
DEVELOPMENT AGREEMENT

for

PUBLIC IMPROVEMENTS

CITY OF EAST GULL LAKE

CASS COUNTY, MINNESOTA

between

LEGACY HOMES I, LLC

and

CITY OF EAST GULL LAKE

THIS AGREEMENT, made and entered into this ____ day of _____, 2019, by and between the City of East Gull Lake, a municipal corporation organized under the laws of the State of Minnesota (the “City”), and Legacy Homes I, LLC, a Minnesota Limited Liability Company (“Developer”).

RECITALS:

WHEREAS, Developer has submitted to the City a final plat application for the plat known as “Legacy Village” (the “Project”).

WHEREAS, the City is willing to expend its professional resources, and the services of its City Engineer and City Attorney, in investigating the infrastructure necessary for the Project, provided Developer agrees to reimburse the City for said expenditures.

WHEREAS, the granting by the City of the following land use application is required to enable the Project to proceed: a Final Plat Application. Previously, at the same time as preliminary plat approval was given by the City, a CUP/PUD was granted to Developer for this Project.

WHEREAS, the City requires terms for the completion of infrastructure not yet installed at the time of consideration of the final plat application, including, but not limited to, mechanisms for the performance and payment of installation of all infrastructure requirements in the event Developer fails infrastructure installation requirements of the plat and CUP/PUD approvals granted by the City.

WHEREAS, certain items of Project infrastructure require ongoing maintenance in the event of normal wear and tear or breakage and provision for that maintenance, as well as payment therefore.

WHEREAS, the real property that is the subject of this Agreement is located in Cass County, Minnesota and is legally described as follows (the “Property”):

Legal Description:

The Northwest Quarter of the Southwest Quarter of the Northwest Quarter of Section 28, Township 134 North, Range 29 West, Cass County, Minnesota,

AND

The West 471.00 feet of the North 630.00 feet of the Northwest Quarter of the Southwest Quarter of Section 28, Township 134 North, Range 29 West, Cass County, Minnesota,

AND

That part of the Northwest Quarter of the Southwest Quarter of Section 28, Township 134 North, Range 29 West, Cass County, Minnesota, described as follows:

Commenting at the northwest corner of said Northwest Quarter of the Southwest Quarter; thence on an assigned bearing of North 89 degrees 42 minutes 25 seconds East, along the north line of said Northwest Quarter of the Southwest Quarter, a distance of 471.00 feet to the intersection with the east line of the West 471.00 feet of said Northwest Quarter of the Southwest Quarter and the point of beginning of the tract to be herein described; thence South 00 degrees 16 minutes 47 seconds East, along said east line, a distance of 406.73 feet; thence North 89 degrees 43 minutes 13 seconds East 26.00 feet; thence North 00 degrees 31

minutes 59 seconds West 406.74 feet to said north line; thence South 89 degrees 42 minutes 25 seconds West, along said north line, a distance of 24.20 feet to the point of beginning,
AND

That part of the South Half of the Southeast Quarter of the Southwest Quarter of the Northwest Quarter of Section 28, Township 134 North, Range 29 West, Cass County, Minnesota, described as follows:

Beginning at the northwest corner of said South Half of the Southeast Quarter of the Southwest Quarter of the Northwest Quarter; thence on an assigned bearing of North 89 degrees 41 minutes 48 seconds East, along the north line of said South Half of the Southeast Quarter of the Southwest Quarter of the Northwest Quarter, a distance of 307.05 feet; thence South 00 degrees 07 minutes 54 seconds West 62.41 feet; thence South 89 degrees 41 minutes 10 seconds West 307.05 feet to the west line of said South Half of the Southeast Quarter of the Southwest Quarter of the Northwest Quarter; thence North 00 degrees 07 minutes 54 seconds East, along said west line, a distance of 62.46 feet to the point of beginning,
AND

That part of the North Half of the Southeast Quarter of the Southwest Quarter of the Northwest Quarter of Section 28, Township 134 North, Range 29 West, Cass County, Minnesota, lying west of the following described line:

Commencing at the southwest corner of said North Half of the Southeast Quarter of the Southwest Quarter of the Northwest Quarter; thence on an assigned bearing of North 89 degrees 41 minutes 48 seconds East, along the south line of said North Half of the Southeast Quarter of the Southwest Quarter of the Northwest Quarter, a distance of 307.05 feet to the point of beginning of the line to be herein described; thence North 00 degrees 07 minutes 54 seconds East 330.11 feet to the north line of said North Half of the Southeast Quarter of the Southwest Quarter of the Northwest Quarter and said line there terminating,
AND

The Southwest Quarter of the Southwest Quarter of the Northwest Quarter of Section 28, Township 134 North, Range 29 West, Cass County, Minnesota,
LESS AND EXCEPT

That part of said Southwest Quarter of the Southwest Quarter of the Northwest Quarter described as follows:

Beginning at the southeast corner of said Southwest Quarter of the Southwest Quarter of the Northwest Quarter; thence on an assigned bearing of South 89 degrees 42 minutes 25 seconds West, along the south line of said Southwest Quarter of the Southwest Quarter of the Northwest Quarter, a distance of 164.72 feet; thence North 00 degrees 31 minutes 59 seconds West 267.53 feet; thence North 89 degrees 41 minutes 10 seconds East 167.82 feet to the east line of said Southwest Quarter of the Southwest Quarter of the Northwest Quarter; thence South 00 degrees 07 minutes 54 seconds West, along said east line, a distance of 267.59 feet to the point of beginning.

WHEREAS, Developer shall be responsible for the costs of installation and financing of certain Municipal Improvements (the "Municipal Improvements"), which are identified on the attached **Exhibit "A"**.

WHEREAS, the City Code and Minnesota Statutes Section 462.358 authorize the City to enter into a performance contract, secured by cash escrow or other security, to guarantee completion of and

payment of the cost of the Municipal Improvements following City approval of the final plat for the Project, including payment of the City's legal and engineering fees and expenses.

NOW, THEREFORE, in consideration of the premises and the mutual promises and conditions hereinafter contained, it is agreed as follows:

I. Approvals/Requirements.

- A. Subject to the terms and conditions of this Agreement, the City hereby agrees to act promptly upon Developer's Application for final plat. The City will follow proper zoning procedure and process, and by entering into this Agreement the City is not agreeing to grant Developer's final plat.
- B. Developer shall provide to the City a copy of Developer's title insurance policy for the Property or a title opinion directed to the City from an attorney licensed in Minnesota with proof of professional liability insurance, assuring the City that the Project will not violate title restrictions, if any.
- C. All road, erosion control and drainage plans and specifications for the Project shall be prepared and certified by an engineer registered in the State of Minnesota with experience in underground utility, as well as road construction and municipal street design conforming to the City standards for City maintained roads.
- D. Water supply and sanitary sewer facilities for the Project shall be installed by the Developer at the expense of Developer.

After the water supply facilities for the Project is installed and functioning, any future repairs necessary to the water infrastructure as it occurs in the public road and right of way shall be the sole expense of Developer.

As and after the water system and sewer system for the Project is installed by the Developer and functioning, the specifications referenced in the City Engineers Association of Minnesota (CEAM) Standard Specifications (Latest Addition) shall apply to: Trench Excavation and Backfill/Surface Restoration, Watermain and Service Line Installation, and Sanitary Sewer and Storm Sewer Installation.

Developer has the option to use credits from that Cragun's Resort has with the City to cover connection fees for the entire project including the 38 homes and maintenance facility connection. City administrator will keep documentation of these as the homes are sold.

- E. Prior to City authorization of release of the signed milar of the plat to Developer for recording and within ninety (90) days of final plat approval, Developer shall: supply security for financial performance and construction of the Municipal Improvements as set forth on the Performance Bond and Performance Bond Agreement attached hereto **Exhibit B**; deliver all documents required by this Agreement; and pay to City any and all outstanding reasonable and customary expenses then incurred by the City

for Project purposes, including but not limited to engineering, legal, and other professional staff fees.

F. Easement Right-of-Way Dedication

Developer shall dedicate to the City, at no cost to the City, as a condition to the City's approval of the plat, all permanent or temporary easements for right-of-way purposes to the extent necessary for the construction and installation of the Municipal Improvements, as reasonably determined by the City. Developer shall provide the City with all necessary permanent easements and/or rights-of-way for maintenance of the Municipal Improvements in the dedication of the plat.

All roads are to be built to City specifications and maintained by Developer until 50% of homes have been sold, at which time the maintenance of the road will be turned over to the City.

