



AGENDA

Madison Lake City Council

Monday, August 24, 2015 at 6:00 PM

Madison Lake Community Room

- 1) **Call Meeting to Order & Pledge of Allegiance**
- 2) **Roll Call**
- 3) **Resolution #2015-26 Approving Development Agreement for West Shore Estates**
- 4) **Resolution #2015-27 Approving Final Plat for West Shore Estates**
- 5) **Adjournment**

**RESOLUTION # 2015-26
DEVELOPMENT AGREEMENT**

**CITY OF MADISON LAKE
BLUE EARTH COUNTY, MINNESOTA**

THIS AGREEMENT, Made and entered into this ~~17th~~-24th day of August, 2015, by and between the City of Madison Lake, a municipal corporation organized under the laws of the State of Minnesota, hereinafter called “City”; and R&B Properties, LLC and/or its assigns, hereinafter called “the Developer”.

RECITALS

WHEREAS, the Developer is the fee owner of the Property described in Exhibit “A” (“Property”) consisting of 11.9 acres of unimproved land, more or less, located in the City of Madison Lake, Minnesota. The Developer intends to improve and develop the Property as a seventeen (17) unit, common interest community for residential housing to be known as “West Shore Estates” (sometimes referred to as “Development Project”); and

WHEREAS, the Developer has made application to the City pursuant to the City Zoning and Subdivision Ordinances for approval to subdivide and develop the Property into a seventeen (17) unit Common Interest Community, as such term is defined in Minn. Stat. § 515B.1-103 (10) (2014), and has filed with the City a Preliminary Plat for the Property; and

WHEREAS, the Madison Lake Planning Commission and City Council have reviewed the application and the City Council has given approval to the preliminary plat of West Shore Estates, subject to certain conditions as set forth by the City Council on July 13, 2015 and revised on August 3, 2015, and attached hereto as Exhibit “E”, and subject to the terms and conditions of this Agreement. Integral to the agreement of the parties hereto are that those conditions placed by the City Council on July 13, 2015 and August 3, 2015 merge into, and become an integral part of this Agreement; and

WHEREAS, the Developer has agreed to install at its expense all public improvements shown in Exhibit “B”. Said installation shall comply with all Statutes, Rules, Ordinances, and the like of the Federal Government, State of Minnesota, and City of Madison Lake, and or any of those governmental entities’ political subdivisions.

NOW THEREFORE, in consideration of the premises and of the mutual promises and conditions hereinafter contained, the City and Developer agree as follows:

Article I. Terms and Definitions:

Developer- R&B Properties, LLC.

City- The City of Madison Lake.

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Public Infrastructure Improvements- The infrastructure improvements to be built to City specifications by the Developer with ownership to be automatically transferred to the City in accordance with Section 5.09 of this Agreement.

Private Infrastructure Improvements- The infrastructure improvements \ to be built by the Developer and ownership shall be maintained by the Developer and/or their successors.

Exhibits – The property description, City Engineer’s Estimate, Inspection Fee Schedule, Conditions of the Council, Access Easements and the required Public Infrastructure Improvements and their Specifications referenced within this document.

Development- The new West Shore Estates common interest community being created as part of the Project.

Project - the installation and construction of the Public Infrastructure Improvements.

Article II. Representations and Warranties of the Developer.

The Developer, as an inducement to the City to enter into this Agreement, hereby represents, warrants and covenants to the City as follows:

- 2.01 No Disability. The Developer in good standing and authorized to do business in the State of Minnesota, is authorized to enter into this Development Agreement, and is under no restriction whatsoever to enter into this Agreement.
- 2.02 Execution No Violation. The execution, delivery and performance of this Agreement does not and will not result in any breach of, or constitute a default under, any indenture, mortgage, contract, agreement or instrument to which the Developer is a party or by which it, or its property, is bound.
- 2.03 Litigation. There are no pending or, to the knowledge of the Developer, threatened actions or proceedings before any court or administrative agency which will adversely affect the financial condition, business or operation of the Developer or the ability of the Developer to perform its obligations under this Agreement. In the event that threatened or pending litigation develops, Developer is hereby placed on express and specific notice that Developer will, within five (5) business of being advised of threatened or pending litigation, notify the City in writing of this event.
- 2.04 Compliance. The Developer will comply with and promptly perform all of the Developer’s obligations under this Agreement and all related documents and instruments.

