

CITY OF HERMANTOWN

AGENDA

**City Council Continuation Meeting July 25, 2016 @ 5:00 p.m. –Large Conference Room
City Administrative Services Building**

1. ROLL CALL

2. RESOLUTION

2016-80 Resolution Authorizing And Directing The Mayor And City Clerk To Execute
And Deliver Development Agreement With JLG Enterprises Of Hermantown,
LLC

(motion, roll call)

3. RECESS

TO: Mayor & City Council

FROM: Josh Bergstad, Planner



DATE: July 20, 2016

Meeting Date: July 25, 2016

SUBJECT: Jackson Estates 4th Addition
Development Agreement

Agenda Item: 1A Resolution 2016-80

REQUESTED ACTION

Approve execution of the Development Agreement between JLG Enterprises and City of Hermantown for Jackson Estates 4th Edition.

DESCRIPTION OF REQUEST

Requested is approval of the Development Agreement between JLG Enterprises (Developer) and the City of Hermantown (City) for the completion of public improvements in Jackson Estates 4th Addition, a residential subdivision approved by the City in June 2016 pending satisfaction of certain conditions.

The Development Agreement includes a construction schedule with a three year build out of all public improvements including Truman Road, Jefferson Drive, public utilities and stormwater management. 950 of Truman Road extending west from Ugstad Road to station 8+00 will be built in 2016 to allow development of 12 lots. The remainder of Truman Road will be connected to McKinley Drive in the existing Jackson Estates 3rd Addition and receive the first layer of blacktop by October 15, 2017. The Development Agreement includes irrevocable letters of credit in the amount of 125% of construction cost of all stormwater management and Truman Road from station 8+00 to McKinley Road that the City can use to construct the required improvements if the Developer does not meet the construction schedule.

The Planning and Zoning Commission unanimously recommended that the City execute the Development Agreement with the Letters of Credit and attached construction schedule for completion of Truman Road and stormwater management.

SOURCE OF FUNDS (if applicable)

N/A

ATTACHMENTS

- Construction Schedule
- Construction Map
- Development Agreement Executive Summary
- Development Agreement

**CONSTRUCTION SCHEDULE
JACKSON ESTATES 4th ADDITION**

The proposed schedule for the construction is as follows:

Before October 15, 2016:

- Final plat approved by City of Hermantown.
- Required Security provided to City.
- Preconstruction meeting held
- Clear and grub entire road right of way of Truman Road and Jefferson Drive to McKinley, install erosion control measures to set limits to prevent wetland impact and to protect water quality during construction.
- Water mains and service lines from station 8+00 on Truman Road east to the Ugstad Road intersection are completed.
- Sanitary sewer mains and service lines from station 8+00 on Truman Road east to Ugstad Road are completed.
- Truman Road completed as a gravel road from station 8+00 east to Ugstad Road.
- Hammerhandle-style turnaround will be installed at west end of Truman Road at station 8+00, per city specs as a gravel cul-de-sac.
- Dead End sign will be installed on Truman Road at Ugstad Road.
- All wetland work and stormwater management facilities for the entire plat will be completed.

Before October 15, 2017:

- Utilities and road construction of Truman Road and Jefferson Road as gravel roads from station 8+00 west and north to connect with McKinley Road will be completed.
- First layer of blacktop installed on Truman Road from station 8+00 east to Ugstad Road

Before October 15, 2018

The final section of road and utility construction (Jefferson Drive south of Truman) will be completed as follows:

- Complete final construction of the Jefferson Drive cul-de-sac.
- Jefferson Drive from McKinley Drive to Truman Road and Truman Road to Ugstad Road will be fully and finally blacktopped.
- Water mains, sanitary sewer mains, and related service laterals will be constructed to remaining lots surrounding the Jefferson Drive cul-de-sac.

By September 30, 2019:

All Infrastructure work must be completed.

Additional Items:

- Developer will apply dust control on gravel road surfaces during the construction and development period as required and snow plow and maintain roads until accepted by the City.
- If any work on the Plat is not completed within the required times, the City of Hermantown may complete the work by utilizing the letter of credit from the developer for funds necessary to complete Truman Drive and Jefferson Drive (without any utilities and without the Jefferson Drive cul-de-sac) and Stormwater Maintenance Facilities.

Resolution No. 2016-80

**RESOLUTION AUTHORIZING AND DIRECTING
THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER
DEVELOPMENT AGREEMENT WITH JLG ENTERPRISES OF HERMANTOWN, LLP**

WHEREAS, JLG Enterprises of Hermantown, LLP (“Developer”) owns property located within the City of Hermantown; and

WHEREAS, Developer has requested the City to approve the Preliminary Subdivision Plat of Jackson Estates 4th Addition (“Plat”) (“Project”); and

WHEREAS, the City of Hermantown desires to enter into a Development Agreement with Developer for the Project; and

WHEREAS, a Development Agreement has been prepared and is attached hereto; and

WHEREAS, the City Council has considered this matter and believes it is in the best interest of the City to approve the Development Agreement and to authorize and direct the Mayor and City Clerk to enter into such Agreement on behalf of the City of Hermantown.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hermantown, Minnesota as follows:

1. The Development Agreement attached hereto is hereby approved.
2. The Mayor and City Clerk are hereby authorized and directed to execute and deliver such Agreement on behalf of the City of Hermantown.

Councilor _____ introduced the foregoing resolution and moved its adoption.

The motion for the adoption of such resolution was seconded by Councilor _____ and, upon a vote being taken thereon, the following voted in favor thereof:

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted.

DEVELOPMENT AGREEMENT

BY AND BETWEEN

**JLG ENTERPRISES OF HERMANTOWN, LLP,
A MINNESOTA LIMITED LIABILITY PARTNERSHIP**

AND

CITY OF HERMANTOWN

(JACKSON ESTATES 4TH ADDITION)

Dated as of the ____ day of _____, 2016

This document was drafted by:

Steven C. Overom
MAKI & OVEROM, LTD.
31 West Superior St., Suite 402
Duluth, Minnesota 55802
(218) 726-0805

DEVELOPMENT AGREEMENT
(Jackson Estates 4th Addition)

This Agreement made and entered into as of the ____ day of _____, 2016, by **JLG ENTERPRISES OF HERMANTOWN, LLP**, a Minnesota limited liability partnership, hereinafter called "Developer," and the **CITY OF HERMANTOWN**, Minnesota, a statutory city under the laws of the State of Minnesota, hereinafter called "City," is in response to the following situation:

A. Developer has requested the City to approve the Subdivision Plat of Jackson Estates 4th Addition ("Plat") which is platted over the property located in St. Louis County, Minnesota, legally described as follows:

See **Exhibit A** attached hereto ("Property")

B. City has determined to approve the Plat subject to certain conditions being satisfied.

C. One of such conditions is that Developer execute and deliver this Agreement to the City.

NOW, THEREFORE, in order to satisfy the conditions to the approval of the Plat by the City, Developer hereby agrees as follows:

1. To pay all costs incurred by the City in connection with the initial review and consideration of the Plat, prior to the execution of the Plat, as provided by Section 3.8 hereof, and thereafter in connection with the Plat or in connection with the determination of whether the conditions to the approval of the Plat or the construction of the road, sewermain, watermain and stormwater facilities required for the development of the Plat ("Infrastructure Improvements") have been completed in accordance with the Plans and Specifications, including, without limitation, fees incurred by the City Engineer for inspecting the construction of Infrastructure Improvements, within ten (10) days of being invoiced by the City for such costs.

