

**CITY COUNCIL MEETING
JULY 6, 2020
ADDENDUM**

12. RESOLUTIONS

2020-97 Resolution Authorizing And Directing The Mayor And City Clerk To
Execute And Deliver Development Agreement With P & R Properties
Twin Ports LLC

(motion, roll call)

Resolution No. 2020-97

**RESOLUTION AUTHORIZING AND DIRECTING
THE MAYOR AND CITY CLERK TO EXECUTE AND DELIVER
DEVELOPMENT AGREEMENT WITH P&R PROPERTIES TWIN PORTS LLC**

WHEREAS, P&R Properties Twin Ports LLC (“Developer”) owns property located within the City of Hermantown; and

WHEREAS, Developer has requested the City to approve the Commercial Industrial Development Permit for the P&R Hermantown Apartments (“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:

Councilors

and the following voted in opposition thereto:

WHEREUPON, such resolution was declared duly passed and adopted July 6, 2020.

DEVELOPMENT AGREEMENT

BY AND BETWEEN

**P & R PROPERTIES TWIN PORTS, LLC
("DEVELOPER")**

AND

**CITY OF HERMANTOWN
("CITY")**

Dated as of the _____ day of _____, 2020

THIS DOCUMENT WAS DRAFTED BY:

Steven C. Overom
Overom Law
11 East Superior St., Suite 543
Duluth, Minnesota 55802
(218) 625-8460

DEVELOPMENT AGREEMENT

THIS AGREEMENT, made on or as of the ____ day of _____, 2020, by and between **City of Hermantown**, (hereinafter referred to as the “City”) and **P & R Properties Twin Ports, LLC** a Minnesota limited liability company (hereinafter referred to as the “Developer”), is in response to the following situation:

A. “Developer owns certain real estate in the City legally described on Exhibit A attached hereto (“Land”).

B. The Developer desires to construct a multi-unit residential facility on the Land (“Project”).

C. In order to develop the Project, Developer needs to construct Stormwater Improvements, an extension to the City Sewer Main, Sewer Connections and Water Connections (as such terms are defined in Article VI) which will service the Project.

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I Representations and Warranties

The Developer represents and warrants that:

1.1 Developer will construct, operate and maintain the Project in accordance with the terms of this Agreement, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations) the provisions of that certain Commercial Industrial Development Permit dated _____, 20__ (“CIDP”) and recorded with the County Recorder office of St. Louis County, Minnesota on _____, 20__ as Document No. _____ and the provisions of that certain MS4 Statement of Compliance dated _____, 20__ (“MS4 Statement of Compliance”) The CIDP and MS4 Statement of Compliance are also on file with the City Clerk of the City.

1.2 The Developer has received no notice or communication from any local, state or federal official that the activities of the Developer pursuant to this Agreement may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts, the existence of which would cause it to be in violation of any local, state or federal environmental law, regulation or review procedure.

1.3 The Developer will use its best efforts to construct the Project in accordance with all local, state or federal energy-conservation laws or regulations.

1.4 The Developer will use its best efforts to obtain in a timely manner all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable

local, state and federal laws and regulations which must be obtained or met before the Project may be lawfully constructed.

1.5 Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions or any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which they are bound, or constitutes a default under any of the foregoing.

ARTICLE II Construction Plans

2.1. Construction of Project. The Project shall be constructed by the Developer on the Land in accordance with the Approved Site Plan (as defined below), CIDP and MS4 Statement of Compliance, all the foregoing which are hereby collectively hereinafter referred to as “City Zoning Approvals,” the Infrastructure Plans and Specifications and all other applicable codes, regulations, laws, and statutes, and at all times operate and maintain, preserve and keep the Project or cause the Project to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

2.2. Site Plan. Developer shall submit drawings showing the final site plan that includes a full landscape plan for the Project to the City for its approval. Once approved, the site plan shall be designated as the “Approved Site Plan”. If the Developer desires to make any material change in the Approved Site Plan, the Developer shall submit the proposed change(s) to the City for its approval. If the site plan, as modified by the proposed change, conform to the requirements of this Development Agreement, the City shall approve the proposed change and notify the Developer in writing of its approval. Such change in the Approved Site Plan shall, in any event, be deemed approved by the City unless rejected, in whole or in part, by written notice by the City to the Developer, setting forth in detail the reasons therefore. Such rejection shall be made within ten (10) days after receipt of the notice of such change. No approval by the City shall relieve the Developer of the obligation to comply with the terms of this Agreement, the terms of the City Zoning Approvals and Infrastructure Plans and Specifications and all applicable federal, state and local laws, ordinances, rules and regulations. Once approved, the modified site plan shall thereafter constitute the Approved Site Plan.

ARTICLE III Taxes

City makes no representation whatsoever with respect to the amount of real estate taxes payable by Developer from and after the date hereof or with respect to the classification of the Land and Project for real estate tax purposes.

ARTICLE IV
Additional Covenants by Developer

4.1. Developer Covenants. Developer hereby covenants and agrees as follows:

4.1.1. To pay all of the costs of the Project, Sewer Main, Stormwater Improvements, Sewer Connections and Water Connections (collectively “Infrastructure Improvements”) and indemnify and hold harmless City from paying for any such costs.

4.1.2. To pay all costs and expenses incurred by City in connection with the initial review, consideration and inspection of the Project and thereafter in connection with the determination of whether the conditions of the construction of the Infrastructure Improvements required for the development of the Project have been completed in accordance with the Infrastructure Plans and Specifications including professional fees for City consultants within thirty (30) days of being invoiced for such amounts. The City agrees to provide the Developer with invoices and other documents evidencing such costs and expenses.

4.1.3. 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 Infrastructure Plans and Specifications approved by the City Engineer and City Public Works Director.

4.1.4. To construct the Sewer Main, as defined in Section 6.1.10, prior to the issuance of a Certificate of Occupancy for the Project at the sole cost and expense of Developer pursuant to the Assessment Agreement as defined in Section 4.1.5.