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- 2.05 Environmental Assessment. To the best of Developer's knowledge, the proposed Development does not require an environmental assessment worksheet or an environmental impact statement, but Developer agrees to, within sixty (60) days prepare the same if required to do so by the City or other governmental entity, pursuant to law, and agrees to reimburse City for all expenses incurred by the City in connection with the preparation of the review, including staff time and attorneys' fees.
- 2.06 Wetlands. The Development complies with all wetland protection legislation including without limitation the Wetland Conservation Act. Wetlands must be shown on the Final Plat.
- 2.07 Environmental Laws. As of the date of the execution of this Agreement, Developer is not aware of any facts which would cause it to be in violation of any local, state or federal environmental law, regulation or review procedure, which would give any person a valid claim under the Minnesota Environmental Rights Act. In the event that Developer is advised that it may be in violation of environmental laws, Developer is hereby placed on express and specific notice that developer will, within five (5) business days of being advised of the same notify the city in writing of this event.
- 2.08 Payment of Costs and Expenses. The Developer agrees to pay to the City an amount not exceeding \$2,500.00 in reimbursement of any or all costs, charges, expenses and attorneys' fees and staff time incurred or paid at any time by the City in relation to the development of the project, including but not limited to engineering, review of the plans, drafting of this Agreement and any condemnation action, except as may otherwise be set forth in this Agreement.
- 2.09 Default. In the event the Developer defaults upon any of its obligations under the terms of this Agreement, the Developer agrees to reimburse the City for its costs incurred in the enforcement of this Agreement, including Staff time, engineering, any and all City related litigation costs, and attorneys' fees.
- 2.10 Intended Use. The intended use of the Property is for a planned unit development of seventeen (17) residential units in a Planned Community, as such term is defined in Minn. Stat. § 515B.1-103 (26) (2014), complying with the City's zoning and subdivision ordinances.
- 2.11 Cooperation. The Developer agrees to cooperate fully with the City in regard to all matters pertaining to this Agreement and the Development project, including any litigation commenced with respect to the project and the resolution of any

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engineering, erosion, traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the project and the City agrees to reciprocate.

Article III. Fees

- 3.01 Subdivision and Platting Fees. The Developer will be responsible for paying all fees associated with the subdivision and its platting.
- 3.02 Park Dedication Fee. Developer will dedicate for public use a nine (9) foot wide recreational trail and fifteen (15) foot wide out lot upon the property in satisfaction of all of the City's park land dedication ordinances, to be named the "Betsy-Tacy Trail". The developer will build the base and pave the recreational trail to the City Engineer's specifications attached hereto as Exhibit "B", before turning it over to the City, all prior to July 31, 2017. Developer will pay the City an additional \$12,000 in full payment of the remainder of the park land dedication fee requirement upon signing of this Agreement.
- 3.03 Inspection Costs. Provided that the Exhibit "B" Public Infrastructure Improvements, (excepting the recreational trail) are completed by September 1, 2016, and further provided that the recreational trail is completed by July 31, 2017, Developer agrees to pay, within forty-five (45) days of invoicing by the City for all City inspection fees incurred in relation to the development of this project, an amount not exceeding \$7,500.00. In the event Developer does not complete the Exhibit "B" Public Infrastructure Improvements prior to the completion dates set forth in this section, additional inspection fees will apply for which the Developer is solely responsible. Inspection Fees are provided in Exhibit "D".
- 3.04 Building Permit Fees. The Developer is responsible for any current Building Permit Fees and any current access charges associated with the Development Project. Building permit fees and access charges shall be paid in full with application for building permits.
- 3.05 Payment Terms. The Developer agrees to remit the payments required by Section 2.08 and 3.03 above within 45 days of the dated City invoice. The timely payment of all invoiced fees shall be a condition precedent to the issuance of any building permits.

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- 3.06 Deferred Assessment. Developer is responsible for paying the deferred assessment now of record in the office of Blue Earth County Land Records in the amount of \$12,170.27 prior to making the first residential connection to the City's Infrastructure.

Article IV. Developer's Responsibilities:

- 4.01 Adhering to Applicable Laws. The Developer agrees to adhere to all City Policies, City Ordinances, State Laws and Federal Laws.
- 4.02 Platting. The Developer, within six (6) months of the execution of this Agreement, agrees to complete the final plat process. In the event the Developer fails to complete the platting process within said six (6) months, the Agreement may be declared null and void by the City, however, Developer shall not be responsible for any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of the Developer.
- 4.03 Warranty of Developer. The Developer hereby warrants and represents to the City, as inducements to the City's entering into this Agreement, that the Developer is the Fee Owner of the Property and has full authority to execute and make a binding obligation which runs with the land.
- 4.04 Public Infrastructure Improvements. Developer agrees to construct, install and pay for all improvements and proceedings necessary to fully complete the Development, as defined in Exhibit "B" Public Infrastructure Improvements, except as may otherwise be set forth in this Agreement. As hereinafter set forth, all Exhibit "B" Public Infrastructure Improvements shall be subject to review, approval, inspection and authorization by the City and/or its consulting engineer.
- 4.05 Dedication of Improvements and Access Easement. Upon completion of the project and approval from the City Council, the Developer will turn over and dedicate to the City the Exhibit "B" Public Infrastructure Improvements and convey to the City an access easement in the form of Exhibit "F" attached hereto. Developer will pay for any costs associated with the preparation of these conveyances and recording fees associated with the same.
- 4.06 Service Line Connections. In accordance with the City's Municipal Code, the City will never be responsible for private service line connections. Until the sale of constructed residential units, the Developer agrees to be responsible for the maintenance and upkeep of private service lines. Upon completion of the Exhibit

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“B” Public Infrastructure Improvements and acceptance by the City Council by resolution, the City will be solely responsible for the maintenance and repair of the City’s water and sewer main infrastructure.