2. Developer acknowledges that it is a requirement of the City that the Developer bear all costs of construction of the Infrastructure Improvements and that the Infrastructure Improvements must be constructed in accordance with Plans and Specifications approved by the City Engineer and City Public Works Director.

3. Before the Plat will be executed by the City the Developer must:

3.1 Comply with the provisions of Section 9 hereof (Infrastructure Plans and Specifications approved).

3.2 Provide the City with:

3.2.1 A copy of a construction contract (“Construction Contract”) between Developer and _____. (“Contractor”) that provides that Contractor will construct the following portion of Infrastructure Improvements in accordance with the Plans and Specifications on or before October 15, 2016:

3.2.1.1 Truman Drive as a gravel road from station 8+00 east to Ugstad Road.

3.2.1.2 Planting of trees along the property boundary between the property in the Plat and neighboring property south of Truman Road and just west of Ugstad Road.

3.2.1.3 All Stormwater Management Facilities (“Stormwater Management Facilities”) required to be constructed by Developer pursuant to the stormwater certificate issued for the Plat as part of Truman Drive from Station 8+00 east to Ugstad Road.

3.2.1.4 The permanent wetland markers required by Section 9.4 hereof.

3.2.1.5 The filling of all wetlands permitted by the wetland replacement plan approved for the Plat and completion of all other work required by the wetland replacement plan (“Wetland Work”).

3.2.2 A collateral assignment of the Construction Contract to City consented to by the Contractor.

3.2.3 A payment bond and performance bond in the full contract amount covering the work to be done pursuant to the Construction Contract with the City of Hermantown named as a co-obligee on such bonds.

3.3 Pay City a park dedication fee of \$1,100.00 per lot in the Plat in lieu of dedicating any land within the Plat to the City for park and open space.

3.4 Pay City a Wetland Impact Fee of \$1,456.65 ($\$0.15 * 9,711$ SF) prior to the commencement of site work.

3.5 Provide City with an electronic copy of the Plat consistent with St. Louis County Survey datum.

3.6 Provide the City with title evidence in form and substance acceptable to the City and the City Attorney examines or causes the title of the land underlying the Plat to be examined and the Developer completes all actions required to be taken by the City Attorney and City Engineer.

3.7 Cause the Plat dedication on the final Plat to be in form and substance acceptable to the City Attorney and City Engineer.

3.8 Provide the City with the final Plat that has duly and properly executed by all parties with an interest in the land underlying the Plat, as determined by the City Attorney and the signatures of such parties are duly and properly notarized.

3.9 Provide the City with the copies of the final Plat as is required under the Hermantown subdivision platting regulations.

3.10 Provide the City with written approval of the final Plat by the City Planner, City Surveyor and City Engineer as being in compliance with the Hermantown subdivision platting.

3.11 Provide City with evidence that corrections to any deficiency noted by the surveyor on the Preliminary Plat have been made on the final Plat.

3.12 Enter into and cause First American Title Company Inc. d/b/a Consolidated Title & Abstract Company to enter into the Disbursing Agreement (“Disbursing Agreement”) in the form of the one attached hereto as **Exhibit 3.6**.

3.13 Deposit with Consolidated Title and Abstract Company, to hold and disburse, pursuant to the Disbursing Agreement, all net sale proceeds (gross sales price less the closing costs related to the sale) from sales of lots in the Plat until an amount equal to one hundred twenty-five percent (125%) of the amount of the Construction Contract is deposited with Consolidated Title and Abstract Company.

3.14 Pay the City’s out-of-pocket costs and expenses, including attorneys’ fees and engineering fees, incurred to the date the Plat is signed.

3.15 Comply with all the provisions of Resolution Approving Wetland Replacement Plan For Jackson Estates 4th Addition 47XX Ugstad Road (Resolution No. 2016-68) including, without limitation, the following:

3.15.1 A preconstruction meeting must be held with the appropriate Developer, construction, and City representatives; and

3.15.2 Finalize the purchase of credits from the Zeinet Wetland Bank and provide proof thereof to the City; and

3.15.3 Obtain a Stormwater Certificate from the City of Hermantown; and

3.15.4 Provide financial security in the form of an irrevocable letter of credit in the amount of \$200,000.00 representing the estimate of the cost of construction of all Stormwater Management Facilities required by the stormwater certificate and/or wetland replacement plan for the Project to ensure completion of all Stormwater

Management Facilities on the site. This must be provided separately from the security required by Section 3.16 of this Development Agreement. The letter of credit must be irrevocable and in form and substance acceptable to the City Administrator and City Attorney.

3.16 An irrevocable letter of credit in the amount of \$450,000.00 representing 125% of the estimated cost of construction, strictly in accordance with the Plans and Specifications, of Jefferson Drive from Truman Road to McKinley Drive and Truman Road from Jefferson Drive east to station 8+00 on Truman Road (not including utilities) plus the cost of bituminous paving of Truman Road from station 8+00 east to Ugstad Road. The letter of credit must be irrevocable and in form and substance acceptable to the City Administrator and City Attorney.

3.17 Provide a collateral assignment of plans and specifications (“Collateral Assignment of Plans and Specifications”) that will entitle City to have full control of the Plans and Specifications upon default by Developer. The Collateral Assignment of Plans and Specifications shall be in form and substance acceptable to the City.

3.18 Provide a collateral assignment of the contract (“Engineering Contract”) between TKDA and Developer with respect to the engineering work for the Project consented to by the TKDA entitling the City to the rights of Developer under the Engineer Contract.

3.19 Execute and deliver to City a temporary easement in form and substance acceptable to the City Engineer and City Attorney for a hammer handle at the 8+00 point on Truman Road. This temporary easement will continue in effect until Jefferson Drive from Truman Road to McKinley and Truman Road from Jefferson Drive to station 8+00 on Truman Road has been completed in accordance with the Plans and Specifications accepted by the City. The legal description of this easement is attached hereto as Exhibit 3.19.

4. Developer agrees that the City may exercise its rights under the Disbursing Agreement and collateral assignment of Construction Contract and payment and performance bond provided to by Developer to City pursuant to Section 3.15.4, the letter of Credit provided to City by Developer pursuant to Section 3.15.4, the letter of credit provided to City by Developer pursuant to Section 3.16, the Collateral Assignment of Plans and Specifications provided pursuant to Section 3.17 and/or the Collateral Assignment of Contract for Engineering Services provided pursuant to Section 3.18 above if Developer shall fail to perform any obligation required to be performed by Developer hereunder and such failure shall continue for a period of ten (10) days after written notice of such failure has been given by the City to Developer.

5. That any notice to Developer hereunder shall be in writing and deemed to have been given when delivered personally to Developer or when deposited in the United States mail, registered or certified with postage prepaid, and addressed as follows:

JLG Enterprises of Hermantown, LLP
Attn: Gary Gilbert
3850 Old Midway Road
Hermantown, MN 55810

6. The City Engineer shall, after consulting with the designated representatives of Developer, be the final authority in the event of any questions, ambiguities or disagreements regarding the interpretation of the Plans and Specifications or whether the construction of the Infrastructure Improvements or any part or portion of the Infrastructure Improvements been completed in accordance with the Plans and Specifications.