4.1.5. To pay, prior to connection to the public sewer or water service, all required sewer connection fees and permit fees and water connection fees, any sewer availability charges, water availability charges, sewer assessments or water assessments reserved or levied against the Land and any WLSSD Capacity Availability Fee (“CAF”) applicable to any sewer connection including the fees and charges identified on Exhibit 13.1.4 attached hereto. Developer shall, prior to the issuance of a building permit or commencing construction of the Project, execute and deliver to City an Agreement of Assessment and Waiver of Irregularity and Appeal (“Assessment Agreement”) with respect to the construction of the Sewer Main and Ugstad Road Lift Station in the form of the one attached hereto as Exhibit 4.1.5.

4.1.6. To pay all required park dedication fees prior the issuance of a building permit or commence of construction of the Project.

4.1.7. To complete the construction of the Infrastructure Improvements in accordance with Article VI hereof and pay all costs related thereto prior to the issuance of a Certificate of Occupancy for the Project.

4.1.8. To complete the construction of the Stormwater Improvements in accordance with the MS4 Statement of Compliance and pay all costs related thereto prior to the issuance of a Certificate of Occupancy for the Project.

4.1.9. Developer shall provide a security deposit equal to 125% of cost of construction of the Stormwater Improvements prior to the issuance of a building permit or commencement of construction of the Project. No building permits shall be granted for the Project until an MS4 Statement of Compliance for the Project is issued. The Stormwater Improvements are defined as the entire system utilized to collect, convey and treat stormwater. The security is to be in effect until all of the Stormwater Improvements have been constructed and the City Engineer and City Public Works Director executes a Certificate of Completion with respect to the Stormwater Improvements attesting that they have been properly constructed.

4.1.10. Developer shall be responsible for the ongoing perpetual maintenance and repair of the Stormwater Improvements and compliance with the MS4 Statement of Compliance.

4.1.11. Developer shall plant the landscaping as shown on the Approved Site Plan prior to the issuance of a building permit or a Certificate of Occupancy for the Project. Developer shall at all times maintain the landscaping in good condition and free of weeds and debris.

4.1.12. Developer shall obtain the necessary MNDOT permits for the removal of (2) driveways, regrading of MNDOT's ditch and the connection to the City's waterline in MNDOT Right of Way and provide copies of such permits to City prior to commencing construction of the Project.

4.1.13. Developer will finalize wetland impacts, purchase wetland impact credits if required and obtain all permits in regards to wetland impacts prior to the issuance of a building permit or commencing construction of the Project.

ARTICLE V

Open Burning Restriction

Developer shall not allow any on-site burying or burning of brush or other site debris on the Land.

ARTICLE VI
Construction of Infrastructure Improvements

6.1. Definitions

6.1.1. City Attorney. Whenever the term “City Attorney” is used in this Agreement, it shall mean the person or firm from time to time designated by the City as its City Attorney. At this time the City Attorney is Steven C. Overom of Overom Law, PLLC.

6.1.2. City Engineer. Wherever the term “City Engineer” is used herein. At this time, the City Engineer is David Bolf.

6.1.3. City Planner. Whenever the term “City Planner” is used in this Agreement. At this time, the City Planner is Eric Johnson.

6.1.4. City Zoning Approvals. Wherever the term “City Zoning Approvals” is used in this Agreement, it shall mean the MS4 Statement of Compliance, CIDP Order and Approved Site Plan.

6.1.5. Date of Final Completion. Whenever the term “Date of Final Completion” is used in this Agreement, it shall mean the date the City Engineer executes and delivers to Developer and the City a Certificate of Final Completion in accordance with Section 6.3.6 of this Agreement.

6.1.6. Infrastructure Improvements. Whenever the term “Infrastructure Improvements” is used in this Agreement it shall mean the Stormwater Improvements, Sewer Main, Water Connections and Sewer Connections.

6.1.7. Infrastructure Plans and Specifications. Wherever the term “Infrastructure Plans and Specifications” is used in this Agreement, it shall mean the plans and specifications approved by the City Engineer for the Infrastructure Improvements pursuant to Section 6.3 of this Agreement.

6.1.8. Landscaping. Whenever the term “Landscaping” is used in this Agreement, it shall mean the landscaping as shown on the Approved Site Plan.

6.1.9. Sewer Connection. Whenever the term “Sewer Connection” or “Sewer Connections” is used in this Agreement, it shall mean the sewer lateral from the City sewer main to the Project.

6.1.10. Sewer Main. Whenever the term “Sewer Main” is used in this Agreement, it shall mean an extension of the City’s sewer main from the Ugstad Road Lift Station to the northern boundary of the Land.

6.1.11. Unavoidable Delays. Whenever the term “Unavoidable Delays” is used in this Agreement it shall mean delays which are the direct result of strikes, other labor

troubles, war, terrorist acts, natural disasters, adverse weather conditions, fire or other casualty, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit which directly results in delays and delays described in any force majeure provision that is contained in Developer's construction contract for such work, the effect of such provision which is to extend the time allowed the contractor under such construction contract to complete the work.

6.1.12. Water Connection. Whenever the term "Water Connection" or "Water Connections" is used in this Agreement, it shall mean the water service line from the City water main to the Project.