Final lift of pavement install time is estimated to be once 80% of homes have been sold, but timing can be adjusted if Developer and City agree.

Developer will construct turn lane off of County Road 70 on to Legacy Drive. A turn lane onto Gull River Road from County Road 70 is still in discussion at the time of this agreement. City, Developer, & County to work together to determine requirement and cost sharing plan.

G. Permits and Approvals

Developer shall be responsible for securing all necessary site grading and development approvals and permits from all appropriate Federal, State, Regional, and Local jurisdictions, including without limitation the Minnesota Pollution Control Agency, prior to the commencement of the site grading or construction for the Project. All site grading, construction, installation, materials and equipment for such work shall be in accordance with plans and specifications approved by the City.

H. Park Dedication Fee

As a requirement of the granted PUD, the Developer will pay the City of East Gull Lake as a Park Dedication fee of \$20,611. This payment is acknowledged as received by the City as of the execution of this Agreement.

I. Impervious

Attached to and incorporated into this document is the lot by lot projected impervious surface that totals less than 24%. This document will serve as a worksheet to control the impervious surface throughout the development. The procedure will be as follows:

- At the time of building permit the developer will submit the building plans with projected impervious surface including building, sidewalks & patios, and driveway. That total will be entered into spreadsheet.
- Once building is complete with driveway the as build calculations will be made and submitted to the city to be recorded on this document as impervious for that lot. Any increase or decrease will be noted and future building may have to be adjusted to stay under the 24% total required.

J. Landscape Plan

Buffer and trees within the development area will continue to be planted in the first couple of years with a minimum of 75 trees of various sizes will be planted in the buffer areas by the end of 2019 with many more planted in the future.

K. Fencing

6 foot high opaque fence located on the North and West side of the golf course maintenance facility will be completed prior to first home being occupied. Currently projecting to construct the fence by late May or Early June of 2019.

II. Representations of Developer. As an inducement to the City's approval of the engineering specifications and authorization to proceed with construction on the final plat and entering into this Agreement, Developer represents and warrants to the City, as of the date of this Agreement and throughout the term of this Agreement, that Developer has adopted all necessary resolutions authorizing Developer's execution, delivery and performance of this Agreement, and that either Developer is the fee owner of the Property, or the fee owner of the Property has consented in writing to this Agreement and to all applications made or to be made to the City in connection with the plat.

III. Municipal Improvements Made by Developer. The Developer shall install the following improvements, which shall serve the plat (the "Municipal Improvements"):

See attached Exhibit "A"

Developer agrees to reimburse the City for all engineering, administrative and legal expenses incurred by the City in connection with this Agreement.

IV. Easements. As indicated above, Developer shall dedicate to the City such easements as identified in the final plat and as shall be necessary in connection with the Municipal Improvements and their ongoing maintenance.

V. No Occupancy. No occupancy of any building in the plat shall occur until the conditions of this Agreement for water/sewer installations are satisfied in full, the balance of the conditions have security posted related to each condition as provided herein, and conditions of final plat approval are satisfied.

VI. Permits. Upon execution of this Agreement, and upon Developer's decision to proceed to develop any portion of the plat, Developer and other necessary parties shall promptly apply for all permits, approvals, licenses, or other documents from any and all necessary governmental agencies (which may include the City, County, MPCA, and DNR) so as to enable Developer to construct the Developer Improvements as herein contemplated, and Developer shall use its best efforts to obtain the same as soon as reasonably possible.

No building permit shall be issued by the City unless the plans or application therefor are in conformity with the City's comprehensive plan, this Agreement, and all local, state and federal regulations. The City shall, within fifteen (15) days of receipt of plans or building permit applications, review such submittal to determine whether the foregoing requirements have been met. If the City discerns said plans or applications are deficient, it shall notify Developer in writing, stating the deficiencies and the steps necessary for correction. Issuance of a grading or building permit by the City shall be a conclusive determination that the plans or applications have been approved as to the requested activity by Developer and satisfy the provisions of this section.

No building shall be occupied until the Municipal Improvements (with exception for the second lift of blacktop) have been installed, which include operational and tested sewer and water systems as applicable, and installation of erosion control measures and roadway development sufficiently completed to support access by emergency vehicles, snowplows, and garbage trucks, have been completed as determined by the City Engineer in his sole but reasonable discretion. Until such approval is granted, no dwelling in the plat may be occupied on either a temporary or permanent basis, provided this provision shall not include the use of a constructed building as a model home or sales center so long as no one occupies such building as a dwelling.