7. Developer acknowledges and agrees that pursuant to Section 350 of the Hermantown City Code, no road or street within the city becomes a City street until it is accepted and opened by the City Council by a resolution to that effect and that the City has not accepted or opened the roads within the Plat. Developer further acknowledges and agrees that the City has no obligation and will not assume responsibility to grade, construct, improve, repair, replace, snowplow or in any way maintain or construct any road until such road has been accepted and opened pursuant to Section 350 of the Hermantown City Code. Developer further acknowledges and agrees that the City Council will not consider any resolution accepting and opening any road until Developer makes a written request of the City to accept and open the road. Such request may not be made by Developer until (i) one year after the construction of the road is determined to be completed in accordance with the Plans and Specifications and (ii) only if Developer has maintained and repaired the road in good condition and repair unless Developer (x) provides a written one year warranty with respect to the construction of the road that is in form and substance acceptable to the City, City Engineer and the City Attorney and (y) Developer provides security for such warranty in an amount, form and substance acceptable to the City, City Engineer and City Attorney. In the event Developer proceeds as provided in subparts (x) and (y) of this paragraph the City Council will consider a resolution accepting and opening the road at its first regular meeting after Developer makes a written request of the City to accept and open the road and the items required by subparts (x) and (y) of this paragraph are provided to the City. Likewise, Developer acknowledges and agrees that the City has no obligation to repair or replace any other Infrastructure Improvements until such Infrastructure Improvements have been determined to be constructed in accordance with the Plans and Specifications by the City Engineer and City Public Works Director. Developer shall be responsible for snow plowing, dust control and maintaining, on a regular basis, any road in the Plat which has not been accepted by City. Dust control shall be as directed from time to time by the City Public Works Director and in compliance with all permits issued to Developer with respect to the Project.

8. Developer agrees that it will not make any changes to the Plans and Specifications without the prior written approval of the City Engineer and City Public Works Director.

9. Developer shall present detailed plans and specifications for the Infrastructure Improvements to the City Engineer and City Public Works Director and obtain approval of such plans and specifications by the City Engineer and City Public Works Director. Whenever the words "Plans and Specifications" are used herein it shall mean the plans and specifications that are approved by the City Engineer and City Public Works Director. Developer shall construct the

Infrastructure Improvements in accordance with the construction schedule attached to this Agreement as Exhibit 9 (the “Construction Schedule”). If there is any variation between the Construction Schedule and any provisions of this Agreement, the provisions of this Agreement shall govern. All construction work shall be completed strictly in accordance with the approved Plans and Specifications. The Plans and Specifications shall include the requirement that the final road elevation be marked prior to any building permit being issued for any construction on any lot within the Plat. For the purposes of this Development Agreement, Infrastructure Improvements means the following:

9.1. Truman Road and Jefferson Drive within the Plat.

9.2. The sanitary sewer mains and water mains within the Plat.

9.3. The Stormwater Management Facilities required to be constructed by Developer pursuant to the stormwater certificate and wetland replacement plan issued for the Plat.

9.4. Permanent wetland markers marking the wetlands within the Plat and the entire preservation areas adjacent to the Plat.

9.5. Planting of trees south of Truman Drive along the property boundary of the neighboring property adjacent to and west of Ugstad Road.

9.6. The Wetland Work

10. Before the commencement of any work on any Infrastructure Improvements, Developer, Developer’s Contractor and Developer’s Engineer shall meet with the City Engineer and City Public Works Director to determine guidelines to insure that work is subject to appropriate testing and inspection before any portion of the work is covered or further work is done. Developer and Developer’s Contractor may be limited, as a result of this discussion, as to work that may be done outside of regular working hours unless prior arrangements are made for inspection and testing to be done at such times and appropriate payment arrangements are made.

11. Developer acknowledges that the City Engineer may require independent testing of the work done on the Infrastructure Improvements prior to its determining that the work has been completed in accordance with the Plans and Specifications. Developer further understands and acknowledges that Developer shall be responsible for paying the costs incurred in connection with any such testing. The City Engineer will execute and deliver the Certificate of Completion in the form attached hereto as **Exhibit B** to the City only upon the final completion of the Infrastructure Improvements required to be constructed by Developer.

12. City agrees that, upon execution of the Development Agreement and Developer providing City with the security required under Sections 3.2, 3.15.4, 3.16, 3.17 and 3.18 that City will allow the issuance of zoning certificates and building permits (provided all other requirements for the issuance of such zoning certificates and building permits have been satisfied) for the 12 lots in the Plat abutting on Truman Road east of station 8+00. Except as provided in the foregoing

sentence, Developer acknowledges and agrees that no zoning certificates and no building permits will be issued for any construction within the Plat until the Infrastructure Improvements abutting the lot for which the permit is sought have been completed strictly in accordance with the Plans and Specifications as determined by the City Engineer by executing of a Certificate of Final Completion in the form of the one attached hereto as **Exhibit B** and record drawings in printed form and electronically in auto-cad format and electronically in PDF format for such Infrastructure Improvements have been provided to City. The security required by Sections 3.2, 3.15.4, 3.16, 3.17 and 3.18 hereof shall continue to be in effect until all Infrastructure Improvements are finally completed as determined by the City Engineer by execution of a Certificate of Final Completion in the form of the one attached hereto as **Exhibit B** or upon final completion of Jefferson Road from McKinley to Truman Drive and Truman Drive from Jefferson to Ugstad Road and all utilities from station 8+00 on Truman Road east to Ugstad Road strictly in accordance with the Plans and Specifications and a certificate of Final Completion with respect to such work is executed by the City Engineer in the form attached hereto as **Exhibit B** that is modified to reflect the situation, whichever event occurs first. Developer agrees to provide City with record drawings in printed form and electronically in auto-cad format and electronically in PDF format for all of the Infrastructure Improvements constructed by Developer prior to release of any security provided by Developer with respect to such Infrastructure Improvements.

13. Notwithstanding anything to the contrary contained herein Developer agrees that all of the Infrastructure Improvements will be fully completed in accordance with the Plans and Specifications and the Construction Schedule no later than September 30, 2019. In addition, Developer agrees that:

13.1. Truman Drive will be constructed from Ugstad Road to station 8+00, the water and sanitary server mains on Truman Road to station 8+00, all of the Stormwater Management Facilities related to Truman Drive from Ugstad Road to station 8+00 are constructed and all Wetland Work is completed by October 15, 2016.

13.2. The first lift of blacktop will be placed on Truman Drive from station 8+00 east to Ugstad Road on or before October 15, 2017.

13.3. Jefferson Drive from McKinley Drive to Truman Road and on Truman Road from Jefferson Drive to station 8+00 is constructed as a gravel road and all Stormwater Management Facilities related to such road construction are constructed by October 15, 2017.

13.4. All blacktopping on Jefferson Drive from McKinley Drive to Truman Road and on Truman Road from Jefferson Drive to Ugstad Road is completed before October 15, 2018.

14. The security provided under Section 3.15.4 shall continue to be in effect until all of the Stormwater Management Facilities in the Plat have been constructed and the City Engineer and City Public Works Director executes a Certificate of Completion with respect to the Stormwater Management Facilities attesting that they have been properly constructed.

15. The Plans and Specification shall provide for a 24 foot bituminous driving surface with two two foot gravel shoulders constructed to the City's rural standard. City has agreed to this road standard so that it is constructed to the same standard that the other roads within Jackson Estates, Jackson Estates 1st Addition, Jackson Estates 2nd Addition and Jackson Estates 3rd Addition are constructed. This approval does not constitute a revision to the City road standards applicable to other projects. The Plans and Specifications must also provide for the restoration of the Ugstad Road/Truman Road intersection and the Jefferson Drive/McKinley Drive intersection.