- 4.07 Private Infrastructure Improvements. Within the Planned Unit Development, Developer will construct a private road for which the Developer, or its successors or assigns, will be responsible for all repair, maintenance, and snow removal. The private drive will be improved with a paved surface 24 feet in width, with curb and gutter, and minimum axle weight limitation of 5 tons. The first asphalt lift of the roadway must be completed before lots accessing the roadway are given certification of occupancy.
- 4.08 Future County Road 44 Access Requirements. City represents to Developer that as of the date of this Agreement, there is not under consideration, and there does not exist, any proposed or planned realignment of County Road 44, or any control of access issues to or from County Road 44 and the Development. Nothing within this Agreement shall preclude the City from assessing the Developer for any costs related to any future realignment of County Road 44, or control of access to or from County Road 44 and the Development. The City, in assessing any improvements agrees to follow the process outlined in Minnesota Statutes Chapter 429 in its entirety, and Developer reserves all of its rights to challenge any proposed future assessment should any assessment be initiated in the future related to access requirements.

Article V. Public Infrastructure Improvement Requirements

In accordance with policies and ordinances of the City, the Exhibit “B” Public Infrastructure Improvements shall be constructed and installed as follows:

- 5.01 Construction Plan and Approval Thereof. The Developer will engage, at Developer’s sole expense, a Professional Engineer, who is registered, and in good standing with the State of Minnesota to prepare detailed plans and specifications for complete installation of all Exhibit “B” Public Infrastructure Improvements, in accordance with City Standards. The Developer agrees to submit said plans and specifications to the City accompanied by lists of the quantities of construction items, and estimates of their costs for approval by the Public Works Supervisor and City Engineer prior to the start of construction of any improvements. The Developer will be responsible for submitting plans and specifications to the City’s Standard. This Agreement is not an approval of plans and specifications. The Developer, within six (6) months of the execution of this Agreement, agrees to complete plans and specifications and have them approved by the City. In the event the Developer

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fails to complete the platting process within said six (6) months, the Agreement may be declared null and void by the City, however, Developer shall not be responsible for any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of the Developer.

- A. The Developer is responsible to determine and obtain prior to construction all the necessary approvals, easements, permits, and licenses required for this project to proceed in a timely and orderly fashion. All costs incurred to obtain said approvals, permits, easements and licenses and also all fines or penalties levied by any agency due to the failure of the Developer to obtain or comply with the conditions of such approvals, permits and licenses shall be the sole responsibility of the Developer. The Developer agrees to defend and hold the City, its officers, employees and agents harmless from any action initiated by any regulatory agency resulting from any failure of the Developer.

- B. The City's Engineer is responsible for selecting the connection point for the Exhibit "B" Public Infrastructure Improvements to connect to the City's main system. The connection will be made at the connection point established by the City's Engineer.

- C. The Developer is responsible to plan and build the trunk water main and sanitary sewer infrastructure to City Engineer's Association of Minnesota (CEAM) standards.

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- D. The Exhibit “B” Public Infrastructure Improvements must be installed in accordance with City standards and ordinances and plans and specifications which have been prepared by Developer’s Engineer, furnished to the City and approved by the City engineer.

The Developer agrees to instruct the Developer’s Engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer’s Engineer will be able to certify that the construction work meets the approved City standards as a condition of City acceptance.

The City may, at the City’s discretion have one or more City inspectors and a soil engineer inspect the work on a full or part-time basis. As set forth in Sections 3.03 of this Agreement, and provided that the Exhibit “B” Public Infrastructure Improvements, (excepting the recreational trail) are completed by September 1, 2016, and further provided that the recreational trail is completed by July 31, 2017, Developer agrees to pay, within forty-five (45) days of the date of City invoice for all City inspection fees incurred in relation to the development of this project, an amount not exceeding \$7,500.00. In the event Developer does not complete the Exhibit “B” Public Infrastructure Improvements prior to the completion dates set forth in this section, additional inspection fees may apply for which the Developer will be solely responsible.

Subject to approval by the Developer’s Engineer, the Developer, its contractors and subcontractors, agrees to follow all instructions received from City’s inspectors. Developer’s Engineer shall provide for on-site project management. Developer’s Engineer is responsible for design changes and contract administration between the Developer and the Developer’s contractor. Any design changes must be reviewed and approved by City’s engineer. The Developer or Developer’s Engineer shall schedule a pre-construction meeting at a mutually agreeable time at the City Administrative offices with all parties concerned, including the City staff, to review the program for the construction work, or any subsequent changes to the work.

