

**DEVELOPMENT AGREEMENT**

**between**

**CITY OF DULUTH**

**and**

**Hartley Hills Land Development, LLC**

**Dated as of May \_\_\_\_\_, 2020**

## **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 Hartley Hills Land Development, LLC, a limited liability company created and existing under the laws of the State of Minnesota ("Developer").

### **RECITALS**

WHEREAS, Developer proposed to replat and develop a 11.96-acre parcel of land located east of Hastings Drive and west of Northfield Street and Kolstad Avenue, Duluth, Minnesota, with the complete legal description attached hereto as Exhibit A (the "Property"); and

WHEREAS, Developer desires to conduct site development activities and develop the Property for residential, streets and utilities, trails, and certain other site improvements; and

WHEREAS, in furtherance of the Development, Developer applied to City for approval of a preliminary plat and a final plat to divide the Property into 18 separate lots ranging from .24 acres to .84 acres into and one Outlot, identified on the survey and final plat labeled FIRST REARRANGEMENT OF HARTLEY HILLS FOURTH ADDITION attached hereto as Exhibit B (the "Plat"); and

WHEREAS, on February 11, 2020, the City Planning Commission approved the Plat 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 streets, drainage and utility easements shown on the Plat; and

WHEREAS, Developer has agreed to dedicate to the public for public use pedestrian easements for permanent pedestrian access across the Property as described in Exhibit C, (the "Pedestrian Easements"); and

WHEREAS, City intends to accept Pedestrian Easements following recording of the Plat; and

WHEREAS, Developer has agreed to make certain 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. Developer's Duty and Compliance. Development of the lots created as part of the subdivision 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 a demolition permit and building permits.

2. Street Names: Street Names as used in this Agreement shall refer to the streets as named and described in the Plat.

3. Recording of Plat and Vacations: 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 the Property, Developer shall have cause to be recorded with the St. Louis County Recorder the fully-executed Plat and City Council Resolution No. 20-0208R and shall have provided to the City's Director of Planning and Economic Development (the "Director") and the City Engineer copies of Plat along with evidence of recording of the recorded Plat and resolution. City agrees that when requested to execute the Plat in the form approved by the Planning Commission, it shall expeditiously so execute it.

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 Agreement: Developer shall have caused this Agreement to have been recorded against the Property in the Office of the County Recorder for St. Louis County, Minnesota and shall have caused evidence of such recorded to have been presented to the Director.

B. Tree Inventory: a tree inventory by Plat Block conforming to the requirements of Section 50-25.9 of the Duluth City Code, 1959, as amended (the "Code") shall have been completed, filed with the Director and approved by the Director and the City Forester.

C. Storm Water Management Plan: A storm water management plan for the Property meeting the requirements of Section 50-18 E. of the Code shall have been completed, filed with the Director and approved by the Director and the City Engineer.

D. MOU: Developer shall have entered into a Memorandum of Understanding ("MOU") with the City Engineer in the form acceptable to the City Engineer committing to the design and construction of the roads, sidewalks, and utilities as shown in the Plat, including but not limited to the design and construction of all work necessary to the implementation of the Storm Water Management Plan referenced in Subparagraph C above. Said MOU shall provide for a reasonable paved public turnaround access for public safety or maintenance of public roads at the intersection of Kolstad Avenue and Northfield Street. Said MOU shall specifically provide that the City will not accept as "public" any of the roads, sidewalks, utilities or storm water management improvements unless all such improvements described in the MOU have been completed to the satisfaction of the City Engineer.

E. 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 \$25,000 to guarantee completion of construction of the pedestrian pathways described in Paragraph 8 below in conformance with the requirements of that paragraph and site landscaping and the other public improvements described on Exhibit D attached

hereto and made a part hereof, and authorizing the Director to exercise said security and to use the proceeds to complete said construction.

5. Developer's Duty and Compliance. Development of the lots created as part of the subdivision 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 relevant governmental approvals and building permits required.