16. Developer will provide record drawings for the Infrastructure Improvements constructed by it pursuant to this Agreement on paper and electronically in auto-cad format and PDF format within the time limits set forth in this Agreement. No roads or utilities will be accepted by the City until the required record drawings are provided to the City.

17. Developer will provide the GPS data points for the wetland boundaries on all lots within the Plat and for the permanent wetland markers required to be installed by Developer pursuant to Section 9.4 hereof. Developer, on its behalf and on behalf of its successors and assigns, further grants City access to the Property and any lot on the Property for purposes of checking the wetland boundaries and permanent wetland markers and making any repairs and/or replacements that City deems necessary.

18. Upon the issuance of a Certificate of Final Completion by the City Engineer for the Infrastructure Improvements the City shall become the owner of the Infrastructure Improvements covered by such Certificate of Final Completion including the stormwater facilities outside of any road right-of-way. Upon the issuance of a Certificate of Final Completion by the City Engineer for any road and the satisfaction of the provisions of Section 7 of this agreement the City shall become the owner of the road covered by such Certificate of Final Completion.

19. Developer will provide or cause to be provided separate water and sewer services to each dwelling unit in the Plat and:

19.1 Provide the City with a map/plan on paper and electronically in auto cad and PDF format showing the location of water and sewer service lines. The information must be in a coordinate system so that it can be imported into the City's GIS system.

19.2 Install a locating wire or equally effective means of marking the location of each non-conductive water or sewer service lines.

The City will not provide a certificate of occupancy for any structure serviced by such service lines until the requirements of this Section have been satisfied.

20. Before the Plat is executed by the City, Developer shall execute and deliver to the City for recording against each lot within the Plat the Declaration of Stormwater and Wetland Restrictions substantially in the form of the one attached hereto as **Exhibit 20**.

21. Developer acknowledges that City intends to provide a letter, substantially in the form of the one attached hereto as **Exhibit 21** to each party who requests utility service from the City at any time with regard to lots within the Plat.

22. Neither Developer nor its successors or assigns shall modify or disturb the wetland areas or stormwater facilities within the Plat without the prior written approval of the City. The owner of each lot within the Plat shall be responsible for the preservation and maintenance of the wetland areas and the Stormwater Management Facilities located on such owner's lot. Developer, for itself and its heirs and assigns, grants City access to the Property and every lot on the Plat for the purpose of determining compliance with this provision.

23. City is hereby granted access across the Property and all individual lots within the Plat at any time to repair, maintain and restore the Stormwater Management Facilities and wetland areas on any of the Property and to check the location of the wetland boundaries and permanent wetland markers on the Property and any lot on the Plat and make any repairs and/or replacements that City deems necessary.

24. In the event that the City is required to repair, restore or modify the wetland areas, permanent wetland markers or Stormwater Management Facilities as a result of actions by the Developer or its successors or assigns, then the City may assess the costs of such repairs, restoration or modifications against the Property or any part of the Property pursuant to Chapter 429 of the Minnesota Statutes or the City may declare that the portion of the Property upon which such wetland or Stormwater Management Facilities are located to be a hazardous property within the meaning Minnesota Statutes §463.15, it being agreed to and acknowledged by Developer that a failure to adequately maintain or unremedied damage to a wetland or Stormwater Management Facilities constitutes a hazard to public safety or health.

25. The Developer further agrees that nothing in this Agreement constitutes any approval of any other licenses or permits or approvals required to be obtained under applicable law, rule, regulation or ordinance before any construction can take place on the Property. Examples of permits and approvals that are not approved by this Agreement are building permits, water and sewer connection approvals (which require payments for connection fees to the City and a CAF payment to WLSSD).

[SIGNATURES APPEAR ON NEXT PAGE]

EXHIBIT A

Legal Description of Property Covered by Plat

The property situated in the City of Hermantown, County of St. Louis, State of Minnesota, to wit:

Per St. Louis County Recorder Doc. No. 862696:

That part of Outlot E, Block 16, DULUTH HOMESTEAD SUBDIVISION PLAT, which is included in the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4), Section 16, Township 50, North of Range 15, West of the Fourth Principal Meridian, except the southerly 620 feet thereof.

Per St. Louis County Recorder Doc. No. 870140:

The Easterly 225 Feet (E'ly 225') of the following described property: That part of Outlot E, Block 16, DULUTH HOMESTEAD SUBDIVISION PLAT, which is included in the Northeast Quarter (NE 1/4) of Southeast Quarter (SE 1/4), Section 16, Township 50, North of Range 15, West of the Fourth Principal Meridian, except the Southerly 620 feet (S'ly 620') thereof.

Per St. Louis County Recorder Doc. No. 877017:

Outlot E, Block 16, except that part in the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) and except that part of the Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) of Section 16, Township 50, Range 15, DULUTH HOMESTEADS SUBDIVISION PLAT, St. Louis County, Minnesota.

PIN: 395-0010-00960

PIN: 395-0010-00961

PIN: 395-0010-00970

EXHIBIT 3.6
DISBURSING AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2016, by and between, **First American Title Company Inc. d/b/a Consolidated Title & Abstract Company** (hereinafter called “Escrow Agent”), **JLG Enterprises of Hermantown, LLP**, a Minnesota limited liability partnership, (hereinafter called “Developer”) and the **City of Hermantown**, Minnesota, a statutory city under the laws of the State of Minnesota, (hereinafter called “City”) in response to the following situation:

- A. City and Developer have entered into a Development Agreement (“Development Agreement”), pursuant to which City has approved the development of the real estate legally described on **Exhibit A** attached hereto (“Property”) by Developer.
- B. Developer has contracted with _____ to construct infrastructure improvements (“Infrastructure Improvements”) on the Property pursuant to a Construction Contract (“Construction Contract”) dated _____, 20__.
- C. Under the Development Agreement, Developer is obligated to provide security to secure the performance of its obligations under the Development Agreement and this Disbursing Agreement is intended to satisfy the Developer’s obligations under the Development Agreement.
- D. City and Developer desire that Escrow Agent hold and disburse the funds deposited with it by Developer and pursuant to this Agreement, and Escrow Agent is willing to do so on the terms set forth herein.

THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and the sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Developer will deposit with Escrow Agent the sum of \$ _____ representing 125% of the amount of the Construction Contract. Developer will deposit such funds in accordance with Section 3.13 of the Development Agreement. The amount required to be deposited by Developer hereunder and under the Development Agreement will be adjusted at the time of each draw made pursuant to this Disbursing Agreement so that the amount on deposit with the Escrow Agent after the draw will be equal to 125% of the greater of (i) the then estimated cost to complete the construction of the Infrastructure Improvements as determined by the City Engineer or (ii) the remaining amount due under the Construction Contract. If the amount remaining on deposit is less than the amount required to be on deposit then Developer shall immediately deposit an amount sufficient to cause the amount to be at least equal to the amount required to be on deposit with the Escrow Agent. If the amount remaining on deposit is more than the amount required to be on deposit then Developer shall be entitled to withdraw such excess amount from the Escrow Account
- 2. Escrow Agent is authorized and directed to disburse funds deposited pursuant to this Agreement, to:
 - 2.1. Pay costs of construction of the Infrastructure Improvements incurred in connection with the construction of the Infrastructure Improvements.

