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**DEVELOPMENT AGREEMENT**

**Between**

**COBBLESTONE LAKE DEVELOPMENT, LLC**

**And**

**CITY OF APPLE VALLEY**

**For**

**COBBLESTONE LAKE 8th ADDITION**

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## A G R E E M E N T

WHEREAS, the City of Apple Valley, Dakota County, Minnesota, (the "City"), has been requested by Cobblestone Lake Development, LLC, a Minnesota limited liability company, (the "Developer") to approve for recording the following described subdivision of land:

The Plat of Cobblestone Lake 8th Addition (the "Subdivision"); and

WHEREAS, the Developer intends to develop the Subdivision as seventeen (17) lots for residential dwellings and one lot (Lot 18) to be owned by a homeowners association for open space, driveway and parking purposes; and

WHEREAS, pursuant to City Ordinances, the Planning Commission held a public hearing with reference to the application for approval of the preliminary plat on May 6, 2015; and

WHEREAS, the Planning Commission recommended its approval of the preliminary plat on June 3, 2015; and

WHEREAS, the City Council approved the preliminary plat on July 9, 2015;

NOW, THEREFORE, in consideration of the mutual agreements of the parties it is hereby agreed by and between the parties as follows:

1. Subject to the terms and conditions of this Agreement, the City hereby approves for recording the plat known as Cobblestone Lake 8th Addition, as shown and noted on ***Exhibit "A"*** attached hereto.

2. Contemporaneously with recording the plat, the Developer shall submit to Dakota County with the plat a letter addressed to the Dakota County Property Taxation and Records Department stating that Lot 18, Cobblestone Lake 8th Addition, will be owned by a homeowners association and requesting that the value of such parcel be allocated among Lots 1 through 17, Cobblestone Lake 8th Addition, and that no tax

identification number be assigned to Lot 18. The Developer shall submit a copy of the letter and a copy of the recorded plat to the City upon recording of the plat.

3. The Developer has requested and the City has designed the necessary water laterals and services, sanitary sewer laterals and services, storm sewer system and repairs to public streets and sidewalks to service this Subdivision (the "Municipal Improvements"). These Municipal Improvements are identified in the plans dated July 31, 2015, for Apple Valley Project No. 2015-138, and are being installed by the Developer under a separate contract by and between the Developer and City entitled "Agreement for Private Installation of Improvements" dated July 9, 2015.

The Municipal Improvements shall be maintained as follows:

- A. The City shall only be responsible for maintenance of sanitary sewer lines having a pipe equal to or greater than eight inches in diameter and located within public right-of-way or utility easement. Maintenance of service and lateral lines shall be in accordance with City Policy 2.03 Water and Sanitary Sewer Service Maintenance and Repair Policy Adopted July 8, 2010, per resolution 2010-144.
- B. The City shall only be responsible for the maintenance of water lines have a pipe equal to or greater than six inches in diameter and located within public right-of-way or utility easement. Maintenance of service and lateral lines shall be in accordance with City Policy 2.03 Water and Sanitary Sewer Service Maintenance and Repair Policy Adopted July 8, 2010, per resolution 2010-144.
- C. The storm sewer improvements shall be owned and maintained by the City and shall be located entirely within public right-of-way or dedicated public easements.

4. The Developer agrees to perform and install the following items: private street, driveways, sidewalks, landscaping, subdivision monuments and protective utility service boxes to serve the residential lots, in accordance with and under the following conditions:

- A. To install the Municipal Improvements, as designed by the City, in accordance with the Agreement for Private Installation of Improvements.
- B. To grade the Subdivision in accordance with the Grading and Drainage Plan prepared by James R. Hill, Inc., dated June 26, 2015.
- C. To construct sidewalks and driveways with concrete or bituminous material in accordance with City construction standards.
- D. To seal or cause to be sealed all existing wells on the Property in accordance with State, County and local laws.
- E. To install a protective box and cover over each sewer cleanout and water shutoff, to City specifications.
- F. To install all perimeter subdivision monuments upon the filing of the plat for recording.
- G. To install all lot monuments prior to July 31, 2016.
- H. To install and maintain all materials (trees, shrubs and sod) in accordance with the plans approved by the City.
- I. The Developer agrees to comply with all requirements of the Natural Resources Management Regulations as set forth in Chapter 152 of the Apple Valley City Code prior to, during and after the development of the Subdivision. The Developer further agrees to submit to the City for its approval, a Natural Resources Management Plan prior to any construction or land-disturbing activity in connection with the development of this Subdivision. The Developer shall implement and comply with all terms and conditions of the approved Plan prior to and during any construction or land-disturbing activity, including, but not limited to, maintaining the performance security required in Chapter 152 of the Apple Valley City Code.
- J. To install erosion control measures in accordance with the Apple Valley Natural Resources Management Plan.
- K. To install each item noted in Section 4, herein, at the Developer's sole cost and expense, in accordance with all plans reviewed and approved by the City.