6.2. Construction and Maintenance of Stormwater Improvements. Developer acknowledges and agrees that it will construct the Stormwater Improvements in accordance with the MS4 Statement of Compliance at no cost to the City and continuously maintain the Stormwater Improvements at no cost to the City. Developer and its successors and assigns must, at its cost and expense, maintain and repair the Stormwater Improvements so that the Stormwater Improvements continue to perform the designed storm water functions. Developer and its successors and assigns shall keep records for up to six years, or as required under applicable law, of inspection, maintenance and monitoring of the Stormwater Improvements and provide such records to the City within thirty (30) days after receipt of written request for the records from the City. In the event that Developer or its successors and assigns fails to repair and/or maintain the Stormwater Improvements in accordance with applicable codes, regulations, laws, and statutes, then in that event, the City may, following sixty (60) days prior written notice to all of the then owners of the Land, perform the required repairs or maintenance work on the Stormwater Improvements and charge the reasonable costs of such work to the Land in accordance with the provisions of Minnesota Statutes Section 429.021, Subd. 1(2) and the special assessment procedures of Chapter 429 of Minnesota Statutes. In the event of an uncured default for which the City elects to perform the required repairs and maintenance work on the Stormwater Improvements, the City shall do so strictly in accordance with all laws, rules and regulations applicable to Developer, the Stormwater Improvements, and the Land, including without limitation, all applicable stormwater regulations. Developer shall retain the ownership of the entire Stormwater Improvements and shall be responsible for the repair and maintenance of the entire Stormwater Improvements. City shall not be responsible for the maintenance and repair of any part of the Stormwater Improvements, including without limitation any ponds or outlet structures located on the Land. Developer hereby grants a permanent license to City for access to any portion of Stormwater Improvements for the purposes of City performing testing and monitoring of the Stormwater Improvements and performing maintenance and repairs permitted to be made by City under this Section.

6.3. Infrastructure Improvements.

6.3.1. Plans and Specifications. Developer shall prepare detailed plans and specifications for the construction of the Infrastructure Improvements for the review and approval by the City Engineer. All construction work on the Infrastructure Improvements shall be completed strictly in accordance with the plans and specifications approved pursuant to this Section 6.3.1.

6.3.2. Pre-Construction Meeting. 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 all 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 as such times and appropriate payment arrangements are made.

6.3.3. Testing, Inspection, Final Completion. 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 Infrastructure 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 provide a Certificate of Final Completion in the form attached hereto as Exhibit 6 to the City upon the completion of the Infrastructure Improvements. Developer will pay all costs and fees of the City Engineer in connection with the approvals, testing and inspection required by this Section 6.3.

6.3.4. "As Built" Plans (Record Drawings). Developer will provide, at Developer's cost and expense, construction record drawings ("record drawings") for the Infrastructure Improvements constructed by it pursuant to this Agreement on paper and electronically in auto-cad format to the City before any security provided by Developer pursuant to this Agreement is released.

6.3.5. Date of Final Completion of Infrastructure Improvements. The construction of the Infrastructure Improvements shall be deemed to be completed on the date the City Engineer executes and delivers to Developer and the City a Certificate of Final Completion in the form attached hereto as Exhibit 6. Developer acknowledges and agrees that the City Engineer will not execute the Certificate of Final Completion until the construction of the Infrastructure Improvements have been fully completed in accordance with the Infrastructure Plans and Specifications.

6.3.6. Acceptance of Infrastructure Improvement. Developer acknowledges and agrees that the City has no obligation to maintain, improve or repair the Stormwater Improvements, Sewer Connections and Water Connections and that Developer will remain responsible for the foregoing items. Developer shall be responsible for, indemnify and hold harmless the City from paying for all costs and expenses in connection with the installation and construction of the Infrastructure Improvements. Prior to the issuance of a Certificate of Final Completion, City shall be entitled to repair the Infrastructure Improvements at the expense of Developer if Developer fails to repair the Infrastructure Improvements. Any costs and expenses incurred by the City in connection with any such repair of the Infrastructure Improvements shall be paid by Developer to the City immediately upon receipt by Developer of an itemized statement for the cost and expense incurred by the City in repairing the Infrastructure Improvements. If Developer fails to pay such amount to the

City within thirty (30) days of the mailing of such itemized statement by the City to Developer, then the City may proceed to collect such amount from Developer in whatever manner it deems appropriate, including, without limitation, assessing the amount of such statement against the Land in the manner provided by law. In this regard, Developer agrees that any charge made by the City for the repair of the Infrastructure Improvements shall be a charge for sewer service or water service. Nothing in this section shall be deemed to require the City to repair the Infrastructure Improvements. Developer acknowledges that if Developer fails to repair the Infrastructure Improvements, that City may discontinue allowing Developer to have access to the City water or sewer system. Upon the issuance of a Certificate of Final Completion, the Sewer Main shall become the property of the City and thereafter the City shall be responsible for the maintenance and repair of the Sewer Main.

6.3.7. 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 Infrastructure Plans and Specifications or whether the construction of the Infrastructure Improvements been completed in accordance with the Infrastructure Plans and Specifications.

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

ARTICLE VII

Dedication of Easements

7.1 Developer will grant to the City an easement for utility and sign installation over that portion of the Land shown on Exhibit 7.1 attached hereto and described on Exhibit 7.1 attached hereto. The easement shall be substantially in the form of the one attached hereto as Exhibit 7.1 and be executed in a manner acceptable to the City and City Attorney. The easement will require Developer and its successors and assigns to provide electrical service to the City sign constructed in the easement and pay for the cost of electrical services provided to such sign. No construction may commence or a building permit issued for the Project until the easement required by this Section 7.1 have been granted to the City.

7.2 City will grant to the Developer a temporary construction easement for grading purposes over that portion of the Land shown on Exhibit 7.2 hereto and described on Exhibit 7.2 attached hereto. Such easement shall be substantially in the form of the one attached hereto as Exhibit 7.2 and be executed in a manner acceptable to the City and City Attorney. This easement is temporary in nature and will expire on December 31, 2021.

ARTICLE VIII
Title Evidence Provided

Developer shall, concurrent with the execution and delivery of the easement required to be provided to the City pursuant to Section 7.1 hereof, provide City, at Developer's expense, with evidence of title, in form and substance acceptable to the City Attorney, showing good and marketable title free of liens and encumbrances in the entity or persons executing such easement. No building permit will be issued and no construction may commence on the Project unless title evidence required by this Article has been provided to the City.

ARTICLE IX
No Claims

Developer represents and warrants to the City that neither Developer nor any agent, subcontractor or any other party affiliated with Developer has any existing claims or causes of action against City in connection with the Development Agreement or the construction of the Infrastructure Improvements or the Project. Developer agrees to indemnify and hold harmless the City against any and all claims that may be brought at any time by any party whatsoever arising out of the construction of the Project, the Development Agreement or the construction of the Infrastructure Improvements.