- 2.2. Obtain releases and satisfactions of liens and other encumbrances if any, pursuant to statements of amounts due, which must be approved Developer and the City Engineer.
3. Prior to the first disbursement of funds hereunder, Escrow Agent must be furnished the following items:
 - 3.1. Sworn Construction Statement disclosing all of the various contracts entered into, and setting forth the names of the contractors, material suppliers, and other parties with whom contracts have been entered into for the construction of the Infrastructure Improvements, their addresses and phone numbers, material and/or work to be furnished, and amounts of the contracts.
 - 3.2. Owner's total project costs statement that discloses all of the other costs not shown on the Sworn Construction Statement that are required to be paid by Developer pursuant to the Development Agreement and otherwise to perform its obligations under the Development Agreement.
4. Prior to each and every disbursement of funds, Escrow Agent must be furnished the following items:
 - 4.1. Current sworn Construction Statement setting forth all contractors, material suppliers, and other parties with whom contracts have been entered into with respect to the Infrastructure Improvements, the amount of each contract, the amount paid-to-date, the amounts being requested, and the balances due.
 - 4.2. Current Owner's Total Project Cost Statement updating the previous Owner's Total Project Cost Statement.
 - 4.3. Draw Request signed by Developer for the requested disbursement.
 - 4.4. Current invoices from contractors, material suppliers, and other parties, which correspond to the amounts to be disbursed (plus any retainage).
 - 4.5. Approval by the City Engineer of the relevant Draw Request, along with written instructions to disburse the funds.
 - 4.6. Unconditional, full (not partial except for any retainage), current up-to-date Lien Waivers; and releases of Mechanic's Liens if necessary; satisfactory to Escrow Agent.
 - 4.7. Developer and the City Engineer must sign any change orders relating to the construction of the Infrastructure Improvements or other development costs that increase the total cost of the Infrastructure Improvements or other development costs and Developer must deposit additional funds in the amount of any change order with the Escrow Agent before any additional disbursements may be made by the Escrow Agent.
5. Upon receiving all of the documents and required funds provided for by the foregoing provisions of this Agreement, Escrow Agent will disburse directly to each sub-contractor, supplier, and other party identified in the relevant Draw Request, the amounts shown therein; or if less, the

amount approved by the City Engineer. The disbursement checks may be stamped with a “full payment to date” notation.

6. Escrow Agent will keep and maintain books and records in sufficient detail to reflect the disbursements made by it pursuant to this Agreement. City may during normal business hours examine the books and records of Escrow Agent pertaining to those disbursements.
7. Escrow Agent does not keep track of payee information and disbursements for 1099 reporting to the IRS. The Developer must do that reporting.
8. No liability is assumed by Escrow Agent to Developer or Contractor for protection against Mechanic’s Liens.
9. Functions and duties assumed by Escrow Agent include only those described in this Agreement, and Escrow Agent is not obligated to act except in accordance with the terms and conditions of this Agreement. Escrow Agent does not insure that the Infrastructure Improvements will be completed, nor that the Infrastructure Improvements will be constructed in accordance with the plans and specifications, nor that sufficient funds will be available for the completion of Infrastructure Improvements.
10. All capitalized terms when used herein shall have the meanings given them under the Development Agreement unless the context clearly requires otherwise.
11. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.
12. This Agreement can be amended or modified only by a written Amendment signed by the parties hereto.
13. Developer grants City a security interest in the funds held by the Escrow Agent hereunder to secure the performance of Developer’s obligations under the Development Agreement. The City’s security interest in such funds is perfected by the Escrow Agent holding such holds.
14. Escrow Agent agrees that it is holding the funds deposited by Developer with it to protect the security interest granted to City by Developer in such funds.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties described herein have caused this Disbursing Agreement to be duly executed on date first above written.

**FIRST AMERICAN TITLE COMPANY INC. D/B/A
CONSOLIDATED TITLE & ABSTRACT COMPANY**

By _____
Its _____

JLG ENTERPRISES OF HERMANTOWN, LLP

By _____
Its _____

CITY OF HERMANTOWN

By _____
Its Mayor

And By _____
Its City Clerk

EXHIBIT A

The property situated in the City of Hermantown, County of St. Louis, State of Minnesota, to wit:

Per St. Louis County Recorder Doc. No. 862696:

That part of Outlot E, Block 16, DULUTH HOMESTEAD SUBDIVISION PLAT, which is included in the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4), Section 16, Township 50, North of Range 15, West of the Fourth Principal Meridian, except the southerly 620 feet thereof.

Per St. Louis County Recorder Doc. No. 870140:

The Easterly 225 Feet (E'ly 225') of the following described property: That part of Outlot E, Block 16, DULUTH HOMESTEAD SUBDIVISION PLAT, which is included in the Northeast Quarter (NE 1/4) of Southeast Quarter (SE 1/4), Section 16, Township 50, North of Range 15, West of the Fourth Principal Meridian, except the Southerly 620 feet (S'ly 620') thereof.

Per St. Louis County Recorder Doc. No. 877017:

Outlot E, Block 16, except that part in the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4) and except that part of the Southwest Quarter (SW1/4) of the Southeast Quarter (SE1/4) of Section 16, Township 50, Range 15, DULUTH HOMESTEADS SUBDIVISION PLAT, St. Louis County, Minnesota.