- L. To attend a meeting with representatives of the City prior to commencement of grading or installation of streets and utilities to serve the Subdivision. The Developer shall cause all contractors and subcontractors for such work to attend the meeting.
- M. Developer will not bury any pipe nor install bituminous surface nor pour concrete without the specific approval of the City Inspector, prior to the work being performed.
- N. All "on-site" inspections by the City will be done at the sole cost and expense of Developer, by persons supplied by the City.
- O. That any material violation of the terms of this Agreement and in particular this section, shall allow the City to stop and enjoin all construction in the Subdivision until authorization to proceed is given by the City. The Developer agrees to hold the City harmless from any damages, causes of action, or claims related to the construction being stopped by the City.
- P. Construction shall be limited to the hours of 6:00 a.m. to 10:00 p.m. Monday through Friday. Construction shall not occur on Saturday or Sunday.
- Q. Earthmoving activities shall be limited to the hours of 6:30 a.m. to 5:30 p.m. Monday through Friday. Earthmoving activities shall not occur on Saturday or Sunday. Earthmoving activities shall not occur when wind velocity exceeds thirty (30) miles per hour. Watering to control dust shall occur as needed and whenever directed by the Apple Valley Building Official or Zoning Administrator.
- R. To abide by and satisfy the conditions of preliminary plat approval which are attached hereto as ***Exhibit "B"*** and incorporated herein.

5. **Financial Guaranty.** Prior to the release of the Plat for recording, the Developer shall deposit with the City a Financial Guaranty in the amount of **\$8,500.00** (in addition to the financial guaranties deposited under the Agreement for Private Installation and the Development Agreement for Cobblestone Lake 7<sup>th</sup> Addition) to secure the full performance of this Development Agreement. The Developer shall furnish the City with the Financial Guaranty from a bank or lending institution acceptable to the City. The amount of the Financial Guaranty was calculated as follows:

### **DEVELOPER IMPROVEMENTS**

<u>Item</u>	<u>Amount</u>
Driveways	\$100.00 / Lot
Sidewalks	\$100.00 / Lot
Landscaping	\$100.00 / Lot
Subdivision monuments	\$100.00 / Lot
Protective utility service boxes	\$50.00 / Lot
As-Built Surveys	<u>\$50.00 / Lot</u>
Subtotal per lot:	\$500.00 / Lot

#### **Total Financial Guaranty for 17 residential lots: \$8,500.00**

This breakdown is for historical reference only. It is not a restriction on the use of the Financial Guaranty. The bank or financial institution and the form of the Financial Guaranty shall be subject to the approval of the City Finance Director and City Attorney. The bank or financial institution must have a business office for presentment of the Financial Guaranty within the Minnesota seven county Metropolitan Area. The City may draw down the Financial Guaranty to pay for all costs and expenses incurred by the City to enforce this Agreement including the costs incurred by the City in connection with the collection of the Financial Guaranty and any remediation or completion of improvements. If the Financial Guaranty is drawn down, the proceeds shall be used to cure the default and, to the extent possible, reimburse the City its costs and expenses.

