

SITE DEVELOPMENT AGREEMENT

This Site Development Agreement, ("Agreement") is made this 20 day of February, 2020 between JP Brooks, Inc., dba JP Brooks Builders, a Minnesota corporation, with offices located at 11314 86th Ave. N., Maple Grove, Minnesota 55369 ("Developer") and the City of Spring Lake Park, a Minnesota municipal corporation, with offices located at 1301 81st Avenue N.E., Spring Lake Park, Minnesota 55432 ("City") and shall be effective as of the date above.

WHEREAS, Developer is under contract to purchase or has purchased the following property within the City of Spring Lake Park, totaling approximately 2 acres:

The North 300 feet of the East Half of the East Half of the Southwest Quarter of the Southeast Quarter of Section 2, Township 30, Range 24, Anoka County, Minnesota, except that part platted as BUZZELL'S 1st ADDITION and except Roads.

(the "Subject Property")

WHEREAS, Developer is proposing to subdivide the Subject Property into 6 lots and construct one single family home within each lot and additionally plat an outlot that will be deeded to the City (the "Project") on the Subject Property; and

WHEREAS, the City rezoned the Subject Property from R-1 Single Family Residential to PUD #2019-1, Planned Unit Development District on December 2, 2019; and

NOW, THEREFORE, the parties hereto agree as follows:

- 1) **Site Development.** Developer is hereby granted permission to subdivide the Subject Property into six lots total, each of which shall contain a single family home.
- 2) **Plans and Specifications.** Developer shall complete the construction in accordance with the final approved plans (collectively, the "Site Improvement Plan") as more specifically set forth on Schedule 1 attached hereto.
- 3) **Ordinance No. 459.** Developer shall comply with the terms and conditions of Ordinance No. 459, adopted by the City on December 2, 2019.

4) **Financial Guarantees.** The attached **Exhibit B** outlines the financial requirements and guarantees of Developer, which shall be the exclusive responsibility of Developer. A Letter of Credit (the "LOC") in the amounts set forth on **Exhibit B** must be provided to and accepted by the City; and all required fees, costs and escrow amounts paid, before Developer commences any work on Subject Property. The City may draw upon the LOC in the event Developer fails to complete the public improvements identified in the Site Improvement Plan and on **Exhibit B**; additionally, the City may also draw upon the LOC to seek reimbursement for Developer's failure to pay amounts due under this Agreement after the applicable notice and cure periods have run. Once the Project is complete and all amounts due hereunder have been paid, the LOC shall be released. In addition to posting the sureties contemplated above, Developer shall also provide an additional bond, letter of credit, or cash escrow chosen by Developer to the City, as indicated on **Exhibit B**, in an amount determined by the City (the "Maintenance Bond"). The Maintenance Bond shall be in a form approved by the City and shall remain outstanding for a period of twenty-four months after completion of the landscaping portion of the Site Improvement Plan, at which point the Maintenance Bond will be released and any unused portion will be returned to Developer.

5) **Erosion and Siltation Control.**

- a. **Control Measures.** Before any grading is started under the Site Improvement Plan or related permit, all down gradient perimeter control measures as provided for in the Site Improvement Plan shall be installed. No final approval of the improvements authorized by the Site Improvement Plan (nor a final certificate of occupancy) shall be issued until all disturbed areas have been stabilized as provided for in the Site Improvement Plan. The LOC shall guaranty the erosion control and grading work required in this paragraph.
- b. **Unsatisfactory Conditions.** Developer shall be responsible for compliance with the approved erosion and sediment control (ESC) portion of the Site Improvement Plan. In the event the Developer fails to comply with the ESC requirements, the City shall give Developer telephonic and email notice of the nature of such failure in accordance paragraph 8. Developer shall correct such unsatisfactory condition described in the telephonic and email notice within three (3) business days after first receiving telephonic and email notice, or if the nature of such unsatisfactory condition is such that the same cannot reasonably be corrected within said three (3) business day period, then Developer shall have such additional time as is reasonably necessary to correct such unsatisfactory condition provided Developer promptly commences to correct such unsatisfactory condition and proceeds with diligence and continuity. During the term of this Agreement, if Developer fails to comply as provided above, then the City has the right to enter upon the Subject Property and correct said condition at Developer's expense. City shall be entitled to all of its reasonable costs and expenses of enforcing this paragraph of the Agreement, including, but not limited to, legal, fiscal and engineering costs. City may at its option invoice the said costs for direct payment

from Developer. City reserves the right to invoice the said cost for direct payment from Developer and to withhold a final certificate of occupancy or final approval of the work provided for under the Site Improvement Plan, until City receives payment in full of its invoiced costs.