ARTICLE X
Professional Fees

Developer shall pay to the City all reasonable fees and expenses incurred by the City in connection with the preparation of this Agreement and the administration and enforcement thereof, including, without limitation, reasonable attorney's fees and costs, City Planner fees and City Engineer fees within thirty (30) days of the date the City mails an invoice to Developer for any reasonable amount required to be paid to City by Developer pursuant to the Development Agreement. The City will not issue a building permit for any building in the Project and no construction may commence unless all amounts billed to Developer by the City to that date have been paid to the City by Developer.

ARTICLE XI
No Approval or Issuance of Other Permits

Except for the approvals specifically provided herein, nothing herein shall be construed as a permit or approval by the City or an agreement by the City to issue or provide any permit or approval to Developer with respect to the construction of the Project, the construction of any Infrastructure Improvements or otherwise. Without limiting the generality of the foregoing, Developer acknowledges and agrees that even if it satisfies all of the requirements imposed on it under this Agreement that the Project may not be opened unless and until all other required permits are obtained by Developer from all relevant governmental agencies.

ARTICLE XII
Interpretations

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

ARTICLE XIII
Building Permit; Commencement of Construction

13.1. Prior to the issuance of a building permit and the commencement of construction of the Project, the following must be satisfied:

13.1.1. Any easement dedications required by Section 7.1 hereof have been provided.

13.1.2. Any title evidence required by Article VIII hereof has been provided.

13.1.3. The Final CIDP has been signed and recorded.

13.1.4. Developer has paid all required sewer connection fees and permit fees and water connection fees, any sewer availability charges, water availability charges, sewer assessments or water assessments reserved or levied against the Land and any WLSSD Capacity Availability Fee (“CAF”) applicable to any sewer connection and all other fees described on Exhibit 13.1.4 shall have been paid.

13.1.5. Developer has paid all required park dedication fees.

13.1.6. This Development Agreement has been executed and recorded.

13.1.7. The Site Plan, including landscaping plan, has been approved by the City.

13.1.8. The Agreement of Assessment and Waiver of Irregularity and Appeal required by Section 4.1.5 has been executed and provided to the City.

13.1.9. An estimate of the cost of construction of the Stormwater Improvements has been provided and approved by the City Engineer.

13.1.10. The security required by Section 4.1.9 has been provided to the City.

13.1.11. The MnDOT approvals required by Section 4.1.12 have been obtained.

13.1.12. The Infrastructure Plan and Specifications have been approved by the City Engineer.

13.1.13. The MS4 Statement of Compliance has been issued by the City.

13.1.14. Developer has obtained approval of any wetland impacts on the Land related to the Project.

13.2. Prior to the issuance of a Final Certificate of Completion and Certificate of Occupancy for the Project, the following must be satisfied:

13.2.1. Construction of the Infrastructure Improvements has been completed in accordance with the Infrastructure Plans and Specifications.

13.2.2. The Stormwater Improvements have been completed in accordance with the MS4 Statement of Compliance and Infrastructure Plans and Specifications.

13.2.3. Developer has planted all of the landscape in accordance with the Approved Site Plan or an irrevocable letter of credit in the amount equal to one hundred twenty-five percent (125%) of the City Planner's estimate of the cost of materials and installation needed to ensure the completion of all landscaping. The letter of credit must be irrevocable and in form and substance acceptable to the City Administrator and City Attorney. Notwithstanding anything to the contrary contained herein, the Landscape Improvements shall, in all events, be completed by October 15, 2021.

13.2.4. The provisions of Article X of this Agreement with respect to the payment of fees have been satisfied.

13.2.5. Developer is not in default under this Agreement.

13.2.6. All applicable requirements of the Hermantown Building Code have been satisfied.

13.2.7. All of the items set forth in Section 13.1 have been satisfied.

13.2.8. All wetland work has been completed in accordance with any permits or approvals for such work.

13.2.9. Developer has provided the City with a map/plan on paper and electronically in auto cad format showing the location of water, Stormwater Improvements and sewer service lines.

13.2.10. Developer has installed a locating wire or equally effective means of marking the location of each non-conductive water or sewer service lines.

13.2.11. Developer has paid all costs and expenses incurred by City in connection with this Agreement and the transactions contemplated hereby, including professional fees for City consultants.

13.3. Prior to the release of any security provided by Developer to City, the following must be satisfied:

13.3.1. All of the items set forth in Section 13.1 and Section 13.2 have been satisfied.

13.3.2. Construction of the Infrastructure Improvements have been completed in accordance with the Infrastructure Plans and Specifications.

13.3.3. The landscaping has been fully completed and certified as complete by the City Planner.

ARTICLE XIV ASSIGNMENT AND TRANSFER

14.1 Representation as to Development. The Developer represents and agrees that its undertakings pursuant to the Agreement, are, and will be, for the purpose of Development of the Project and not for speculation in land holding. The Developer further recognizes that, in view of (a) the importance of the development of the Project to the general welfare of the community; (b) the fact that any act or transaction involving or resulting in a change in the identity of the parties in control of the Developer is of particular concern to the City. The Developer further recognizes that the City is entering into the Agreement with the Developer, and, in so doing, is willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants hereby by them to be performed.

14.2 Prohibition Against Transfer of Property and Assignment of Agreement. For the foregoing reasons, the Developer represents and agrees that, prior to the completion of the construction of the Infrastructure Improvements and issuance of the Certificate of Final Completion:

14.2.1 Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Land or any part thereof, to perform their obligations under the Agreement, any other purpose authorized by the Agreement, the Developer (except as so authorized) has not made or created, and that they will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance or lease, or any trust or power, or transfer in any other mode or form of, or with respect to, the Agreement or the Property or any part thereof or any interest therein, or any contract or agreement to do any of the same without the prior written approval of the City.