- 5.02 Developer’s Expense. The Developer agrees to construct and install at the Developers expense the Exhibit “B” Public Infrastructure Improvements to the specifications listed therein. The Developer agrees that all costs for all Exhibit “B” Public Infrastructure Improvements shall be the sole responsibility of the Developer.

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- 5.03 Contractor. The Developer agrees to engage a licensed contractor to construct the Exhibit “B” Public Infrastructure Improvements. The City’s Public Works Supervisor must approve said contractor prior to the commencement of the proposed construction. The Developer may appeal the determination of the Public Works Supervisor to the City Council. The City reserves the right to require evidence of competency and adequate financial status of any such contractor, together with other requirements as may be imposed by law or ordinance. The contractor shall have experience in the installation of municipal water mains. The contractor shall demonstrate the successful completion of at least three such installations and municipal acceptance thereof. The contractor shall comply with any required bonding the City may require to provide adequate surety in regard to the project.
- 5.04 Inspection Costs. Consistent with the provisions of Sections 3.03 and 5.01 D, above, the Developer agrees to pay the City the actual inspection costs of the project defined in Exhibit “E” in an amount not to exceed \$7,500.00. Integral to this stipulation is that the development will be completed in accordance with the specific timelines outlined in this Agreement. If developer fails to honor any of the timelines set forth in this Agreement then Developer will be fully responsible for all costs actually incurred by the City rather than the caps outlined within this Agreement. Exhibit “D” is the inspection fee schedule that will be used to determine the actual inspection costs charged for the development. The City agrees to bill the Developer on a monthly basis for these costs. These costs must be paid by the Developer within 45 days of invoicing by the City. The Developer is responsible for the inspection costs, which include the following services:
- A. The City and the City Engineer’s review, approval and, if necessary, correction of the construction plans and specifications prepared by the Developer’s engineer, at the Developer’s expense.
 - B. The City Attorney’s legal fees for services rendered in connection with the approval, review, construction, and enforcement of this Agreement.
- 5.05 Construction of Improvements.
- A. Completion Date: All Exhibit “B” Public Infrastructure Improvements, with the exception of the recreational trail, will be performed, in full completion, no later December 31, 2016. The recreational trail will be completed no later than July 31, 2017.

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- B. Construction: The construction, installation, materials and equipment shall be in accordance with the approval plans, specification and current utility policy.

- C. Easements: As set forth in Section 4.04 and 5.09, the Developer shall, at Developer's exclusive cost, dedicate to the City, all permanent or temporary easements necessary for the installation and perpetual maintenance of said Exhibit "B" Public Infrastructure Improvements. The easements are described in Exhibit "F".

- D. Insurance: The Developer agrees to cause each person with whom the Developer contracts for the construction and installation of any Exhibit "B" Public Infrastructure Improvements to furnish the City with evidence of complete insurance coverage, including but not limited to worker's compensation insurance, liability and property damage insurance in a minimum amount of One Million Dollars (\$1,000,000.00) per occurrence.

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- E. Faithful Performance of Construction Contracts: The Developer will fully and faithfully comply with all terms of any and all contracts entered into by the Developer for the installation and construction of all Exhibit “B” Public Infrastructure Improvements and hereby guarantees the workmanship and materials for a period of two (2) years following the City Council’s final acceptance of the Exhibit “B” Public Infrastructure Improvements. The Developer agrees to deposit with the City (i) payment and performance bonds equal to 110% of the City Engineer’s construction cost estimate of the Exhibit “B” Public Infrastructure Improvements (the City Engineer’s estimated cost of construction is detailed on Exhibit “C”); and (ii) a money deposit equal to 5% of City Engineer’s construction cost estimate of the Exhibit “B” Public Infrastructure Improvements in the form of cash or check, to be held by the City as security for, and subject to application against the Developer’s obligations under this Agreement. The City agrees to release all, or the remaining balance of this deposit on the second anniversary of the City Council’s final acceptance of the Exhibit “B” Public Infrastructure Improvements. Should Developer default in any of its performance obligations the City may, at City’s determination and after the City has submitted a claim or claims against the payment and performance bonds, use this amount as retainage to complete Developer’s performance obligations under this Agreement. Except as set forth herein, nothing shall restrict or require the City to first draw upon any bonds to secure compliance with Developer’s obligations under this Agreement. In addition, City’s failure to draw upon the bonds first shall not constitute a waiver of its right to later draw upon the bonds to secure compliance with the Developer’s obligations.
- F. Pre-construction Meeting: Prior to any construction on Exhibit “B” Public Infrastructure Improvements, the Developer and its engineer shall schedule a pre-construction meeting at a mutually agreeable time with all parties concerned, including the City staff, to review the program for the construction work.
- G. As-Built: Within 90 days after completion of said Exhibit “B” Public Infrastructure Improvements, the Developer agrees to supply the City with a complete set of “As-Built” plans.