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. Property Conveyance and Easements. Developer agrees to convey that property described as Outlot A on the Plat to the City for storm water management and to dedicate to the City in trust for the general public all easements for streets, sidewalks, storm water management, and utilities as shown on the Plat and the pedestrian access easements as described on Exhibit C at no cost to City. Developer warrants and represents to City that it has marketable fee title to the Property free and clear of all mortgages, liens and other encumbrances and that it has the right to convey said property and to dedicate the easements to the City free and clear of any encumbrances or shall have established to the satisfaction of the Director, in the exercise of his or her sole discretion that Developer has the right to so convey and dedicate such interests.

8. Pedestrian Trail Construction: No later than September 31, 2021, the Developer shall have constructed a pedestrian pathway in conformance with the following requirements on and through the 20-foot wide pedestrian easement as described in Exhibit C, immediately adjacent to Lot 1 Block 2, and a pedestrian pathway in conformance with the following requirements on and through the pedestrian easement

as described in Exhibit C and located along the north line of Lot 7, Block 2 and on the south line of Lot 8, Block 2. Said pathways will be constructed of crushed limestone and shall have a minimum of width of four (4) feet.

9. Tree Restrictive Covenant: Developer covenants and commits that as a pre-condition of the sale, conveyance, transfer or grant of any form of right to develop each lot within the Plat or to construct thereon any structure or improvements of any kind, Developer will require that any party to whom such rights are granted execute and record with the St. Louis County, Minnesota Recorder a Restrictive Covenant in a form acceptable to the Director guarantying the preservation, replacement and maintenance of trees on said lot as shall be more specifically set forth therein. Said Restrictive Covenant shall implement the requirements of Section 25.9 B of the Code and shall run with the land and be binding on said grantee and his, her or its heirs, successors and assigns.

10. Contribution for Trail Relocation. No later than six months after recording the Plat, Developer agrees to contribute \$10,000 to the City to provide for trail relocation on City park land adjacent to the Property. The use of said funds shall be to address issues of necessary coordination between such trails and the pedestrian needs of the Property as platted or otherwise to benefit the Property and the purchasers thereof. Said contribution may be provided for either as a cash contribution to the City or as a contribution of materials to be used for the purposes above. The acceptability and valuation of the materials contributed to meet this obligation shall be subject to the approval of the Director, which approval shall not be unreasonably withheld.

11. Inspections. All Required Improvements shall be made in accordance with City construction design standards and specifications and shall be subject to the inspection by and approval of the City. Following reasonable notice, Developer hereby grants City, its agents, employees and contractors a license to enter the Property and perform all inspections deemed appropriate by the City in connection with this Agreement.

12. Developer's Default. In the event Developer fails to comply with or perform any terms, conditions, undertakings, or obligations under this Agreement, 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 to specifically enforce performance of any term of 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 4 E 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 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. 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.

13. 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	\$1,000,000
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
Umbrella or Excess Liability	\$10,000,000
Environmental Liability	\$1,000,000

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.

14. 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. 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.

15. 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.

16. 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:               Hartley Hills Land Development, LLC  
  Attn: Sanford Hoff

\_\_\_\_\_  
\_\_\_\_\_

17. 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.

18. 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 such 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.

19. Assignment. Developer may not assign this Agreement without the written approval of the City.

20. 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.

21. 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.

22. 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.

23. 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.

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

HARTLEY HILLS  
LAND DEVELOPMENT, LLC,  
a Minnesota Limited Liability Company

By \_\_\_\_\_  
Emily Larson  
Its Mayor

By \_\_\_\_\_  
\_\_\_\_\_

Attest:

By \_\_\_\_\_  
Its City Clerk  
\_\_\_\_\_  
(date)

Countersigned:

\_\_\_\_\_  
Its Auditor

Approved:

\_\_\_\_\_  
Its Assistant City Attorney

STATE OF MINNESOTA )  
  ) ss.

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of Hartley Hill Land Development LLC, a Minnesota limited liability company, on behalf of the company.