PIN: 395-0010-00960

PIN: 395-0010-00961

PIN: 395-0010-00970

EXHIBIT 3.19
LEGAL DESCRIPTION AND DRAWING OF HAMMERHANDLE

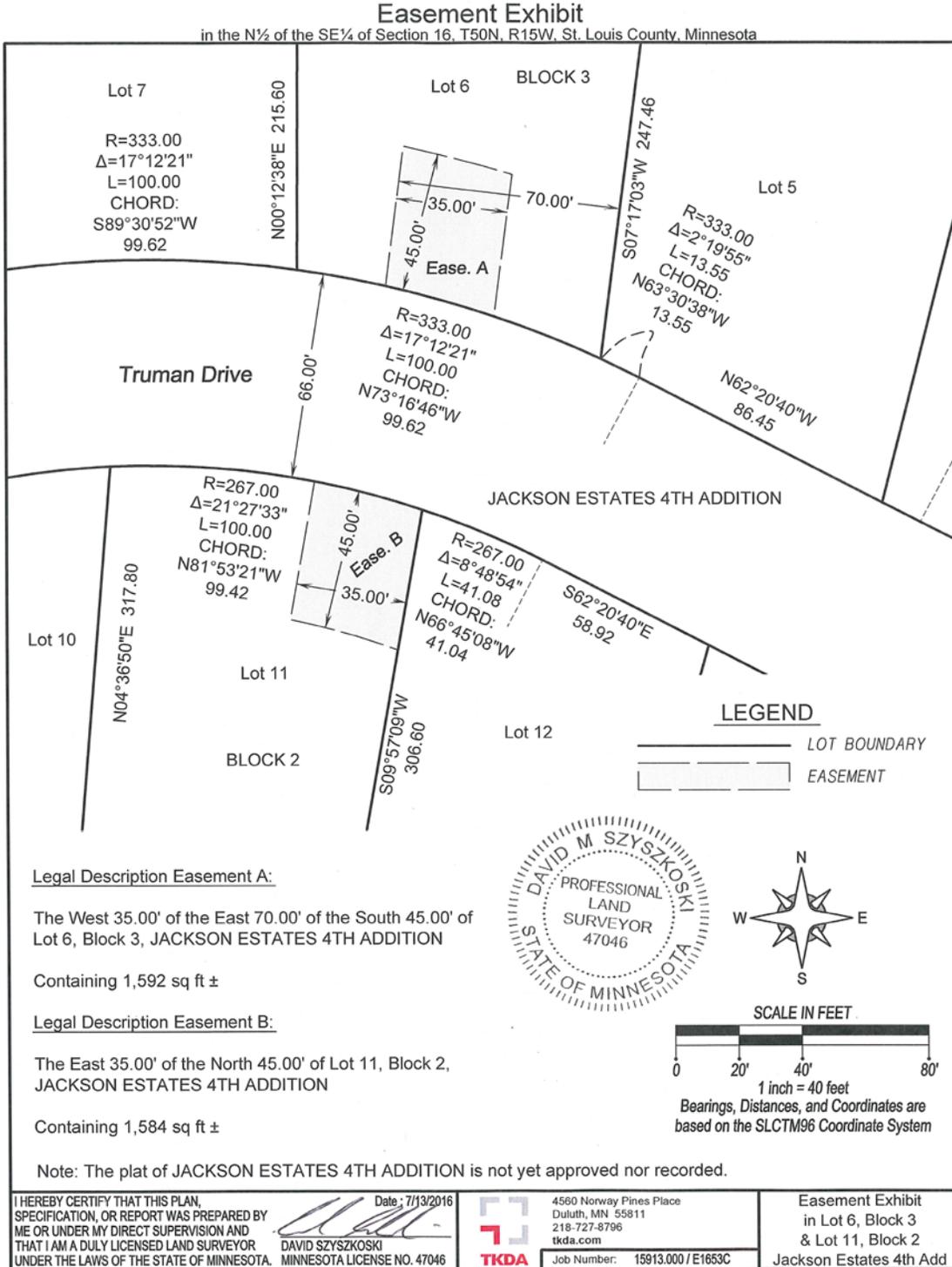


EXHIBIT B
CERTIFICATE OF FINAL COMPLETION

Date of Issuance: _____, 2016

This Certificate of Final Completion is made with reference to the following facts:

JLG Enterprises of Hermantown, LLP, a Minnesota limited liability partnership, (hereinafter the "Developer") entered into a Development Agreement (hereinafter referred to as "Development Agreement") with the City of Hermantown, a statutory city under the laws of the State of Minnesota, (hereinafter the "City"), with respect to a development to be constructed by Developer in the City.

The undersigned hereby certifies that the following facts and representations are true and correct:

1. The construction of the Infrastructure Improvements defined in the Development Agreement has been completed strictly in accordance with the Plans and Specifications and the terms of the Development Agreement. The date of final completion is hereby established as of _____.
2. All capitalized terms when used herein shall have the meaning given them in the Development Agreement.

JLG Enterprises of Hermantown, LLP

Name of Developer's Contractor

By _____
Its _____

By _____
Its _____

The undersigned, the City Engineer, based on the foregoing Certificate and such other testing and inspections as it deemed necessary hereby certifies that the construction of the Infrastructure Improvements defined in the Development Agreement have been fully completed strictly in accordance with the Plans and Specifications.

Dated: _____

Northland Consulting Engineers. L.L.P.

By _____
Its _____

EXHIBIT 9

CONSTRUCTION SCHEDULE JACKSON ESTATES 4th ADDITION

The proposed schedule for the construction is as follows:

Before October 15, 2016:

- Final plat approved by City of Hermantown.
- Required Security provided to City.
- Preconstruction meeting held
- Clear and grub entire road right of way of Truman Road and Jefferson Drive to McKinley, install erosion control measures to set limits to prevent wetland impact and to protect water quality during construction.
- Water mains and service lines from station 8+00 on Truman Road east to the Ugstad Road intersection are completed.
- Sanitary sewer mains and service lines from station 8+00 on Truman Road east to Ugstad Road are completed.
- Truman Road completed as a gravel road from station 8+00 east to Ugstad Road.
- Hammerhandle-style turnaround will be installed at west end of Truman Road at station 8+00, per city specs as a gravel cul-de-sac.
- Dead End sign will be installed on Truman Road at Ugstad Road.
- All wetland work for the entire plat will be completed.
- All stormwater work related to Truman Road from station 8+00 east to Ugstad Road will be completed.

Before October 15, 2017:

- Utilities and stormwater work and road construction of Truman Road and Jefferson Road as gravel roads from station 8+00 west and north to connect with McKinley Road will be completed.
- First layer of blacktop installed on Truman Road from station 8+00 east to Ugstad Road

Before October 15, 2018

The final section of road and utility construction (Jefferson Drive south of Truman) will be completed as follows:

- Complete final construction of the Jefferson Drive cul-de-sac.

- Jefferson Drive from McKinley Drive to Truman Road and Truman Road to Ugstad Road will be fully and finally blacktopped.
- Water mains, sanitary sewer mains, and related service laterals will be constructed to remaining lots surrounding the Jefferson Drive cul-de-sac.

By September 30, 2019:

All Infrastructure work must be completed.

Additional Items:

- Developer will apply dust control on gravel road surfaces during the construction and development period as required by any permits issued to Developer and as directed by the City Public Works Director and snow plow and maintain roads until accepted by the City.
- If any work on the Plat is not completed within the required times, the City of Hermantown may complete the work by utilizing the letters of credit and escrow funds from the developer for funds necessary to complete Truman Drive and Jefferson Drive (without any utilities and without the Jefferson Drive cul-de-sac) and Stormwater Maintenance Facilities.

EXHIBIT 21

DECLARATION OF STORMWATER AND WETLAND RESTRICTIONS

JLG ENTERPRISES OF HERMANTOWN, LLP, a Minnesota limited liability partnership, (“Developer”) hereby certifies and declares that Lot _____, Block _____ Jackson Estates 4th Addition (“Property”) is subject to the restrictions contained within that certain Development Agreement between Developer and the City of Hermantown dated _____, 2016 and recorded the _____ day of _____, 20__ as Document No. _____ with the _____ of St. Louis County, Minnesota. Such restrictions include, but are not limited to, the following:

1. The stormwater control facilities located on the Property, as shown on **Exhibit A** attached hereto (“Stormwater Facilities”), may not be disturbed or changed without the prior written approval of the City. The owner of the Property is obligated to maintain the Stormwater Facilities on the Property at such owner’s cost and expense.

2. The City may enter upon the Property to repair, maintain and modify, at its discretion, the Stormwater Facilities.

3. The permanent wetland markers installed on the Property may not be removed or disturbed in any manner. The wetland areas on the Property may not be disturbed in any manner.

4. The City may enter upon the Property to repair, maintain and correct any disturbances to the wetland areas on the Property.

5. If the owner of the Property fails to maintain the Stormwater Facilities or modifies or disturbs the Stormwater Facilities or wetland areas, then the City may assess the cost of repairing or restoring the Stormwater Facilities or wetland areas against the Property pursuant to the provisions of Chapter 429 of the Minnesota Statutes or it may declare such failure or such modification or disturbance to be a hazard to public safety or health and proceed to take actions which are permissible under Minnesota Statutes §463.15, et. seq., to enjoin or abate the hazard and collect the costs thereof as provided for in such statutes.

6. No building permit will be issued for any construction on the Property until a Stormwater Certificate has been issued by the City with respect to the work for which a building permit is sought.