- A. Terms. The Financial Guaranty may be for a stated term provided it is automatically renewable. The City may draw on the Financial Guaranty, without notice, after an Event of Default has occurred under this Agreement, which has not been remedied within any applicable cure period or upon receiving notice that the Financial Security will be allowed to lapse. If the required improvements are not completed at least thirty (30) days prior to the expiration of the Financial Security, the City may also draw down the Financial Security.
- B. Claims. In the event that the City receives claims from subcontractors or materialmen that work required by this Agreement has been performed and

money due them has not been paid, and the subcontractor or materialmen are seeking payment out of the Financial Guaranty posted with the City, the Developer hereby authorizes the City, at the City's discretion, to commence an Interpleader action pursuant to Rule 22 of the Minnesota Rules of Civil Procedure for the District Courts at the Developer's expense, to include court costs and attorneys' fees. The Developer further authorizes the City to draw upon the Financial Guaranty in the amount of one hundred twenty-five percent (125%) of the claim together with attorneys' fees and court costs, and to deposit the funds in compliance with the Rule. Upon such deposit, the Developer shall release, discharge and dismiss the City from any further proceedings as it pertains to the funds deposited with the District Court, except that the Court shall retain jurisdiction to determine the amount of attorneys' fees, costs and expenses owed to the City pursuant to this Agreement.

- C. Release of Financial Guaranty. The Financial Guaranty shall not be released until a final acceptance by the City of all requirements under the Development Agreement for the Property.
- 6. Prior to the release of the plat for recording, the Developer shall:
  - A. Record the Declaration of Common Interest Community Number 637, Trey Point at Cobblestone Lake, in a form approved by the City Attorney.
  - B. Record a deed conveying fee title to Lot 21, Block 1, Cobblestone Lake 7th Addition, to Trey Point at Cobblestone Lake Association, a Minnesota nonprofit corporation.
  - C. Submit to the City a proposed Supplemental Declaration of Common Interest Community Number 637, Trey Point at Cobblestone Lake, to add Lots 1 to 17 of the Subdivision to the common interest community as units and to add Lot 18 of the Subdivision to the common interest community as common elements. The Supplemental Declaration shall be reviewed and approved by the City Attorney. At the time of recording the plat, and prior to the issuance of any building permit for Lots 1 to 17, the Developer shall record (i) the Supplemental Declaration and (ii) a deed conveying fee title to Lot 18 to Trey Point at Cobblestone Lake Association, a Minnesota nonprofit corporation.
  - D. Deliver to the City the Financial Guaranty.
  - E. Pay the following trunk charges in the total amount of **\$7,255.66** for the 17 residential lots in the Subdivision:

	<u>Amount</u>	<u>Calculation</u>
Sanitary Sewer:	\$4,896.00	\$288.00 per unit x 17 units
Water:	\$2,359.66	\$2,521.00 per acre x 0.936 acres
Storm Sewer:	\$0	\$5,647.00 per acre x 0.936 acres = \$5,285.59 less \$5,285.59 credit for savings due to the placement of storm water pond WVR-P441 in the northeast quadrant of 155th Street West and Pilot Knob Road and construction of trunk storm infrastructure in 155th Street West
<b>Total:</b>	<b>\$7,255.66</b>	

- F. Pay the City's reasonable costs related to the Subdivision and this Agreement, including but not limited to administration, engineering, legal fees and inspection, which the City estimates to be approximately \$4,750.00. Prior to the release of the plat for recording, the Developer shall deposit the aggregate sum of **\$4,750.00** with the City for payment of the City's costs related to the Subdivision and this Agreement. If the City's reasonable costs exceed the aggregate amount of such deposit, Developer agrees to reimburse the City within thirty (30) days of billing. Should the costs be less than the amount of the deposit, upon completion of the Improvements, the amount remaining on deposit shall be returned to the Developer. If requested in writing by the Developer, but not more than one time per month, the City shall submit to the Developer an accounting of the City's reasonable costs related to the Subdivision and this Agreement.
7. Upon submission of a building permit application(s), the Developer agrees to pay the City for the public services furnished to the Subdivision, an amount as determined below upon the basis of units (per building) as determined by the City Engineer, which amount shall be paid in the following manner:
- A. Sewer Availability Charge - The rate per unit is based on the year in which the building permit is issued (presently \$2,811.00 per unit - \$2,485.00 Metro and \$326.00 City). The person who applies for a building permit shall pay, at the time of the issuance of the permit, an amount equal to the rate times the number of units. This fee is subject to change if the obligation of the City to the Metropolitan Waste Control Commission changes.



