the environment, preservation or reclamation of natural resources, the presence, management, release or threatened release of any Hazardous Material (any and all explosive or radioactive substances or wastes and hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other

substances or wastes of any nature regulated pursuant to any environmental law) or to health and safety matters.

12. Notices. Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of the City: City of Duluth
Attn: Director of Planning and Economic Development
411 West First Street, Room 160
Duluth, MN 55802

In the case of Developer: Lon Hovland
3612 Decker Rd.
Duluth, MN 55811

13. Binding Effect. This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

14. Term. The term of this Agreement shall commence upon the date of attestation by the City Clerk and shall continue until the Director and City Engineer have certified in writing that all Public improvements required under this Agreement have been constructed in accordance with the requirements herein contained and Developer has conveyed such property and dedicated the Easements as are required hereunder.

At Developer's request, City will issue a written certificate of completion in recordable form acknowledging that the Required Improvements have been completed. Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

15. Assignment. Developer may not assign this Agreement without the written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed, provided, however, that Developer may assign this Agreement to an entity

controlling, controlled by or under common control with the Developer or its owners and shall provide the City with notice thereof.

16. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, and all questions concerning the meaning, intention or validity of the terms of this Agreement, as well as the performance of the parties hereto, shall be determined and resolved in accordance therewith. The Parties agree to submit to the exclusive jurisdiction of the State and Federal Courts sitting in St. Louis County, Minnesota, and waive any objections to such location based on jurisdiction, venue or inconvenient forum.

17. Construction of Agreement. Developer and City have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

18. Severability. In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

19. Counterparts. This Agreement may be executed, acknowledged and delivered in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Signature pages follow]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

CITY OF DULUTH,

a Minnesota Municipal Corporation

By _____

Emily Larson
Its Mayor

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Emily Larson, the Mayor of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

By

Its City Clerk

(date)

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Ian Johnson, the City Clerk of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

Countersigned:

Its Auditor

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the _____ of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

Approved:

Its Assistant City Attorney

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the _____ of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

HNNH, LLC

By Lon Hovland, Member

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Lon Hovland, Member of HNH, LLC, a Minnesota limited liability company on behalf of the company.

Notary Public

MICHAEL E. WILSON AND KATHLEEN M. WILSON

By Michael E. Wilson

By Kathleen M. Wilson

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Michael E. Wilson and Kathleen M. Wilson.

Notary Public

Exhibit A

Legal Description of Land

CERTIFICATE OF TITLE NO. 344559

**Lots 9 thru 17 Block 1 WESTERN WOODS DIVISION and Lots 1 thru 5 Block 2
WESTERN WOODS DIVISION**

CERTIFICATE OF TITLE NO. 344558

**Lot 6 Block 1 WESTERN WOODS DIVISION and Lot 7 Block 1 WESTERN WOODS
DIVISION**

CERTIFICATE OF TITLE NO. 278724

Lot 8 Block 1 WESTERN WOODS DIVISION

DOCUMENT NUMBER 1442152

**North One-Half of South 6 Acres of West One-Half of Northwest One-Quarter of
Northeast One-Quarter (N1/2 of S 6 of W 1/2 of NW 1/4 of NE 1/4, Section Thirty (30),
Township Fifty (50)
North of Range Fourteen (14), St. Louis County, Minnesota**

**And: All of Westwood Street, as delineated and dedicated in WESTERN WOODS
DIVISION, according to the recorded plat thereof, St. Louis County, Minnesota.**

**And: All of Wildwood Lane, as delineated and dedicated in WESTERN WOODS
DIVISION, according to the
recorded plat thereof, St. Louis County, Minnesota.**