If Developer is in default of this Agreement as hereinafter defined, in addition to any other remedy provided by this Agreement, the City shall be entitled to collect all its reasonable attorney's fees, costs and engineering fees and staff costs.

VII. Responsibility for Costs and Hold Harmless.

- A. Developer shall pay all costs incurred by it or the City in connection with the development of the Project, including but not limited to construction of Municipal Improvements, legal, planning, engineering, and inspection expenses incurred in connection with approval and acceptance of the Project, the preparation of this Agreement, and all reasonable costs and expenses incurred by the City in monitoring and inspecting development of the Project. Developer shall also pay all expenses incurred by City, including attorney fees/costs and engineering fees/costs necessary to enforce this Agreement.
- B. Developer has provided proof of financial ability to pay in full, within thirty (30) days after receipt, all bills relating to the Project submitted by the City as set forth in the attached **Exhibit C** (Riverwood Bank Letter). Developer commits to using the funds identified in the Riverwood Bank Letter as described in that letter to pay the \$962,857.00 cost to complete identified in this Agreement. Developer shall deliver to the City a Performance Bond, as on the terms set forth in the Performance Bond

Agreement attached hereto and incorporated herein as **Exhibit B** for performance of this Agreement and payment of the cost of the Municipal Improvements of the plat in accordance with MN. Stat. 462.358 on a line by line item basis. If the bills are not paid on time, the City may halt all development work until the bills are paid in full.

- C. Developer shall hold the City and its officers and employees harmless from claims made by it/them and third parties for damages sustained or costs incurred resulting from Developer's negligent installation of the Municipal Improvements. Developer shall indemnify the City and its officers and employees for all costs, damages or expenses that the City may pay or incur in consequence of such claims, including reasonable attorneys' fees; provided, however, that nothing herein shall require Developer to indemnify the City, its officers or employees, from any violation of law or from the consequences of their own negligence or willful misconduct.
- D. Developer shall reimburse the City for its costs incurred in the enforcement of this Agreement, including, but not limited to, engineering and reasonable attorneys' fees.

VIII. Prohibitions Against Assignment of Agreement. Developer agrees that (except for associating with other individuals or entities), prior to the completion of the Municipal Improvements as certified by the City:

- A. Except only by way of security for, and only for the purpose of obtaining financing necessary to enable Developer or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to the Municipal Improvements under this Agreement, and any other purpose authorized by this Agreement, Developer (except as so authorized) will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance or transfer in any other mode or form, with respect to this Agreement or any interest herein, or any contract or agreement to do any of the same, without the prior written approval of the City. Nothing contained above precludes Developer from entering into Purchase Agreements or Option Agreements for the sale of developed lots, which activity will not require the written approval of City.
- B. In the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve Developer from any of its obligations. In the event the City approves a substitute developer and the Property is transferred to said substitute, the City agrees to relieve Developer named above of liability from performance as described in this Agreement provided that said substitute shall assume all responsibilities and rights of Developer under this Agreement. Notwithstanding the foregoing, upon conveyance of a finished lot to a builder, the City shall look to the builder regarding erosion control, silt fencing, lot cleanup and street sweeping resulting from builder's construction upon the conveyed lot.

IX. Events of Default Defined. Each of the following shall be an "Event of Default" under this Agreement:

- A. Failure by Developer to observe and substantially perform any covenant, condition, obligation or agreement on its part to be observed or performed under the terms of this Agreement.
- B. If Developer shall admit in writing its inability to pay its debts generally as they become due, or shall file a petition in bankruptcy, or shall make an assignment for the benefit of its creditors, or shall consent to the appointment of a receiver of itself or of the whole or any substantial part of the Property.
- C. If Developer fails to provide the required financial security and assurance for payment of the Municipal Improvements, as determined by the City in its sole judgment.