- B. Water System, Supply and Storage Charge - The rate per unit is based on the year in which the building permit is issued (presently \$886.00 per unit). The person who applies for a building permit shall pay, at the time of the issuance of the permit, an amount equal to the rate times the number of units.

8. The Developer agrees to install all utilities underground in the Subdivision, specifically including electrical, telephone, cable television and gas services. The Developer hereby represents that all utility services will be available for a building prior to occupancy of any dwelling in that respective building.

9. No occupancy of any building in the Subdivision shall occur until water, sanitary sewer, and a gravel driving surface are available for use to that building.

10. The parties mutually recognize and agree that park dedication requirements as provided in Chapter 153 of the City Code for the 17 residential lots in the Subdivision shall be satisfied by a cash payment of **\$76,710.38**. The cash payment for park dedication shall be paid to the City prior to the release of the plat for recording. The cash dedication payment is computed in the following manner:

Use:	Townhouse Dwellings
Persons Per Unit:	2.7
No. of Units:	17
Land Dedication:	17 units x 2.7 persons per unit x 0.00955 acres per person = 0.438345 acres
Cash Dedication:	0.438345 acres required to be dedicated x \$175,000.00 per acre = \$76,710.38

11. The parties mutually recognize and agree that storm water pond dedication requirements for the Subdivision, as provided in Chapter 153 of the City Code, have been satisfied by the construction of the existing storm water pond (WVR-P441) located in the northeast quadrant of 155<sup>th</sup> Street West and Pilot Knob Road.

12. The Developer agrees to pay for and provide a lighting system for the Subdivision. The layout of the lighting system shall be approved by the City Engineer.

13. The Developer agrees to provide the City with as-built mass grading surveys, prior to the construction of any building within the Subdivision. The Developer agrees to provide the City with as-built surveys for each building constructed within the Subdivision, prior to the issuance of the Certificate of Occupancy for that building.

14. The Developer agrees to reimburse the City for all engineering, administrative and legal costs and expenses incurred by the City in connection with this Agreement, or the enforcement thereof.

15. The Developer hereby specifically releases the members of the City Council from any personal liability in connection with handling funds pursuant to the terms of this Agreement, and further agrees to indemnify and hold the members of the City Council harmless from any claim, of any and every nature whatsoever, as a result of this Agreement or the creation of the Subdivision.

16. The parties mutually recognize and agree that all terms and conditions of this Agreement run with the land herein described with respect to the particular lot affected and shall be binding upon the heirs, administrators, successors and assigns of the Developer.

IN WITNESS WHEREOF, the parties have hereunto set their hands this \_\_\_\_ day of \_\_\_\_\_, 2016.

Developer:

Cobblestone Lake Development, LLC,  
a Minnesota limited liability company

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

City of Apple Valley

\_\_\_\_\_  
By: Mary Hamann-Roland  
Its: Mayor

\_\_\_\_\_  
By: Pamela J. Gackstetter  
Its: City Clerk

STATE OF MINNESOTA   )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me a Notary Public within and for said County, personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, did say that he/she is the \_\_\_\_\_ of Cobblestone Lake Development, LLC, the limited liability company named in the instrument, and that said instrument was signed on behalf of said limited liability company by authority of its board of governors and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of the limited liability company.

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

STATE OF MINNESOTA   )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_ day of \_\_\_\_\_, 2016, before me a Notary Public within and for said County, personally appeared Mary Hamann-Roland and Pamela J. Gackstetter to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and Clerk of the City of Apple Valley, the municipality named in the foregoing instrument, and that the seal affixed on behalf of said municipality by authority of its City Council and said Mayor and Clerk acknowledged said instrument to be the free act and deed of said municipality.

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

This instrument was drafted by:

Dougherty, Molenda, Solfest, Hills & Bauer P.A.  
7300 West 147th Street, Suite 600  
Apple Valley, Minnesota 55124  
(952) 432-3136  
MDK (66-37179)

# EXHIBIT "A"

## COBBLESTONE LAKE 8TH ADDITION

COBBLESTONE LAKE 7TH ADDITION

COBBLESTONE LAKE 3RD ADDITION

NOTED: NO UNPAID TAXES SHOWN AT ANY TAXABLE PARCELS LOCATED IN THIS PLAT. ANY UNPAID TAXES WILL BE PAID BY THE TAXPAYER. THE TAXPAYER'S RESPONSIBILITY FOR THE PLAT. THE TAXPAYER'S RESPONSIBILITY FOR THE PLAT. THE TAXPAYER'S RESPONSIBILITY FOR THE PLAT.