14.2.2 City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that:

14.2.2.1 Any proposed transferee shall have the qualifications and

financial responsibility, as determined by City, necessary and adequate to fulfill the obligations undertaken in the Agreement by the Developer (or, in the event the transfer is of or relates to part of the Land, such obligations to the extent that they relate to such part).

14.2.2.2 Any proposed transferee, by instrument in writing satisfactory to City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of City, has expressly assumed all of the obligations of the Developer under the Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to part of the Land, such obligations, conditions and restrictions to the extent that they relate to such part).

14.2.2.3 The original Developer remains obligated to perform the obligations hereunder unless City agrees otherwise in writing.

14.3 Transfers without Substantive Change of Control. City may, in its sole discretion, waive the requirements of Section 14.2 hereof with respect to a specified transfer, assignment or lease, if it determines, in its sole discretion, that the specified transfer, assignment or lease does not, as a practical matter, result in or involve a significant change in the identity of the parties in control of Developer or the parties responsible for the performance of the obligations of Developer under this Agreement.

ARTICLE XV
Notices

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed sent by U.S. Certified Mail to the following name and address:

If to Developer: P & R Properties Twin Ports, LLC
2306 W Superior Street
Duluth, MN 55816

If to City: City of Hermantown
5105 Maple Grove Road
Hermantown, MN 55811
Attn: John Mulder

With a copy to: Steven C. Overom
Overom Law, PLLC
11 E. Superior Street
Suite 543
Duluth, MN 55802

ARTICLE XVI
Binding Effect

This Development Agreement shall inure to the benefit of and shall be binding upon the City and Developer and their respective successors and assigns. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Land, or any party thereof, that the Developer, and such successors and assigns, shall diligently prosecute to completion the construction of the Infrastructure Improvements and Stormwater Improvements and the Project. It is intended and agreed that such agreements and covenants shall be covenants running with the Land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement itself, be, to the fullest extent permitted by law and equity, binding for the benefit of City and enforceable by City against the Developer and successors and assigns. Either party hereto may record this Development Agreement with the appropriate land title recording office.

ARTICLE XVII
Amendments, Changes and Modifications

Neither this Development Agreement nor any other document to which Developer is a party, or which is made for the benefit of the City, relating to the transactions contemplated hereunder may be effectively amend, changed, modified, altered or terminated, nor may any provision be waived hereunder, except upon the written approval of the City or except as otherwise expressly set forth herein.

ARTICLE XVIII
Severability

In the event any provisions of this Development Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

ARTICLE XIX
Limitation on City Liability

No agreements or provisions contained in this Development Agreement nor any agreement, covenant or undertaking by the City contained in any document executed by the City in connection with this Development Agreement and the transactions contemplated herein or therein, shall give rise to any pecuniary liability of the City or a charge against its general credit or taxing powers, or shall obligate the City financially in any way. No failure of the City to comply with any term, condition, covenant or agreement herein or under this Development Agreement shall subject the City to liability or claim for damages, costs or other financial or pecuniary charge; and no execution of any claims, demand, cause of action or judgment shall be levied upon or collected from the general credit, general fund or taxing powers of the City.

ARTICLE XX
Laws Governing

This Development Agreement shall be interpreted in accordance with and governed by the laws of the State of Minnesota.

ARTICLE XXI
Headings

The titles of articles and sections herein are for convenience only and are not a part of this Development Agreement.

ARTICLE XXII
Default

If Developer fails to perform its obligations hereunder and such failure continues after thirty (30) days written notice of such default is given to Developer by City, then, in that event, the City may take any one or more of the following actions:

22.1 Suspend its performance under this Development Agreement until it receives adequate assurances from Developer that Developer will cure the default and continue its performance under this Development Agreement.

22.2 Take whatever action, at law or in equity, which may appear necessary or desirable to the City to collect any payments due it hereunder including reasonable attorneys' fees incurred in connection with such actions or under this Development Agreement, or to enforce performance and observance of any obligation, agreement or covenant of Developer under this Development Agreement.

22.3 Exercise its rights under any security provided to it under this Agreement, including, without limitation, drawing on any letter of credit provided to City by Developer pursuant to this Agreement.

Notwithstanding the foregoing, if the Developer's failure to perform its obligations hereunder reasonably requires more than thirty (30) days to cure, such failure shall not constitute a default provided that the curing of such failure is promptly commenced upon receipt by the Developer of the notice of the failure, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that Developer keeps the City informed of its progress in curing the failure.

No remedy herein conferred upon or reserved to the City is intended to be inclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be

in addition to every other remedy given under this Development Agreement now or hereafter existing at law or in equity or by statute.

ARTICLE XXIII
Counterparts

This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

ARTICLE XXIV
Additional Provisions

24.1. Conflict of Interests; City Representatives not Individually Liable. No member, official or employee of the City shall have any personal interest, direct or indirect, in the Agreement, nor shall any such members, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official or employee of the City shall be personally liable to the Developer or any successor in interest, in the event of any default or breach by the City for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement.

24.2. No Assurance of Permits. City, by entering into this Agreement, makes no representation or agreement that the Developer will be able to obtain a Building Permit or any other permit required to be obtained by it in order to construct any building on the Property.

[The remainder of this page has been left blank intentionally. Signature pages follow.]

**LIST OF EXHIBITS
TO DEVELOPMENT AGREEMENT
BETWEEN CITY OF HERMANTOWN
AND P & R PROPERTIES TWIN PORTS, LLC**

<u>Exhibit A</u>	Land
<u>Exhibit 4.1.5</u>	Agreement of Assessment and Waiver of Irregularity and Appeal
<u>Exhibit 6</u>	Certificate of Final Completion
<u>Exhibit 7.1</u>	Utility and Sign Easement
<u>Exhibit 7.2</u>	Temporary Construction Easement
<u>Exhibit 13.1.4</u>	Fees and Charges

EXHIBIT A
LEGAL DESCRIPTION OF THE LAND

A rectangular tract of land in the Northwest Quarter of the Northwest Quarter, Section 10, Township 50, Range 15, bounded as follows: On the North by the Southerly line of State Highway #53 as the same existed on January 31, 1946, running through said section; on the South by a line parallel to and 660 feet distant from the first mentioned line; on the West by the easterly line of the Ugstad Road as the same existed on January 31, 1946; and the East by a line parallel to the last mentioned line and 330 feet distant therefrom.