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- H. Permits Required: The Developer is responsible for obtaining all permits required for the project including but not limited to, Minnesota Department of Health for water system, City of Madison Lake, Minnesota Department of Natural Resources, Minnesota Department of Transportation, Blue Earth County Soil and Water Conservation District, and any other permitting as may be required or necessary for the successful completion of the development.
- I. Warranty: The Developer guarantees and agrees to maintain the stability of all work and materials done, furnished and installed under this Agreement for a period of two year(s) after the date of acceptance. The Developer further agrees to fully perform all other guarantees as set forth in the Engineer's specifications as included in this Agreement.

5.06 Connection to City Infrastructure.

- A. Throughout the project, the City's Engineer can require inspections at various points of the project to make the final inspection easier. The City Engineer will work with the Developer to provide a list of what steps require inspection.
- B. No connection to the City's Trunk infrastructure will be allowed without the project being complete and inspected by the City.
- C. The Developer will set up a specific time and date with the City for connecting the Developer's infrastructure with the City's Trunk Infrastructure.

5.07 Private Service Lines. The City will not issue a Certificate of Occupancy until a residential dwelling has been connected to City Water, Sanitary Service and the Deferred Assessment as defined in Article 3.06 is paid. The service lines must be installed by a licensed installer and the Developer has incurred and paid for the cost of the installation. Private service lines shall be installed in a manner that each residence shall have a separate service line connected to the water and sanitary service mains.

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- 5.08 Erosion Control. The Developer agrees to take erosion control measures during grading of the site and construction of the street extension and other improvements as required by the City Engineer. The Developer and contractor shall take full responsibility for obtaining and complying with any applicable permits.
- 5.09 Ownership of Improvements. Upon completion of the work and construction required by this Agreement, and following the City Council's acceptance of the project, the improvements lying within the public right of way and all municipal utilities within easements shall become City property without further notice or action.
- 5.10 Indemnity and Hold Harmless. The Developer agrees to hold the City and its officers, agents and employees harmless from any and all claims, causes of action, or litigation made by the Developer and/or any third parties for any and damage sustained or alleged to be sustained, costs incurred, claims, including attorney's fees, resulting from plat approval development, and construction of the Project. In addition, Developer agrees to, for five years following the final completion of the Project, fully and completely indemnify the City, its officers, agents, and employees from any and all claims, causes of action, or litigation associated with the Project which may be brought or have been brought as a result of the Project.

Article VI. Planned Unit Development Agreement

- 6.01 Prior to the earlier of six months after the date of this Agreement or the issuance of the first building permits for a residential structure to be constructed within the development, an approved and signed Planned Unit Development Agreement must be recorded.

Article VII. General.

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7.01 Binding Effect. The terms and the provisions hereof shall be binding upon and inure to the benefits of the representative, successors, and assigns of the parties hereto and shall be binding upon all future owners of all or any part of the subdivision and shall be deemed covenants running with the land. Reference herein to the Developer, if there be more than one, shall mean each and all of them. This Agreement shall be placed on record and recorded against the Property so as to give notice to subsequent purchasers and encumbrances of all or any part of the subdivision and all recording fees shall be paid by the Developer. Upon the filing of a release from the City, all agreements contained herein shall thereafter be inapplicable to any property covered by said release.

7.02 Notices. Any notices permitted or required to be given or made pursuant to this Agreement shall be delivered personally or mailed by United States Mail to the addresses herein after set forth by certified or registered mail. Such notices, demand or payment shall be deemed timely given or made when delivered personally or when deposited in the United States Mail in accordance with the above. Addresses of the parties hereto are as follows:

If to the City: City of Madison Lake
 P.O. Box 295
 Madison Lake, MN 56063-0295

With Copy to: Jason Moran
 Christian, Keogh, Moran & King
 65 S. Park Ave
 PO Box 156
 Le Center, MN 56057

If to the Developer: R&B Properties, LLC
 4464 Washington Blvd.
 Madison Lake, MN 56063

With Copy to: Blethen, Gage & Krause, PLLP
 100 Warren Street, Suite 400
 Mankato, MN 56001

7.03 Incorporation by Reference. All General and Special Condition Plans, special provisions, proposals, specification and contract for the Improvements furnished and let pursuant to this Agreement by reference as fully as if set out herein in full.

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- 7.04 Independent Party. The City and the Developer expressly understand and agree that the Developer is an independent party. All persons employed by the Developer in the performance of any work or services required or provided for herein shall not be considered employees of the City for any purpose whatsoever, including, but not limited to worker's compensation coverage, employment insurance benefits, social security coverage, retirement membership or credit. Any and all claims and any act or omission on the part of the Developer's employees while engaged in any work or services under this Agreement shall in no way be the obligation or responsibility of the City.