X. Notice/Remedies on Default. Whenever any Event of Default occurs, the City shall give written notice of the Event of Default to Developer by United States mail at its last known address. If Developer fails to cure the Event of Default within fifteen (15) business days (or such longer period as reasonably shall be required, provided Developer promptly commences and diligently prosecutes to completion the cure of such Event of Default) of the date of mailed notice, in addition to any other remedy provided in this Agreement, and without waiver of any such right, the City may avail itself of any or all of the following remedies for so long as such Event of Default continues:

- A. Halt all development work and construction of Municipal Improvements until such time as the Event of Default is cured.
- B. Refuse to issue or revoke building permits or occupancy permits as to any portion of the Project not then completed, until such time as the Event of Default is cured.
- C. Apply to a court of competent jurisdiction to enjoin continuation of the Event of Default.
- D. If the Event of Default is the failure of Developer to fund or pay for the completion, construction or installation of the Municipal Improvements in accordance with the approved plans and specifications and this Agreement, the City may perform the construction or work and Developer shall reimburse the City for its expenses. This provision shall be a license granted by Developer to the City to act, but shall not require the City to take any such action. Developer consents to such action by the City and waives any claim Developer may have against the City for damages in the event the City exercises its rights in accordance with this provision. This remedy is in addition to and not in lieu of the City's right to draw on all security referenced in this Agreement.
- E. Terminate this Agreement by written notice to Developer at which time all terms and conditions as contained herein as to the Project shall be of no further force and

effect and all obligations of the parties as imposed hereunder with respect thereto shall be null and void, it being understood and agreed, however, that no such termination by the City shall impair the rights of Developer as to the Project that have been completed as required by this Agreement.

- F. Draw upon and utilize Developer's funds and/or security in connection with the installation of any Municipal Improvement, in order to cover the cost incurred by the City to correct the Event of Default, including, but not limited to, attorneys' fees and costs and engineering and other expert fees.

XI. Miscellaneous.

- A. This Agreement shall be binding upon the parties, their heirs, successors or assigns, as the case may be.
- B. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portions of this Agreement.
- C. The action or inaction of the City shall not constitute a waiver of or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties, and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- D. This Agreement shall run with the Property and shall be binding upon Developer, its successors and assigns. Developer shall, at its expense, record this Agreement in the office of the County Recorder. After Developer has completed the work required under this Agreement, at Developer's request the City will execute and deliver to Developer a release or Certificate of Completion in recordable form. In addition, if Developer notifies the City that Developer has elected not to proceed with the Project, the City will execute and deliver to Developer a release from this Agreement of that portion of the Property as to which Developer has elected not to proceed, and shall cease incurring costs payable or reimbursable by Developer in connection with that portion of the Project.
- E. All parties to this Agreement acknowledge they have been represented by counsel and have entered into this Agreement freely and voluntarily.
- F. **Expenses Incurred by the City of East Gull Lake.** The Developer is current with all expenses incurred by the city totaling \$8,496.58 and will pay all expenses within 15 days of receipt of bill from the City.

- XII. Notices.** Required notices to Developer shall be in writing and shall be either hand delivered to Developer, or mailed to Developer by United States mail, postage prepaid to the following address:

Legacy Homes I, LLC

Notices to City shall be in writing and either hand delivered to the City Clerk or mailed to the City by United States mail, postage prepaid to the following address:

City of East Gull Lake
Attn: Rob Mason
10790 Squaw Point Rd
East Gull Lake, MN 56401

And to City of East Gull Lake City Attorney:

Thomas C. Pearson
Gammello-Pearson, PLLC
14275 Golf Course Drive, Suite 200
PO Box 2629
Baxter, MN 56425

Either party may change the address to which notice to such party thereafter shall be given, by providing notice of such change.

IN WITNESS WHEREOF, the City and Developer have signed this Developer's Agreement the day and year first written above.

CITY:

City of East Gull Lake

DEVELOPER:

Legacy Homes I, LLC

By: _____

Dave Kavanaugh

Its: Mayor

By: _____

Its: _____

By: _____

Rob Mason

Its: City Administrator

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019 by Dave Kavanaugh, the Mayor, and Rob Mason, the City Administrator, respectively, of the City of East Gull Lake, a Minnesota municipal corporation, on behalf of the corporation.

Notary Public

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____, the _____ of Legacy Homes I, LLC, a Minnesota Limited Liability Company, on behalf of the Company.

Notary Public

This Instrument Drafted By:
Thomas C. Pearson #260071
GAMMELLO-PEARSON, PLLC
PO Box 2629
Baxter, MN 56425
(218) 828-9511