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

STATE OF MINNESOTA )  
  ) ss.

COUNTY OF ST. LOUIS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by Emily Larson and Chelsea Helmer, the Mayor and City Clerk of the City of Duluth, a Minnesota Municipal corporation, on behalf of the City.

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

DRAFTED BY:

Robert E. Asleson ( No. 0003347)  
Assistant City Attorney  
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Room 440 City Hall  
Duluth, MN 55802  
(218) 730-5490

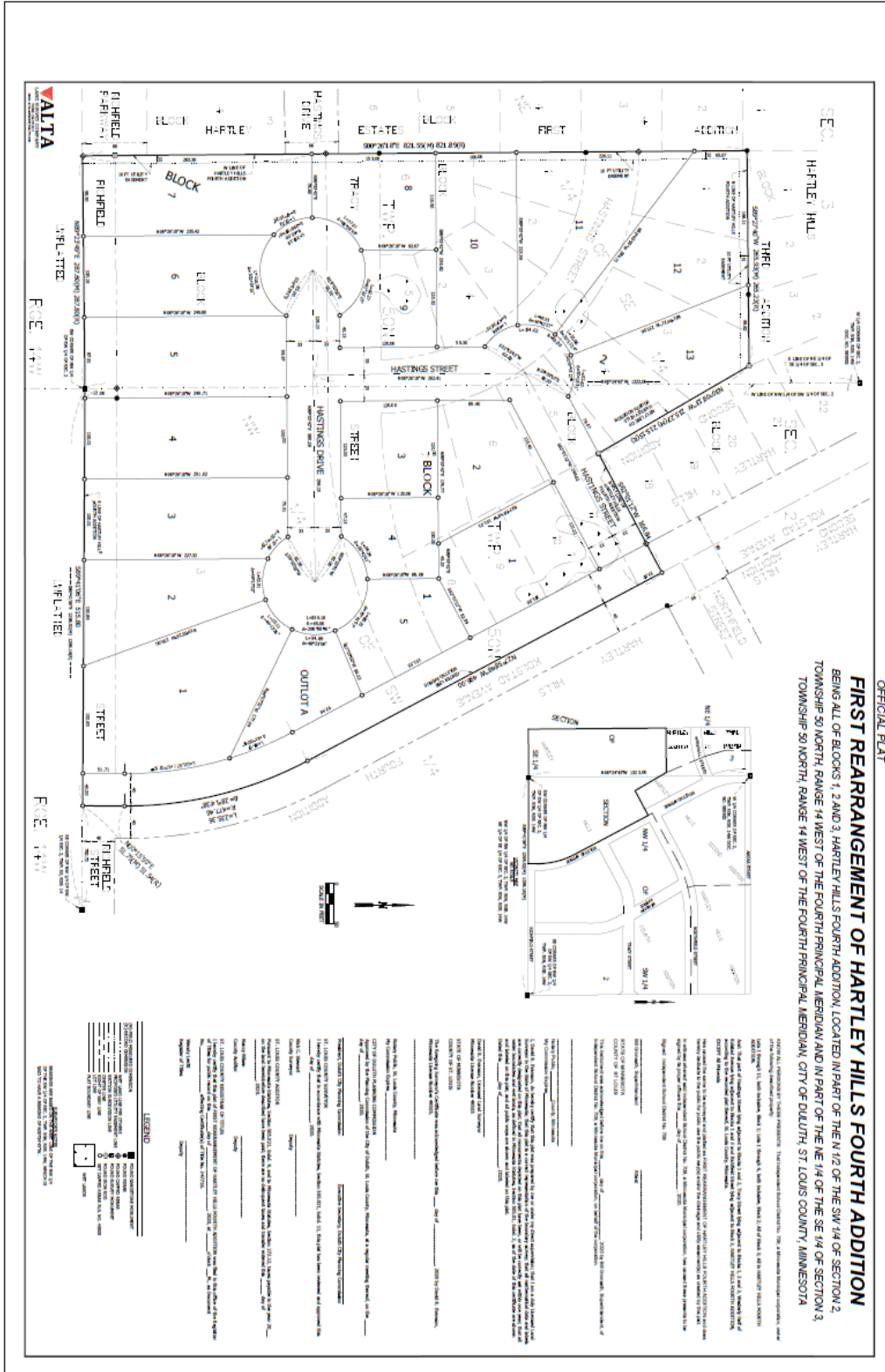
## EXHIBIT A

### **Legal Description of the Land**

Lots 1 through 11, both inclusive, Block 1; Lots 1 through 6, both inclusive, Block 2; All of Block 3; All in HARTLEY HILLS FOURTH ADDITION.