Article VIII. Default.

- 8.01 The Developer agrees to reimburse the City for the City's costs paid or incurred in the enforcement of this Agreement, including engineering and attorney's fees.
- 8.02 In the event of default by the Developer as to any of the work to be performed by the Developer hereunder, the City may perform the work and the Developer agrees to promptly reimburse the City for any expense incurred by the City, provided the Developer is first given notice of the work in default and has not cured said default within a reasonable amount of time which shall not exceed 30 days. This Agreement is a license to the City to act and enter on the Property for the purpose of completing Exhibit "B" Public Infrastructure Improvements and the City shall never need to seek a court order for permission to enter the land. If the Developer refuses to reimburse the City after 60 days for what is invoiced, the City may draw on the Performance Bond described in Article X paragraph J, draw upon the retainage posted by Developer, or assess the cost in whole or in part to the Development property.

Article IX. Right to Proceed.

- 9.01 The Developer may not construct any improvements or any building until all the following conditions have been satisfied:

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- A. This Agreement has been fully executed by both the City and the Developer and filed with the City Administrator/Clerk.
- B. This Agreement has met approval requirements of all applicable government agencies.
- C. The Developer Deposits the retainage required by this Agreement, and has submitted payment and performance bonds to the City.
- D. The Plat has been recorded with the County Recorder's Office.
- E. This Development Agreement has been recorded with the County Recorder's Office.
- F. The City Attorney has received satisfactory evidence of the completion of the requirements of this Article IX (subparagraphs A through E above), and has issued a written opinion that all conditions have been satisfied. The City Attorney shall issue its opinion, within five working days of submission of evidence of subparagraphs A-E above by the Developer.

Article X. Miscellaneous

- 10.01 Third parties shall have no recourse against the City under this Agreement.
- 10.02 Breach of terms of this Agreement by the Developer shall, in addition to the other penalties set forth in this Agreement, also be grounds for denial of building permits, including lots sold to and owned by third parties.
- 10.03 If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- 10.04 If building permits are issued prior to completion and acceptance of public improvements, the Developer assumes all liability and costs resulting from delays in completion of public improvements and damage to public improvements caused by the Developer, its contractors, subcontractors, material persons, employees, agents or third parties.

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- 10.05 The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- 10.06 This Agreement shall run with and be binding on the Property and may be recorded against the title to the property. Upon completion of the Developer's obligations with respect to its obligations under this Agreement, the City will execute and deliver to the Developer a release.
- 10.07 Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to the City. Any such right, power or remedy may be exercised from time to time as often and in such order as may be deemed expedient at any time thereafter any other right, power or remedy.
- 10.08 The Developer may assign this Agreement, with prior City approval, provided the assurances and covenants defined herein are met by the assignee. The Developer agrees to notify the City if such assignment occurs and such notification shall include the name, address, and contact information for the assignee. The City shall have the right to approve the assignee and such approval shall not be unreasonably withheld.
- 10.09 All indemnification and defense obligations of the Developer shall terminate upon the termination of this Agreement.
- 10.10 The City will require Developer's Contractor to provide to the City a payment bond of \$323,598.55 and a performance bond of \$323,598.55 on an ACORD Form in accordance with Acord Specifications to ensure compliance with the Developer's obligations under this Agreement. The bonds shall name both the City and the Developer as loss payees and shall also list the City as an additional insured. These bonding obligations must be provided to the City, in a form satisfactory to the City, before any permitting is secured by Developer.
- 10.11 Five years following final acceptance by the Council for the Project, the City shall execute a recordable release and termination of this Agreement.

**CITY OF MADISON LAKE, MINNESOTA
RESOLUTION #2015-27**

**STATE OF MINNESOTA
COUNTY OF BLUE EARTH
CITY OF MADISON LAKE**

RESOLUTION APPROVING FINAL PLAT FOR WEST SHORE ESTATES

WHEREAS, the City of Madison Lake Planning Commission held a public hearing on July 13th and reviewed revisions to the preliminary plat on July 27th;

WHEREAS, the Madison Lake City Council approved the original preliminary plat on July 13th and the revised preliminary plat on August 3rd with the following conditions beyond any conditions required by the MPCA, DNR or any other governmental body:

1. A signed Developer's Agreement is approved before the Final Plat is approved;
2. The Development meets impervious surface requirements;
3. Allowing for a trail realignment if MNDOT allows a straight away or right of way is changed.

WHEREAS, to the best of our knowledge the conditions outlined in both the original and revised preliminary plat have been meet or are still required to be met; and

WHEREAS, The City Council of Madison Lake believes the proposed plat meets the requirements for subdivision as outlined by the City Ordinance;

NOW THEREFORE LET IT BE RESOLVED THAT, The City Council of Madison Lake has approved the attached final plat (Attachment A).