- 6) **Maintenance of Public Property Damaged or Clutter During Construction.** Developer agrees to assume full financial responsibility and to pay all costs for any damage which may occur to public property including, but not limited to, streets, street sub-base, base, bituminous surface, curb, utility systems including, but not limited to water main, sanitary sewer or storm sewer damaged or cluttered with debris (collectively, the "Public Property") when said damage occurs as a result of activity by the Developer, its contractors or subcontractors or assigns relating to the development of the Subject Property as provided in the Site Improvement Plan. Notwithstanding the foregoing, nothing contained herein shall require Developer to improve any of the Public Property to a condition superior than the condition of said Public Property at the time of Developer's acquisition of the Subject Property ("Closing"). The City shall schedule an inspection of said Public Property with Developer and Developer's general contractor on or around the date of Closing and shall document the condition of said Public Property. In the event the Developer fails to maintain or repair the damaged Public Property, the City shall give Developer written notice of the nature of the default or damage in accordance with paragraph 8. Developer shall maintain or repair the damaged Public Property specified in the written notice within three (3) business days after first receiving written notice, or if the nature of such failure is such that the same cannot reasonably be maintained or repaired within said three (3) business day period, then Developer shall have such additional time as is reasonably necessary to complete such maintenance or repair provided Developer promptly commences to complete such maintenance or repair and proceeds with diligence and continuity. If Developer fails to maintain or repair the damaged Public Property as provided above, then the City may undertake such maintenance or repair. When the City undertakes such maintenance or repair, the Developer shall reimburse the City for all of its reasonable expenses within thirty (30) days after Developer has received an invoice therefore. The Developer understands that no final certificate of occupancy shall be issued if an amount due hereunder remains unpaid or if the Developer is in default under the terms of this Agreement.
- 7) **Street Cleaning.** The Developer shall clean dirt and debris from streets that has resulted from construction work under the Site Improvement Plans by the Developer, its contractors, subcontractors, agents or assigns. The City will inspect the site not less than on a weekly basis and determine whether it is necessary to take additional measures to clean dirt and debris from the streets. In the event the Developer fails to clean dirt and debris from the streets, the City shall give Developer telephonic and email notice of the nature of such failure. Developer shall clean the dirt and debris from the streets described in the telephonic and email notice within one full business day after first receiving telephonic and email -notice, or if the nature of such failure is such that the same cannot reasonably be completed within one full business day, then Developer shall have such additional time as is reasonably necessary to complete such work provided Developer promptly commences to complete such work and proceeds with diligence and continuity.

If Developer fails to complete such work as provided above, then the City may complete or contract to complete the clean-up of the streets at Developer's expense. When the City incurs any expense under the terms of this paragraph, the Developer shall reimburse the City for any reasonable costs the City incurred for such work within 30 days after Developer has received the City's invoice therefore. The Developer understands that no final certificate of occupancy shall be issued if an amount due hereunder remains unpaid.

- 8) **Notices.** Any notices, requests or other communications required or permitted to be given hereunder shall be telephonic and email where indicated and shall be deemed delivered by confirmed receipt by recipient of a facsimile or e-mail, a widely recognized national overnight courier service, or upon receipt if mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth below:

City: City of Spring Lake Park
1301 81st Avenue N.E.
Spring Lake Park, MN 55432
Attn: Daniel R. Buchholtz, City Administrator
Telephone: (763) 792-7211
Facsimile: (763) 792-7257
e-mail: dbuchholtz@slpmn.org

Copy to: John J. Thames
Carson, Clelland & Schreder
6300 Shingle Creek Parkway, Suite #305
Minneapolis, MN 55430
Telephone: (763) 561-2800
Facsimile: (763) 561-1943
e-mail: john.thames@carsoncs.net

Developer: JP Brooks, Inc.
Attn: Josh Pomerleau & Jenn Upegui
Telephone: 763-515-4150 (Jenn)
Facsimile: 1-877-732-9423
e-mail: jp@jpbrooks.com & jenn@jpbrooks.com

Copy to:

- 9) **Insurance Requirements.** Developer shall provide and maintain at all times during the construction of the improvements and performance of the Site Improvement Plan until after acceptance by the City of all improvements:

- a. Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability

insurance) together with an Owner's Contractor's Policy with limits against bodily injury, including death, and property damage (to include, but not be limited to damages caused by erosion or flooding) which may arise out of Developer's work or the work of any of its subcontractors.

- b. Limits for bodily injury or death shall not be less than \$750,000.00 for one person and \$1,500,000.00 for each occurrence; limits for property damage shall not be less than \$2,000,000.00 for each occurrence.
- c. Worker's compensation insurance, with statutory coverage, if applicable.
- d. Developer shall file a Certificate of Insurance with the City Administrator prior to commencing site grading. The City shall be named as an Additional Insured on a primary and non contributory basis on the Certificate. The Certificate shall be modified to bear the following wording:

"Should any of the above policies be canceled before the expiration date thereof, the issuing company shall give thirty (30) days written notice of cancellation to the Certificate Holder."