And: That part of Hastings Street lying adjacent to Blocks 1 and 2, Tracy Street lying adjacent to Blocks 1, 2 and 3, Westerly Half of Kolstad Avenue lying adjacent to Blocks 1 and 3 and Richfield Street lying adjacent to Block 3, HARTLEY HILLS FOURTH ADDITION, according to the recorded plat thereof, St. Louis County, Minnesota.

# EXHIBIT B - PLAT



**VALTA**  
CONSTRUCTION

**OFFICIAL PLAT**  
**FIRST REARRANGEMENT OF HARTLEY HILLS FOURTH ADDITION**  
BEING ALL OF BLOCKS 1, 2 AND 3, HARTLEY HILLS FOURTH ADDITION, LOCATED IN PART OF THE N 1/2 OF THE SW 1/4 OF SECTION 2,  
TOWNSHIP 50 NORTH, RANGE 14 WEST OF THE FOURTH PRINCIPAL MERIDIAN AND IN PART OF THE SE 1/4 OF SECTION 3,  
TOWNSHIP 50 NORTH, RANGE 14 WEST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA

SECTION 2, TOWNSHIP 50 NORTH, RANGE 14 WEST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA  
SECTION 3, TOWNSHIP 50 NORTH, RANGE 14 WEST OF THE FOURTH PRINCIPAL MERIDIAN, CITY OF DULUTH, ST. LOUIS COUNTY, MINNESOTA