Adopted August 24, 2015 by the Madison Lake City Council.

Date:

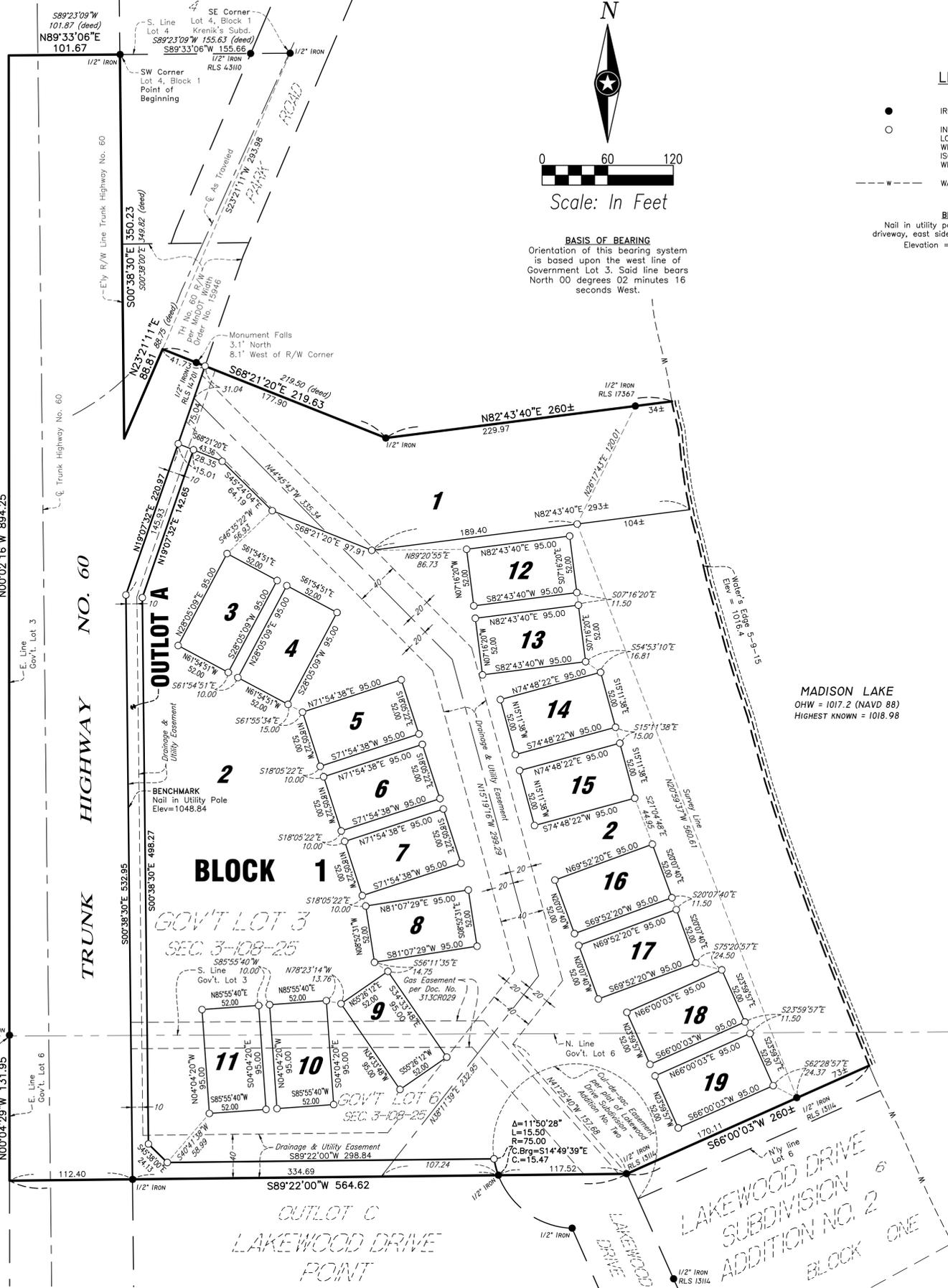
Kenneth Reichel, Mayor

Date:

Ari Klugman, City Administrator

WEST SHORE ESTATES

KRENK'S
SUBDIVISION
BLOCK 1



INSTRUMENT OF DEDICATION

KNOW ALL PERSONS BY THESE PRESENTS: That R & B Properties, LLC, a Minnesota limited liability company, owner of the following described property:

That part of Government Lots 3 and 6, all in Section 3, Township 108 North Range 25 West, Blue Earth County, Minnesota, described as:

Commencing at the southeast corner of Lot 4, Block One, Krenik's Subdivision, according to the plat thereof on file and of record with the Blue Earth County Recorder; thence South 89 degrees 23 minutes 09 seconds West, (Minnesota County Coordinate System - Blue Earth County Zone - HARN NAD83 - 1996), along the south line of said Lot 4, a distance of 155.63 feet to the southwest corner of said Lot 4, the same being the easterly right of way line of Trunk Highway No. 60, said point being the point of beginning; thence South 00 degrees 38 minutes 00 seconds East, along said right of way line, 349.92 feet to the point of intersection with a line which bears South 23 degrees 21 minutes 11 seconds West from the southeast corner of said Lot 4; thence North 23 degrees 21 minutes 11 seconds East, 88.75 feet; thence South 68 degrees 21 minutes 20 seconds East, 219.50 feet; thence North 82 degrees 43 minutes 40 seconds East, 260 feet, more or less, to a point on the westerly water's edge of Madison Lake; thence southeasterly, along said water's edge, 630 feet, more or less, to a point on a line 25.00 feet northerly of, as measured at right angles to, the northerly line of Lot 6, Block One, Lakewood Drive Subdivision - Addition No. Two, according to the plat thereof on file and of record with the Blue Earth County Recorder; thence South 65 degrees 00 minutes 03 seconds West, along said parallel line, 260 feet, more or less, to the point of intersection with the northwesterly extension of the southwesterly line of said Lot 6; thence South 89 degrees 22 minutes 00 seconds West, 564.62 feet to a point on the west line of said Government Lot 6; thence North 00 degrees 04 minutes 29 seconds West, along said west line, a distance of 131.95 feet to the northwest corner of said Government Lot 6; thence North 00 degrees 02 minutes 16 seconds West, along a straight line connecting said northwest corner of Government Lot 6 and the southwest corner of Government Lot 2 in said Section 3, a distance of 893.55 feet to the point of intersection with the westerly extension of the south line of Lot 4, Block One, Krenik's Subdivision; thence North 89 degrees 23 minutes 09 seconds East, along said extension, 101.87 feet to the point of beginning.

Said Parcel A contains 11.9 acres, more or less, subject to an easement for Trunk Highway No. 60 purposes over and across the most westerly boundary and for Park Road purposes over and across the northwesterly boundary. ALSO subject to any other easements of record.

Has caused the same to be surveyed and platted as WEST SHORE ESTATES and does hereby dedicate to the public, for public use, the public ways and the drainage and utility easements as created by this plat.

In witness whereof said R & B Properties, LLC, a Minnesota limited liability company, has caused these presents to be signed by its proper officer this _____ day of _____, 20____.

Signed: R & B Properties, LLC

Chief Manager

State of _____
County of _____

This instrument was acknowledged before me on _____, 20____ by _____, Chief Manager, of R & B Properties LLC, a Minnesota limited liability company.

Notary Public _____
My Commission Expires _____

SURVEYOR'S CERTIFICATE

I, Daniel L. Stueber, do hereby certify that this plat was prepared by me or under my direct supervision; that I am a duly Licensed Land Surveyor in the State of Minnesota; that this plat is a correct representation of the boundary survey; that all mathematical data and labels are correctly designated on this plat; that all monuments depicted on this plat have been or, will be correctly set within one year; that all water boundaries and wet lands, as defined in Minnesota Statutes, Section 505.01, Subd. 3, as of the date of this certificate are shown and labeled on this plat; and all public ways are shown and labeled on this plat.

Dated this _____ day of _____, 2015.

Daniel L. Stueber, Land Surveyor
Minnesota License No. 43110

State of Minnesota
County of Blue Earth

This instrument was acknowledged before me on _____, 2015 by Daniel L. Stueber, Licensed Land Surveyor.

Kent A. Hays
Notary Public, Minnesota
My Commission Expires Jan. 31, 2020

MADISON LAKE PLANNING COMMISSION

Be it known that at a meeting held on this _____ day of _____, 20____, the Planning Commission of the City of Madison Lake did hereby review and approve this plat of WEST SHORE ESTATES.

Chair Person _____ Secretary _____

CITY COUNCIL, CITY OF MADISON LAKE, MINNESOTA

This plat of WEST SHORE ESTATES, was approved and accepted by the City Council of the City of Madison Lake, Minnesota at a regular meeting thereof held this _____ day of _____, 20____, and said plat is in compliance with the provisions of Minnesota Statutes, Section 505.03, Subd. 2.

TAXPAYER SERVICES DEPARTMENT

I hereby certify that the current and delinquent taxes on the lands described within are paid and the transfer is entered this _____ day of _____, 20____.

Taxpayer Services Director _____

COUNTY RECORDER, BLUE EARTH COUNTY, MINNESOTA

I hereby certify that this plat of WEST SHORE ESTATES was filed in the office of the County Recorder for public record on this _____ day of _____, 20____, at _____ o'clock _____ M., and was duly filed in Book _____ of Plats, page _____, as Document No. _____.

Blue Earth, County Recorder