Developer shall be responsible for providing the above language to its insurer.

- 10) **Escrow Payment by Developer.** Developer shall make escrow payments identified in this Agreement for payment of City expenses identified on **Exhibit B** as the Cash Escrow. In the event the Cash Escrow amount is insufficient, Developer shall pay additional escrow as determined by the City Administrator within ten (10) days of written demand. Failure to make payment of the additional escrow amount shall permit the City to supplement those amounts from the above-identified LOC.
- 11) **Balance of Escrow to Developer.** In the event that there is any escrow remaining at the end of the project and Developer has completed all of its responsibilities and obligations, any balance remaining shall be paid to Developer. Any balance will be mailed to the address provided by Developer in this Agreement or such other address given in writing by Developer to the City.
- 12) **Watershed District Maintenance Agreement.** All site plans, construction, and maintenance shall meet the requirements of the Coon Creek Watershed District. Prior to beginning construction, Developer shall provide the City with a copy of the maintenance agreement negotiated with and approved by the the Coon Creek Watershed District. If such maintenance agreement is required by its terms to be recorded, Developer shall also provide proof of recording of the same with Anoka County.
- 13) **Developer Responsible for Securing All Applicable Permits.** Developer shall be responsible for securing all applicable permits related to the project and shall provide a copy of the same to the City, upon request. This includes, but is not limited to, a Storm Water Pollution Prevention Plan, all applicable permits from the City, the Coon Creek

Watershed District, the Minnesota Department of Health, the Minnesota Pollution Control Agency, and the Anoka County.

- 14) **Field Verification of Existing Storm Sewer.** Prior to beginning construction, Developer shall field verify the location, size, and elevations of existing storm sewer on the Subject Property.
- 15) **Snow Removal.** Developer shall comply with all snow removal requirements within Site Improvement Plan. Further, Developer shall review and update snow removal and snow storage requirements as necessary to ensure that snow removal and storage will not encroach on neighboring properties.
- 16) **Compliance with City's Local Surface Water Plan.** Developer shall submit to the City drainage calculations and all other applicable evidence to demonstrate compliance with the City's Surface Water Management Plan.
- 17) **Individual Lot Site Plans Required.** As a condition precedent to the issuance of any building permit for each of the 6 lots within the Subject Property, Developer shall provide the City with individual lot site plans and certificates of survey specific to the lot on which the building permit application applies. The individual lot site plans shall be in a form satisfactory to the City and include the building location, elevations, driveway dimensions, and utility line locations for each specific lot.
- 18) **Final Plat Recording.** No construction on the project may be commenced until Developer has recorded the City approved final plat for the Project, including all City required easements and dedications in fee, and provided proof of the same to the City.
- 19) **Sewer, Water, and Drainage Facilities On Site Considered Private, Developer to Maintain.** The parties agree that all sewer, water, and drainage facilities within the site, with the exception of the new City mains, shall be considered private facilities. The parties agree that the Developer shall be responsible for maintenance of these private facilities up to and including connection to the City mains and the new City mains. Developer shall maintain all stormwater management infrastructure on the site in compliance with the Coon Creek Watershed maintenance agreement, referenced in paragraph 12 of this Agreement until such infrastructure is dedicated to the City. Should Developer fail to maintain the sewer, water or drainage facilities, the City shall provide Developer with notice of this failure and a reasonable opportunity to cure. During the term of this Agreement, should Developer fail to cure the maintenance violation within the reasonable time provided by the City, Developer hereby consents to allow the City to enter the site and abate such violations. Developer further agrees that the City may then assess any and all costs of that abatement to the Subject Property, and Developer hereby waives any right of appeal to such an assessment, but such waiver is only of any right to appeal such an assessment.
- 20) **Sidewalk Maintenance.** Developer shall be responsible for ensuring that the existing sidewalk on the Subject Property is maintained or replaced during construction and

restored to a as good or better condition upon conclusion of the construction of the Project improvements.