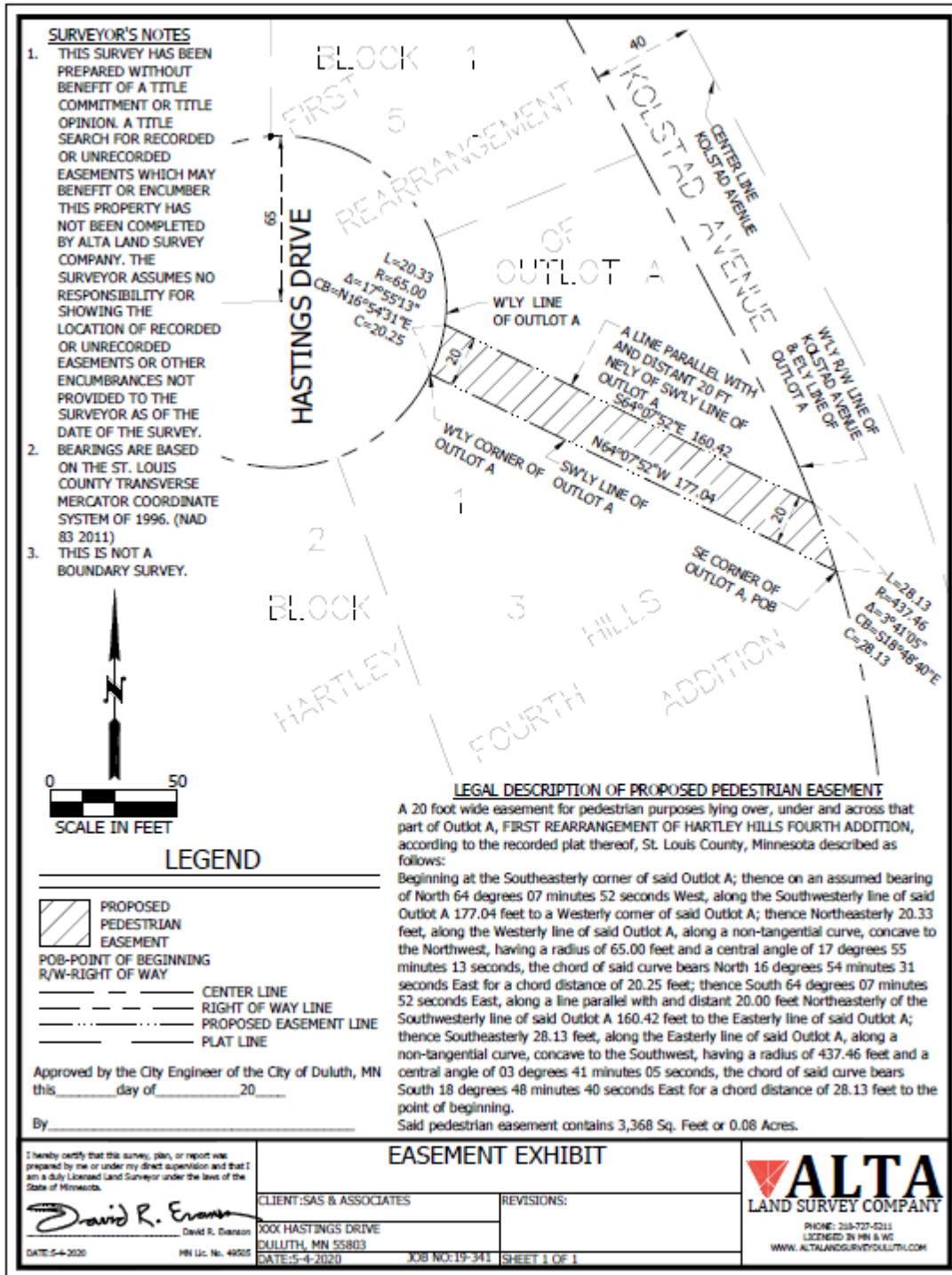
**LEGEND**

Lot Lines	Proposed Lot Lines
Street Lines	Proposed Street Lines
Easements	Proposed Easements
Other	Proposed Other