7. This Declaration shall run with the land and be binding on Developer and its successors and assigns.

[SIGNATURE APPEARS ON NEXT PAGE]

EXHIBIT A

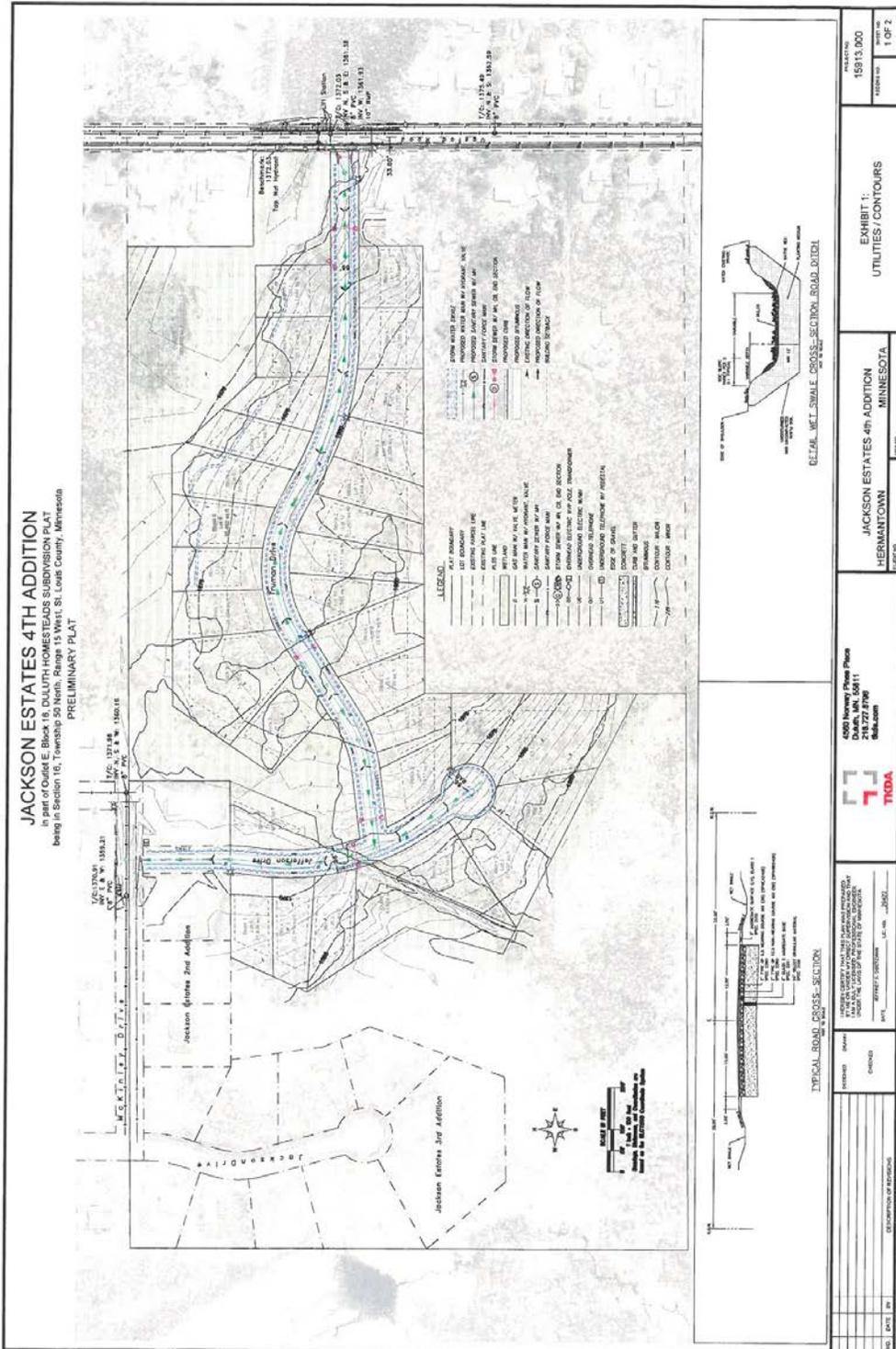


EXHIBIT 22

[TO BE PLACED ON CITY'S LETTERHEAD]

«Date»

«Name»

«AddressBlock»

«AddressBlock»

Dear _____:

Thank you for becoming a utility customer of the City of Hermantown.

We want to let you know that the City of Hermantown prides itself on being environmentally friendly. In furtherance of this, the City has required wetland areas on and adjacent to your property to be marked. These markers have to stay in place and the wetlands marked by the markers need to remain undisturbed.

In addition, the City has required the a stormwater control system be constructed on your property so that the quantity and quality of stormwater leaving your property after a storm is the same as it was before your property was developed. As with the wetlands, this stormwater system has to remain undisturbed in order for it to work. You cannot modify this stormwater system without the City's prior written approval. You are also required to maintain the stormwater system that is located on your property.

Further detail regarding the wetlands and stormwater facilities are set for the in the Declaration of Stormwater and Wetland Restrictions that is enclosed and that has also been recorded with your property title.

Also, please feel free to call City Hall at any time if you have any questions.

Sincerely,

Enclosure

**EXECUTIVE SUMMARY OF
DEVELOPMENT AGREEMENT**

1. Developer agrees and provides security (cash escrow, \$200,000.00 letter of credit for stormwater work and \$450,000.00 letter of credit for connection to McKinley Drive and other items) to secure such agreement that the following work will be done:
 - 1.1. Before October 15, 2016:
 - 1.1.1. All Stormwater Facilities related to the first 950 feet of Truman Road required by the City's Stormwater Certificate are completed.
 - 1.1.2. All Wetland filling and work permitted and required by the Wetland Replacement Plan is completed.
 - 1.1.3. All utilities in and a gravel road with a hammerhandle turnaround from station 8+00 on Truman Road east to Ugstad Road are completed.
 - 1.2. Before October 15, 2017:
 - 1.2.1. First lift of blacktop on Truman Road from station 8+00 east to Ugstad Road is completed.
 - 1.2.2. Jefferson Drive from McKinley Drive to Truman Road and then east on Truman Road to station 8+00 on Truman is constructed as a gravel road.
 - 1.2.3. All Stormwater Facilities related to this road work is completed.
 - 1.3. Before October 15, 2018:
 - 1.3.1. Jefferson Drive from McKinley Drive to Truman Road and then east on Truman Road to Ugstad Road fully blacktopped and completed.
 - 1.4. Before September 30, 2019 all Stormwater Facilities are completed.
2. Developer also agrees but does not provide security that the following items will be completed:
 - 2.1. Before October 15, 2018 construct the utilities in Jefferson Drive from McKinley Drive to Truman Road and then east on Truman Road to station 8+00.
 - 2.2. Before September 30, 2019 all Infrastructure Work (including Jefferson Drive cul-de-sac) in the Plat is fully completed.