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COBBLESTONE LAKE 8TH ADDITION

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COBBLESTONE LAKE 7TH ADDITION

COBBLESTONE LAKE 3RD ADDITION

JAMES R. HILL, INC.

## **EXHIBIT “B”**

### **CITY OF APPLE VALLEY RESOLUTION NO. 2015-98**

#### **PRELIMINARY PLAT APPROVAL COBBLESTONE LAKE 7TH ADDITION**

WHEREAS, pursuant to Minnesota Statutes 462.358, the City of Apple Valley adopted, as Appendix B of the City Code, regulations to control the subdivision of land within its borders, and

WHEREAS, pursuant to Chapter 153 of the City Code, the City Planning Commission held a public hearing on an application for subdivision of land by plat on May 6, 2015; and

WHEREAS, the City Planning Commission reviewed the preliminary plat for conformance with the standards of Chapter 153 of the City Code and made a recommendation regarding its approval on June 3, 2015, subject to conditions.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Apple Valley, Dakota County, Minnesota, that the preliminary plat for the following described plat of land is hereby approved for a two year period, to wit:

#### **COBBLESTONE LAKE 7TH ADDITION**

BE IT FURTHER RESOLVED, that said preliminary plat approval is subject to the appropriate amendment to the City's Comprehensive Plan Map and rezoning, which must be completed prior to final plat approval.

BE IT FURTHER RESOLVED, pursuant to Chapter 153 of the City Code, that said preliminary plat approval is subject to the following conditions, which shall be incorporated into a subdivision agreement to be considered for approval at the time of submission of the request for final plat approval:

1. The plat shall be configured to have thirty-eight (38) lots and zero (0) outlots.
2. Park dedication requirements are based upon the City's finding that the subdivision will create 100 residents/occupants that will generate a need for .954045 acres of parkland in accordance with adopted City standards for park services. This required dedication shall be satisfied by a cash-in-lieu of land contribution based on .954045 acres of needed land area at a benchmark land value of \$175,000.00 per acre, which the City reasonably determines that it will need to expend to acquire land elsewhere in order to provide the necessary park services as a result of this subdivision.
3. Storm water quantity and quality requirements for this subdivision have been satisfied by construction of the existing storm water pond (EVR-P441) located in the northeast quadrant of 155th Street West and Pilot Knob Road.

4. Dedication on the final plat of draining and utility easements within the plat sufficient to serve all units within the development, either as defined or blanket easements.
5. Installation of municipal sanitary sewer, water, storm sewer, and street improvements as necessary to serve the plat, constructed in accordance with adopted City standards, including the acquisition of any necessary easements outside the boundaries of the plat which are needed to install connections to said necessary improvements.
6. Installation of a right-turn lane, constructed in accordance with adopted City standards, at the intersection of Dodd Boulevard and Street B.
7. Installation of pedestrian improvements in accordance with the City's adopted Trail and Sidewalk Policies.
8. Submission of a final grading plan and lot elevations with erosion control procedures, to be reviewed and approved by the City Engineer. If the site is one (1) or more acres in size the applicant shall also submit a copy of the of the General Storm Water Permit approval from the Minnesota Pollution Control Agency pursuant to Minnesota Rules 7100.1000 - 7100.1100 regarding the State NPDES Permit prior to commencement of grading activity.
9. Installation of City street trees on boulevard areas of public street right-of-ways, in accordance with species, size, and spacing standards established in the Apple Valley Streetscape Management Plan.
10. Dedication of one foot (1') wide easements, which restrict direct driveway access to Dodd Boulevard and Eagle Bay Drive.
11. Installation of a public (or private) street lighting system, constructed to City and Dakota Electric Company standards.
12. The City receives a hold harmless agreement in favor of the City as drafted by the City Attorney and incorporated into the subdivision agreement.

ADOPTED this 9th day of July, 2015.

  
Mary Hamann-Roland, Mayor

ATTEST:

  
Pamela J. Gackstetter, City Clerk