This is Abstract property.

EXHIBIT 4.1.5
**AGREEMENT OF ASSESSMENT AND
WAIVER OF IRREGULARITY AND APPEAL**

THIS AGREEMENT, is made this ____ day of _____, 2020, between the **City of Hermantown**, State of Minnesota, hereinafter referred to as the “City,” and **P & R Properties Twin Ports, LLC**, a Minnesota limited liability company, hereinafter referred to as “Owner,” whether one or more, in response to the following situation:

A. City has proposed to construct improvements to a sewer main (“Sewer Main”) and Ugstad Road lift station (“Ugstad Road Lift Station”) (with the Sewer Main and Ugstad Road Lift Station hereinafter collectively referred to as the “Project”) that serves a property owned by Owner located in the City of Hermantown, St. Louis County, Minnesota legally described on Exhibit A attached hereto (“Owner’s Property”).

B. The City Council of Hermantown held a public hearing on the Ugstad Road Lift Station portion of the Project which was identified as Sewer District No. 449 (“Sewer District 449”).

C. Following the public hearing, the City Council approved Resolution No. 2019-168 adopting the assessment roll for Sewer District 449.

D. Owner was assessed One Hundred Thousand and No/100 Dollars (\$100,000.00) pursuant to Resolution No. 2019-179.

E. A summary of the sources and uses related to the Project is attached hereto as Exhibit B (“Estimated Total Project Costs”).

F. City and Owner have entered into negotiations for the construction of the Sewer Main from the Ugstad Road Lift Station to Highway 53 and have arrived at an understanding with respect to the assessment for Sewer District 449 and for the extension of the Sewer Main.

NOW, THEREFORE, in consideration of the City constructing the Ugstad Road Lift Station and Owner agreeing to construct the Sewer Main, Owner and City hereby agree as follows:

1. Owner agrees to construct the Sewer Main and pay the entire cost, hard and soft costs, of the construction of the Sewer Main (“Total Sewer Main Costs”).

2. Owner shall provide City with a detailed summary of the Total Sewer Main Costs incurred by Owner in connection with the construction of the Sewer Main and provide evidence of the payment of the Total Sewer Main Costs in form and substance acceptable to City.

3. Owner agrees to pay the Total Sewer Main Costs and convey the Sewer Main to City upon completion of construction as and for the assessment against Owner’s Property with regard to the Project. City agrees to accept Owner’s payment of the Total Sewer Main Costs and

conveyance of the Sewer Main to City upon completion of construction as Owner's assessment for the Project, including the Ugstad Road Lift Station.

4. City agrees that the amount assessed against "Owner's Property" for the Project will be the amount determined by Section 3.

5. Pursuant to Minnesota Statutes §§429.081 and 462.3531, Owner hereby waives any objection to any irregularity with regard to assessments for the Project, any claim that the amount levied against Owner's Property is excessive and all rights to appeal the assessment levied granted Owner by Minnesota Statute §429.081. Owner acknowledges that the appeal rights granted by Minnesota Statutes §429.081 are Owner's exclusive method of appeal of the special assessment that will be levied against Owner's Property for the Project and by executing this Agreement, Owner will be forever and irrevocably waiving Owner's right to appeal.

6. Owner hereby further waives the requirement of hearings and notices of any hearings and objections to the assessment proceedings, the bidding and letting of contracts for the Project and the calculation and assessment of the project costs.

7. This Agreement will be filed for record with the appropriate St. Louis County land title recording office to reflect the fact that this Agreement is binding upon Owner and the heirs, successors and assigns of Owner and "runs with the land."

8. This Agreement shall be governed by the laws of the State of Minnesota.

9. Owner understands and agrees not to apply for deferral of the assessment payable with respect to the Project and that the City will not grant or approve any deferrals of any assessments payable with respect to the Project.

EXHIBIT A
Legal Description

A rectangular tract of land in the Northwest Quarter of the Northwest Quarter, Section 10, Township 50, Range 15, bounded as follows: On the North by the Southerly line of State Highway #53 as the same existed on January 31, 1946, running through said section; on the South by a line parallel to and 660 feet distant from the first mentioned line; on the West by the easterly line of the Ugstad Road as the same existed on January 31, 1946; and the East by a line parallel to the last mentioned line and 330 feet distant therefrom.

This is Abstract property.

EXHIBIT B
Estimated Total Project Costs
UGSTAD ROAD SEWER EXTENSION
FROM LIFT STATION TO HIGHWAY 53

<u>SOURCES</u>		
A. Lift Station	Original Sources	Present Sources
City Funds	191,406.25	50,094.70
P&R	100,000.00	100,000.00
Krause	20,000.00	20,000.00
Nelson	20,000.00	20,000.00
Billman	100,000.00	100,000.00
Gethsemne	<u>20,000.00</u>	<u>20,000.00</u>
	451,406.25	310,094.70
B. Sewermain	Original Sources	Present Sources
	Unidentified	100% P&R
C. Combined	Original Sources	Present Sources
Lift Station		310,094.70
Sewermain	Unidentified	<u>231,000.00</u>
Total Sources		541,094.70

<u>USES</u>		
A. Lift Station	Original Uses	Present Uses
Construction	352,925.00	
Engineer	52,938.75	
Geotechnical	4,000.00	
Easement	5,000.00	
Wetland	1,250.00	
Construction Contingency	17,646.25	
Administrative	<u>17,646.25</u>	
Total Project Costs	451,406.25	310,094.70
B. Sewer Main		Present Uses
Total project costs based on the estimate by City Engineer		231,000.00
C. Combined		Present Uses
Total Combined Project Cost		541,094.70

<u>TOTAL PROJECT PROPOSED SOURCES</u>	
City	150,094.70
Krause	20,000.00
Nelson	20,000.00
Gethsemne	20,000.00
Billman	<u>100,000.00</u>
Total	310,094.70
Deficit	231,000.00

EXHIBIT 6
CERTIFICATE OF FINAL COMPLETION

Date of Issuance: _____, 2020

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

P & R Properties Twin Ports, LLC (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 parties hereby certify 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 Infrastructure 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.