3. City will:

3.1. Issue building permits for first 12 lots upon execution of the Development Agreement and security provided.

3.2. Issue building permits for any other lots after they are served by water and sewer and a completed road. (Note: Road must be fully blacktopped)

4. Exceptions to past practices:

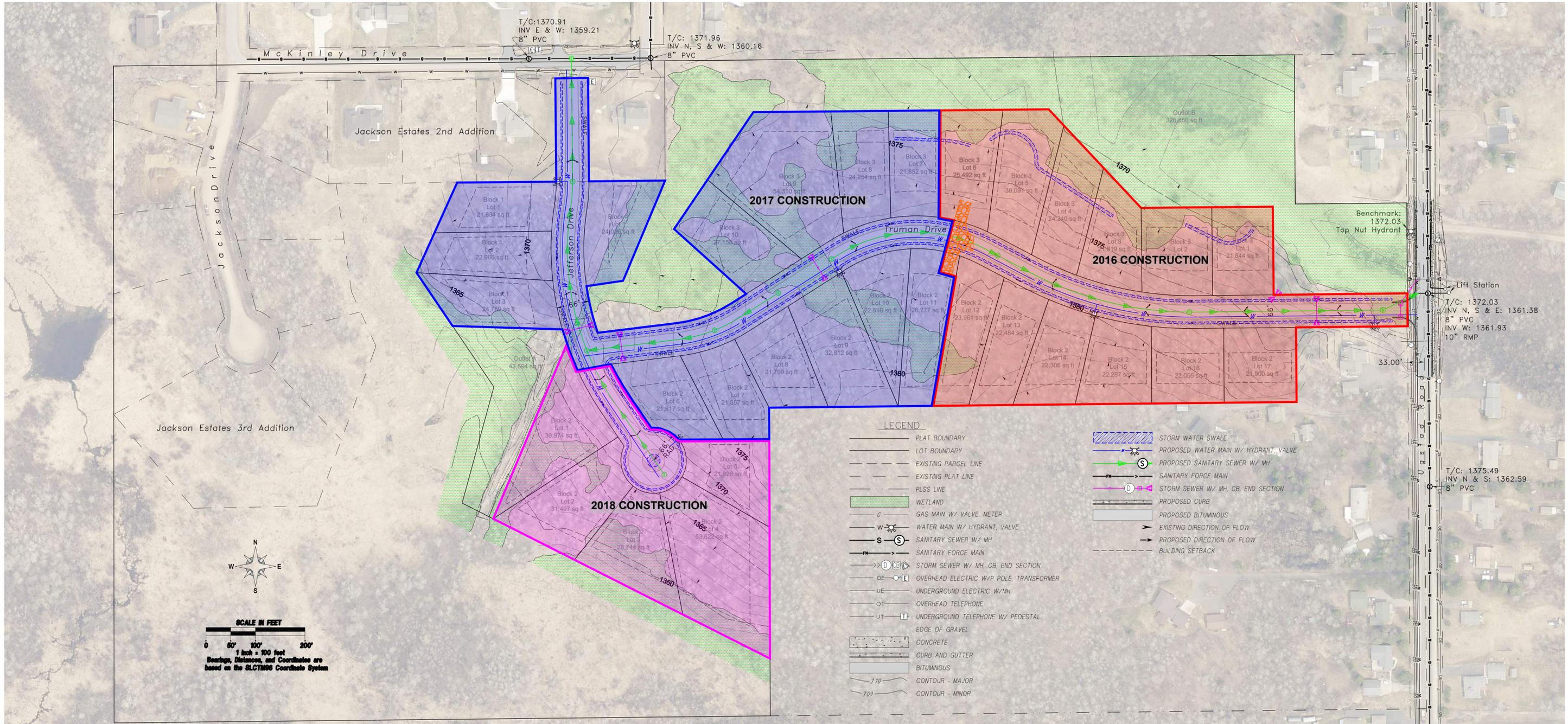
4.1. Lots may be sold in the Plat that do not have utilities on a completed road even though building permits will not be issued for construction on such lots until the utilities and roads are constructed.

4.2. Enforcement of Collateral and letters of credit is not always a “slam dunk”

JACKSON ESTATES 4TH ADDITION

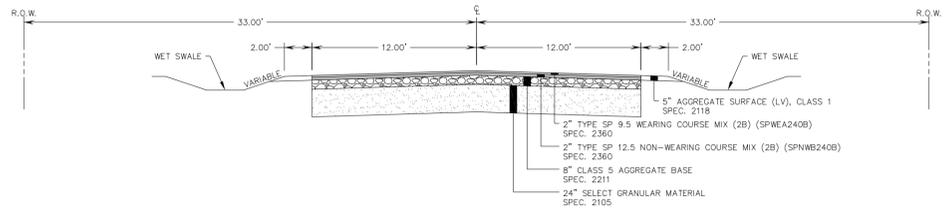
in part of Outlot E, Block 16, DULUTH HOMESTEADS SUBDIVISION PLAT
being in Section 16, Township 50 North, Range 15 West, St. Louis County, Minnesota

PRELIMINARY PLAT

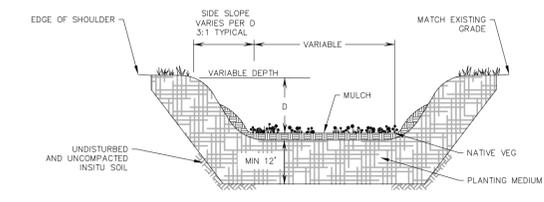


SCALE IN FEET
0 50' 100' 200'
1 inch = 100 feet
Bearings, Distances, and Coordinates are based on the SLCTM96 Coordinate System

- LEGEND**
- PLAT BOUNDARY
 - LOT BOUNDARY
 - - - EXISTING PARCEL LINE
 - - - EXISTING PLAT LINE
 - - - PLSS LINE
 - WETLAND
 - G GAS MAIN W/ VALVE, METER
 - W WATER MAIN W/ HYDRANT, VALVE
 - S SANITARY SEWER W/ MH
 - SANITARY FORCE MAIN
 - STORM SEWER W/ MH, OB, END SECTION
 - OVERHEAD ELECTRIC W/P POLE, TRANSFORMER
 - UNDERGROUND ELECTRIC W/MH
 - OVERHEAD TELEPHONE
 - UNDERGROUND TELEPHONE W/ PEDESTAL
 - EDGE OF GRAVEL
 - CONCRETE
 - CURB AND GUTTER
 - BITUMINOUS
 - 710 CONTOUR - MAJOR
 - 709 CONTOUR - MINOR
 - STORM WATER SWALE
 - PROPOSED WATER MAIN W/ HYDRANT, VALVE
 - PROPOSED SANITARY SEWER W/ MH
 - SANITARY FORCE MAIN
 - STORM SEWER W/ MH, OB, END SECTION
 - PROPOSED CURB
 - PROPOSED BITUMINOUS
 - EXISTING DIRECTION OF FLOW
 - PROPOSED DIRECTION OF FLOW
 - BUILDING SETBACK



TYPICAL ROAD CROSS-SECTION
NOT TO SCALE



DETAIL WET SWALE CROSS-SECTION ROAD DITCH
NOT TO SCALE

FIELD BOOK: Plot Date: 07/13/2016
Plot Name: Hermantown, Official Project: 15913.000-Jackson Estates 4th Addition-Concept/4-Production/01_CAD/02_Concepts/Plat-Sheet-2.dwg
User: Background/Plat-Sheet-2.dwg

NO.	DATE	BY	DESCRIPTION OF REVISIONS

DESIGNED	DRAWN	I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA
CHECKED	DATE	
		JEFFREY S. GOETZMAN LIC. NO. 26422



4560 Norway Pines Place
Duluth, MN. 55811
218.727.8796
tkda.com

JACKSON ESTATES 4th ADDITION
HERMANTOWN MINNESOTA

EXHIBIT 1:
UTILITIES / CONTOURS

PROJECT NO. 15913.000	SHEET NO. 1 OF 2
RECORD NO.	