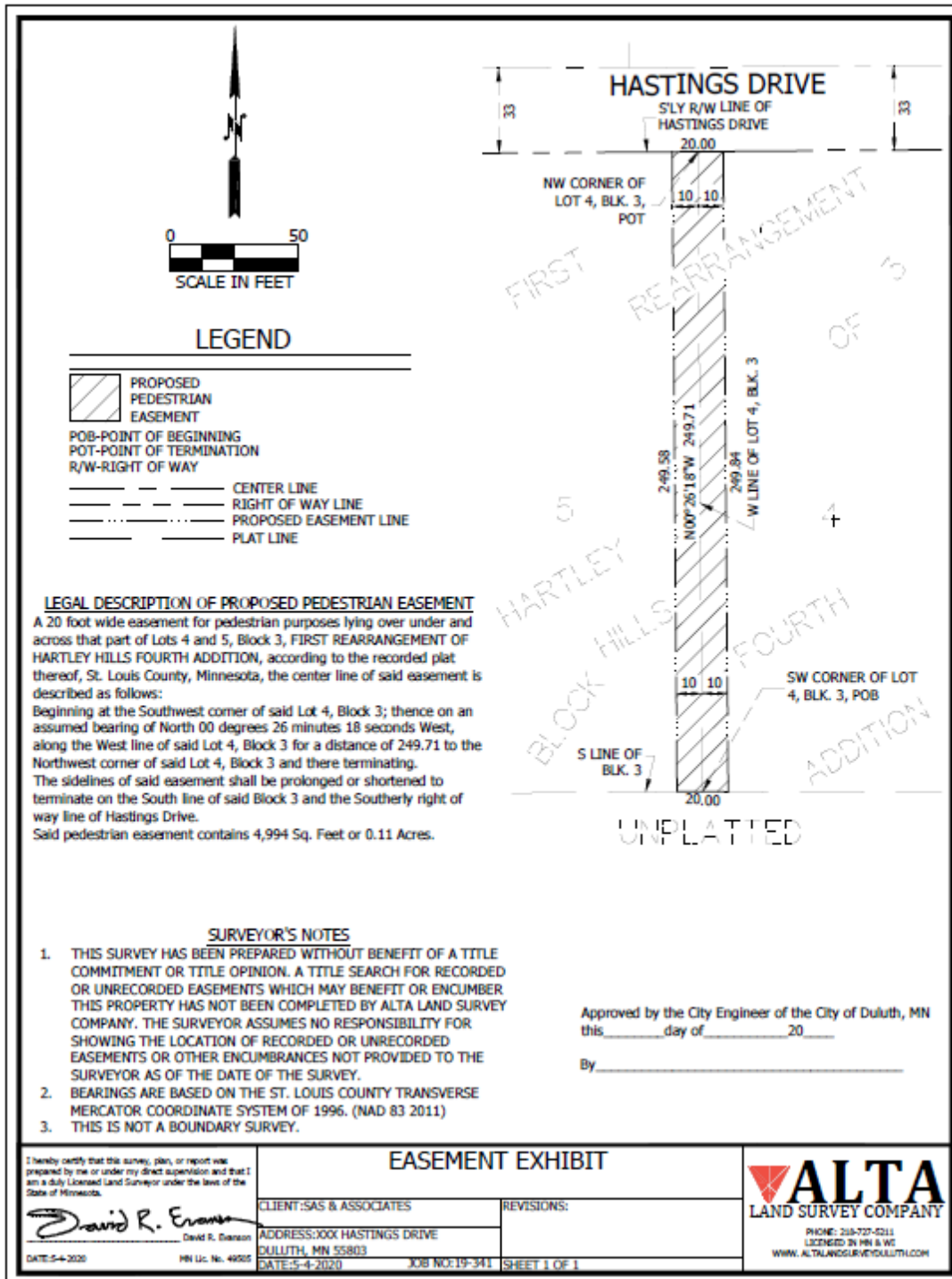
**NOTES**

1. This plat is subject to all laws, ordinances, rules and regulations of the City of Duluth, St. Louis County, Minnesota, and the State of Minnesota, and to all other laws, ordinances, rules and regulations of the City of Duluth, St. Louis County, Minnesota, and the State of Minnesota, which may apply to the land shown on this plat.
2. The plat is subject to the provisions of the Minnesota Statutes, Chapter 462, relating to the recording of plats.
3. The plat is subject to the provisions of the Minnesota Statutes, Chapter 463, relating to the recording of plats.
4. The plat is subject to the provisions of the Minnesota Statutes, Chapter 464, relating to the recording of plats.
5. The plat is subject to the provisions of the Minnesota Statutes, Chapter 465, relating to the recording of plats.
6. The plat is subject to the provisions of the Minnesota Statutes, Chapter 466, relating to the recording of plats.
7. The plat is subject to the provisions of the Minnesota Statutes, Chapter 467, relating to the recording of plats.
8. The plat is subject to the provisions of the Minnesota Statutes, Chapter 468, relating to the recording of plats.
9. The plat is subject to the provisions of the Minnesota Statutes, Chapter 469, relating to the recording of plats.
10. The plat is subject to the provisions of the Minnesota Statutes, Chapter 470, relating to the recording of plats.

EXHIBIT C – PEDESTRIAN ACCESS EASEMENTS, PAGE 1 OF 3



**EXHIBIT C – PEDESTRIAN ACCESS EASEMENTS, PAGE 2 OF 3**





**EXHIBIT C – PEDESTRIAN ACCESS EASEMENTS, PAGE 3 OF 3**