3. That the following have been satisfied:

3.1. Construction of the Infrastructure Improvements have been completed in accordance with the Infrastructure Plans and Specifications.

3.2. The Stormwater Improvements have been completed in accordance with the MS4 Statement of Compliance.

3.3. Developer has planted all of the landscape in accordance with the Approved Site Plan or an irrevocable letter of credit in the amount equal to one hundred twenty-five percent (125%) of the City Planner’s estimate of the cost of materials and installation needed to ensure the completion of all landscaping. The letter of credit must be irrevocable and in form and substance acceptable to the City Administrator and City Attorney. Notwithstanding anything to the contrary contained herein, the Landscape Improvements shall, in all events, be completed by October 15, 2021.

3.4. The provisions of Article X of this Agreement with respect to the payment of fees have been satisfied.

3.5. Developer is not in default under this Agreement.

3.6. All applicable requirements of the Hermantown Building Code have been satisfied.

3.7. All of the items set forth in Section 13.1 of the Development Agreement have been satisfied.

3.8. All wetland work has been completed in accordance with any permits or approvals for such work.

3.9. Developer has provided the City with a map/plan on paper and electronically in auto cad format showing the location of water, Stormwater Improvements and sewer service lines.

3.10. Developer has installed a locating wire or equally effective means of marking the location of each non-conductive water or sewer service lines.

3.11. Developer has paid all costs and expenses incurred by City in connection with this Agreement and the transactions contemplated hereby, including professional fees for City consultants.

P & R Properties Twin Ports, LLC

By _____
Its _____

Developer's Engineer:

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 completed strictly in accordance with the Infrastructure Plans and Specification, except as noted in Section 3.3 of the foregoing Certificate.

Dated: _____

Northland Consulting Engineers, LLP

By _____
Its _____

EXHIBIT 7.1

[TOP THREE INCHES RESERVED FOR RECORDING DATA]

EASEMENT

THIS INDENTURE is made and entered into this ____ day of _____, 2020, between **P & R Properties Twin Ports, LLC**, hereinafter called “Grantor,” and the **City of Hermantown**, a municipal corporation, hereinafter called “Grantee.”

WITNESSETH:

WHEREAS, Grantor is the owner of land situated in the City of Hermantown, St. Louis County, Minnesota; and

WHEREAS, Grantor has agreed to grant Grantee easement for utility and directional sign purposes across Grantor’s property.

NOW, THEREFORE, the said Grantor, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby grant and convey unto the City of Hermantown as Grantee, its successors and assigns, FOREVER:

An easement dedication for public purposes, including utilities and directional signs, including, but not limited to, the construction and maintenance of necessary slopes and fills, in, upon and across that part of said land owned by Grantor, more particularly described and shown on Exhibit A attached hereto (“Easement Area”).

Together with the right to enter upon and occupy so much of such property as may be necessary in constructing utility and directional sign and repairing or otherwise maintaining any required slope and fill or any other improvement built thereon, and including the right to remove any and all trees, shrubs and herbage therein.

It is understood that the right, privilege and easement herein granted and the provisions hereof shall extend to and bind the heirs, personal representatives, successors and assigns of the respective parties hereto. Grantor agrees to extend electrical power to the directional sign (“City Sign”) located within the Easement Area. Grantee will construct the footings, sign, landscape plantings and make the electrical connection to the City Sign. Upon completion of the construction of the City Sign, the

City shall be responsible for its ongoing repair and maintenance. Grantor shall pay for the electricity for the lighting of the City Sign and the cost of any water used for irrigating any landscape elements included as part of the City Sign installation.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be executed on the day and year first above written.

P & R PROPERTIES TWIN PORTS, LLC

By _____
Its _____

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ of P & R Properties Twin Ports, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

[ACCEPTANCE APPEARS ON NEXT PAGE]

ACCEPTANCE

City of Hermantown hereby accepts the foregoing easement.

Dated: _____

City of Hermantown

By _____
Its Mayor

And by _____
Its City Clerk

STATE OF MINNESOTA)
)ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ and _____, the Mayor and City Clerk, respectively, of the City of Hermantown on behalf of the City of Hermantown.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Steven C. Overom
Overom Law
11 East Superior St., Suite 543
Duluth, Minnesota 55802
(218) 625-8460

EXHIBIT 7.2

[TOP THREE INCHES RESERVED FOR RECORDING DATA]

TEMPORARY EASEMENT

THIS INDENTURE is made and entered into this ____ day of _____, 2020, between the **City of Hermantown**, a municipal corporation hereinafter called “Grantor,” and the **P & R Properties Twin Ports, LLC**, hereinafter called “Grantee.”

WITNESSETH:

WHEREAS, Grantor is the owner of land situated in the City of Hermantown, St. Louis County, Minnesota; and

WHEREAS, Grantor has agreed to grant Grantee a temporary easement for grading purposes across Grantor’s property.

NOW, THEREFORE, the said Grantor, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby grant and convey unto the P & R Properties Twin Ports, LLC, as Grantee, its successors and assigns until December 31, 2021.

A temporary easement (Temporary Easement) for grading purposes, including, but not limited to, the construction and maintenance of necessary slopes and fills, in, upon and across that part of said land owned by Grantor, more particularly described and shown on Exhibit A attached hereto (“Easement Area”).

Together with the right to enter upon and occupy so much of such property as may be necessary in constructing, repairing or otherwise maintaining any required slope and fill or any other improvement built thereon, and including the right to remove any and all trees, shrubs and herbage therein.