- 21) **Amendment of Agreement.** This Agreement represents the entire agreement of the parties and may not be amended except in writing and executed by both parties.
- 22) **Agreement Effect.** This Agreement shall be binding upon and extend to the representatives, heirs, successors and assigns of the parties hereto. Notwithstanding anything to the contrary herein, this Agreement shall terminate once the Maintenance Bond is released and returned to Developer in accordance with paragraph 4 of this Agreement. However, Developer's indemnification obligations set forth in paragraph 32 of this Agreement shall survive termination of this Agreement.
- 23) **Incorporation of Recitals.** The recital paragraphs set forth at the beginning of this Agreement are incorporated as part of this Agreement as though fully set forth herein.
- 24) **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 25) **Incorporation by Reference.** All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.
- 26) **Governing Law.** The laws of the State of Minnesota shall govern all issues relating to this Agreement.
- 27) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.
- 28) **Force Majeure.** If Developer shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of an event of Force Majeure, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. "Force Majeure" shall mean: flood, fire, tornado, earthquake or other casualty or natural disaster; war or national emergency; governmental moratoria, restrictions and limitations; injunctions or other similar legal actions related to the Subject Property; adverse weather conditions; strikes or other labor troubles; scarcity or unavailability of fuel, labor or materials; or any other cause beyond the reasonable control of Developer.
- 29) **Rights Cumulative.** Each right, power or remedy herein conferred on either party is cumulative in addition to every other right, power or remedy expressed or implied, now or hereafter arising, available to the City or Developer, at law or in equity, or under any other agreement, and each and every right, power or remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City or Developer and it shall not be a waiver of the right to exercise it at any other time thereafter, or any other right, power or remedy.

- 30) **Severability.** In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not, in any way, be affected or impaired thereby.
- 31) **Violation of Agreement.** In the event the Developer, or its successors or assigns, violates any of the covenants and agreements herein contained, unless this Agreement specifies a different amount of time, the City shall give Developer 30 days mailed notice thereof. If such default is not cured within the 30 day period, the City is hereby granted the right and privilege to declare the contract terminated. If the default cannot reasonably be cured within said 30 day period, and the Developer has given the City written notice of such fact, and if work on the cure in fact has been commenced within such 30 day period and the Developer is proceeding continuously and diligently in accomplishing the cure, the 30 day period shall be extended for an additional period necessary to cure the default but in no event shall the period be extended more than an additional 30 days. The initial 30 day notice period shall be deemed to run from the date of deposit in the United States mail. If the default continues after that period, the City may then, immediately, and without notice or consent of the Developer, use all of the deposited escrow funds, Letter of Credit or other surety funds to complete the Developer's obligations as set forth herein, whether or not related to escrow items and to bring legal action against the Developer to collect any sums due to the City pursuant to this Agreement.
- 32) **Indemnification.** The Developer shall indemnify, defend, and hold harmless the City, its officers, employees, agents and others acting on its behalf from any and all loss, damage, liability, cost, and expense of any kind whatsoever, including reasonable attorneys' fees, resulting from actions, claims, or proceedings brought, or any loss or damage of any type whatsoever, sustained by reason of non-compliance with this Agreement or due to the negligence or willful misconduct of the Developer, its officers, employees, or agents, or any other person or entity for whose acts or omissions constituting negligence or willful misconduct the Developer is legally responsible in conjunction with the Project.
- 33) **Attorneys' Fees.** The Developer shall pay the City's costs and reasonable attorneys' fees to be fixed by the Court in the event a suit or action is brought to enforce the terms of this Agreement.
- 34) **Stormwater Pond Access.** Developer shall be responsible for ensuring that an adequate access easement is provided to the City either across the Subject Property or across an adjacent property to allow the City to access the dedicated outlot on which the stormwater pond is located. Developer shall provide proof of recording of this easement to the City prior to commencing construction on the Project.

[signature pages follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

JP BROOKS, INC DBA JP BROOKS BUILDERS,
a Minnesota corporation

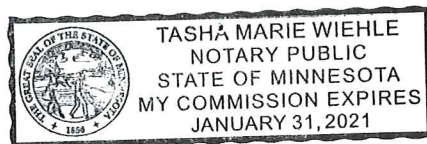
Date 2-20-2020

By: [Signature]

Its: President

STATE OF Minnesota)
) ss.
COUNTY OF Hennipen)

The foregoing instrument was acknowledged before me this 20 day of February, 2020, by Josh Pomerleau the President of JP Brooks, Inc dba JP Builders, a Minnesota corporation, on behalf of the corporation.



[Signature]
Notary Public

CITY OF SPRING LAKE PARK

Date _____

By: _____
Its Mayor

Date _____

By: _____
Its Administrator, Clerk/Treasurer

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledge before me this _____ day of _____, 2020, by Robert Nelson, the Mayor and Daniel R. Buchholtz, the City Administrator, Clerk/Treasurer of the City of Spring Lake Park, a municipal corporation under the laws of Minnesota, on behalf of said municipal corporation.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

John J. Thames, Esq.
Carson, Clelland & Schreder
6300 Shingle Creek Pkwy, Suite 305
Minneapolis, MN 55430
(763) 561-2800

Schedule 1

Sheet C2-1	Site Plan	[date]
Sheet C3-1	Grading Plan	[date]
Sheet C4-1	Utility Plan	[date]
Sheet L-100	Site Landscape Plan	[date]

Exhibit “B”

See Attached