Grantee, as part of the consideration for this License, hereby releases and waives any and all claims and demands that it may or might have against Grantor for and on account of any damage or injury to its facilities or property of Grantee, caused by third parties who are also permitted to use the Easement Area by Grantor. Grantee does further agree to indemnify, protect and save harmless Grantor, its councilors, mayor, members, officers and employees from any and all claims, demands,

awards and actions made, brought or obtained against Grantor, its members, officers or employees, for any and all injuries to persons, including death arising therefrom, and damages to property due to, caused by or growing out of any accident or occurrence attributable to the fault, failure, or negligence of Grantee, and Grantee agrees to defend, at its own expense, any such suit or action brought against Grantor, its officers or employees, and pay any judgment recovered in any such suit or action.

Prior to use of the Property for activities provided herein, Grantee, at its sole cost and expense, will procure, and will maintain during the term of this Easement, insurance adequate to cover all liability herein assumed by Grantee and to protect Grantor and its councilors, officers, employees and agents with respect to losses arising out of the use of the Groomer and Property by Grantee its officers, mayor, councilors, employees, agents suppliers and employees. The insurance policies will name Grantor its officers, mayor, councilors, employees and agents as Additional Insureds and will be endorsed to provide coverage to these Additional Insureds on a primary basis without seeking contribution from any other insurance available to Grantor.

It is understood that the right, privilege and Temporary Easement herein granted and the provisions hereof shall extend to and bind the heirs, personal representatives, successors and assigns of the respective parties hereto.

This Temporary Easement shall expire and be of no force and effect after December 31, 2021.

[SIGNATURES APPEAR ON NEXT PAGE]

ACCEPTANCE

P & R Properties Twin Ports, LLC hereby accepts the foregoing Temporary Easement.

Dated: _____

P & R PROPERTIES TWIN PORTS, LLC

By _____
Its _____

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____ of P & R Properties Twin Ports, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Steven C. Overom
Overom Law
11 East Superior St., Suite 543
Duluth, Minnesota 55802
(218) 625-8460

EXHIBIT A

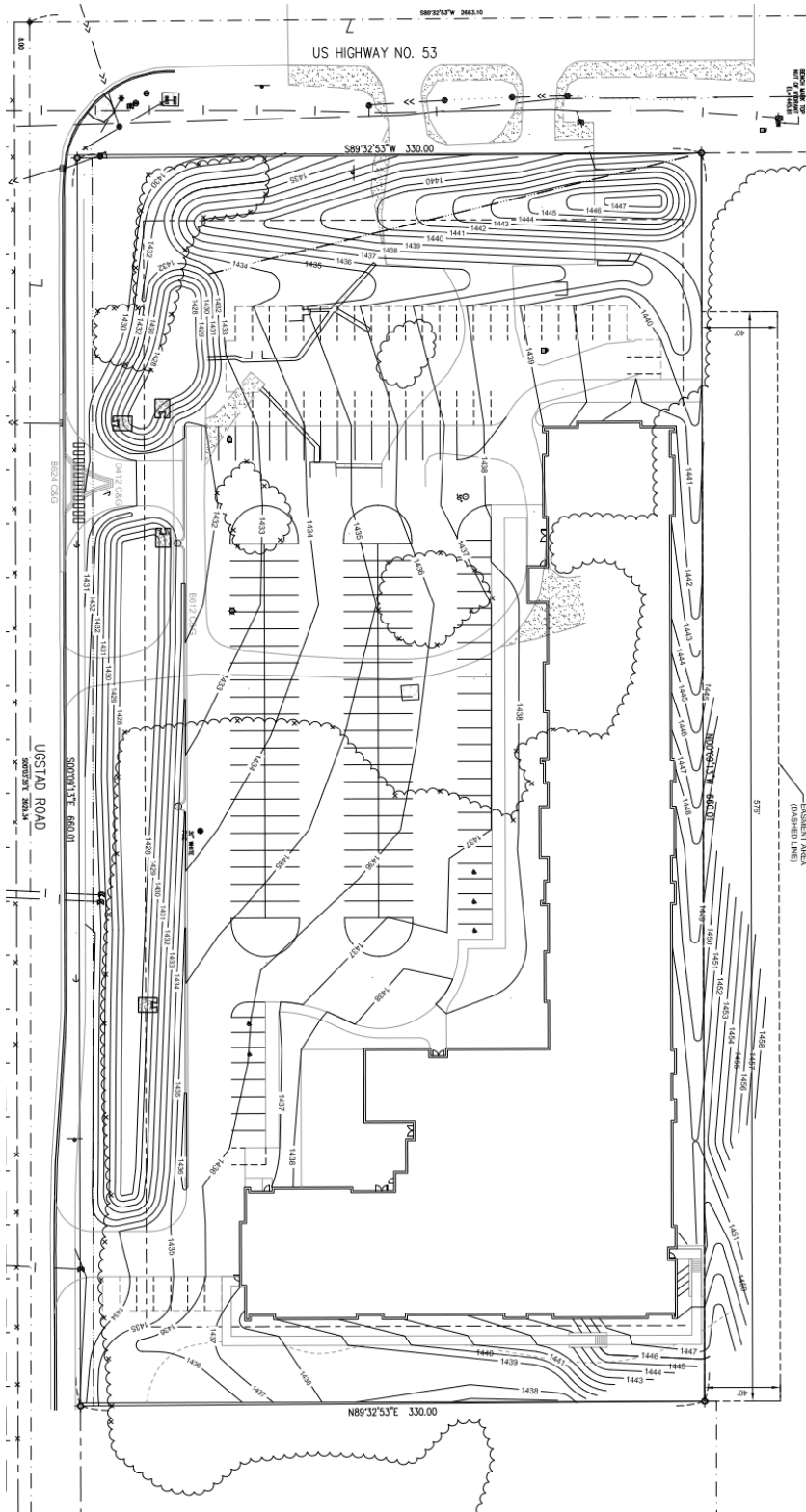


EXHIBIT 13.1.4
FEES REQUIRED TO BE PAID

Prior to the start of construction:

- Sewer connection fees
- Water connection fees
- WLSSD CAF
- Park Dedication Fees
- City Engineer fees incurred to-date
- City Attorney fees incurred to-date