

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

RESOLUTION NUMBER 2692

TOWERING BLUFFS PLANNED UNIT DEVELOPMENT PHASE I

WHEREAS, Greg Jablonske (“**Developer**”), is the fee owner and intends to develop a parcel or parcels of land lying within the City and legally described on the attached **Exhibit A** (the “**Property**”);

WHEREAS, on December 12, 2022, the Planning Commission held a public hearing and adopted Resolution No. 2022-13 conditionally approving Developer’s request to rezone the Property from R-2 Single Family Residential and R-E Residential Estate District to a Planned Unit Development Zoning District and Developer’s preliminary plat for a two-phased residential development (the “**Preliminary Plat**”) based on the information attached hereto as **Exhibit B**;

WHEREAS, on July 10, 2023, the Planning Commission held a public hearing to accept testimony relating to Developer’s general concept plan and development stage plan for Phase I of the Towering Bluffs Planned Unit Development (collectively, the “**Towering Bluffs Development Stage Plan**”) based on the information contained in Exhibit B;

WHEREAS, on July 10, 2023, the Planning Commission adopted Resolution No. 2023 – 03 recommending conditional approval of the Towering Bluffs Development Stage Plan;

WHEREAS, on or about June 6, 2023, the Developer submitted the final plans and related information for Towering Bluffs (collectively, the “**Towering Bluffs Final Plan**”) attached hereto as **Exhibit C**;

WHEREAS, City staff studied the matter, made a report, and provided other information to the City Council; and

WHEREAS, the City Council considered the matter at its August 1, 2023 meeting.

NOW, THEREFORE, based upon the Towering Bluffs Development Stage Plan, Towering Bluffs Final Plan, public testimony taken before the Planning Commission, and all project information presented and considered, the City Council hereby finds:

FINDINGS

1. The Developer is requesting simultaneous general concept plan, development stage plan, and final plan approval of the Towering Bluffs Planned Unit Development (the “**PUD**”), which consists of 22 residential lots (the “**Project**”).

2. Minn. Stat. § 462.357 grants to the City, for the purpose of promoting the public health, safety, morals and general welfare, the authority to regulate use of land within the City through zoning regulations.

3. City Code §§ 152.150-.153 and 152.705-.706 govern planned unit developments within the City including by prescribing the general requirements and standards for a planned unit development and the procedures for processing a planned unit development.

4. City Code § 152.150 states:

This subchapter is established to provide comprehensive procedures and standards designed for both district and conditional use permit planned unit development to allow the development of neighborhoods or portions thereof incorporating a variety of residential types and nonresidential uses. Recognizing that traditional density, bulk, setbacks, use and subdivision regulations which may be useful in protecting the character of substantially developed areas, may not be appropriate to control development in less developed areas. The PUD, by allowing deviation from the strict provisions of this chapter related to setbacks, heights, lot area, width and depths, yards and the like by conditional use permit or a mixture of uses by rezoning to a PUD District, is intended to encourage:

(A) A development pattern in harmony with the objectives of the Comprehensive Plan;

(B) Innovations in development that address growing demands for all styles of economic expansion, greater variety in type, design, architectural standards and siting of structures through the conservation and more efficient use of land in those developments;

(C) Higher standards of site and building design through the use of trained and experienced land planners, architects and landscape architects;

(D) The preservation and enhancement of desirable site characteristics such as environmentally sensitive areas, existing vegetation, natural topography, greenway corridors, open space, geologic features and the prevention of soil erosion;

(E) A creative use of land and related physical development which allows a phased and orderly transition of varying land uses in close proximity to each other;

(F) More convenience in location of accessory commercial and service areas;

(G) An efficient use of land resulting in smaller networks of utilities and streets thereby lowering development costs and public investments; and

(H) Promotion of a desirable and creative environment that might be prevented through the strict application of city zoning and subdivision regulations.

5. City Code § 152.153(A) states:

(A) *Stages of PUD.* The processing steps for a PUD are intended to provide for an orderly development and progression of the plan, with the greatest expenditure of developmental funds being made only after the city has had ample opportunity for informed decisions as to the acceptability of the various segments of the whole as the plan affects the public interest. The various steps represent separate applications for purpose of review, compliant with M.S. § 15.99, as it may be amended from time to time, outlined in detail in the following sections:

(1) *Pre-application staff meeting.* Preliminary discussions between the applicant and city staff;

(2) *General concept plan application.* Consideration of overall concept and plan;

(3) *Development stage plan application.* One or more detailed plans as part of the whole final plan; and

(4) *Final plan application.* The summary of the entire concept and each development stage plan in an integrated complete and final plan.

6. Under City Code § 152.153(H)(1), the purpose of a general concept plan is to provide an opportunity for the applicant to submit a plan to the city showing the basic intent and the general nature of the entire development without incurring substantial cost. The concept plan serves as the basis for the public hearing so that the proposal may be publicly considered at an early stage.

7. City Code § 152.153(H)(4) states:

Optional submission of development stage plan. In cases of single stage PUDs or where the applicant wishes to begin the first stage of a multiple stage PUD immediately, the applicant may, at his or her option, submit development stage plans for the proposed PUD simultaneously with the submission of the general concept plan. In that case, the applicant shall comply with all provisions of the ordinance applicable to submission of the development stage plan. The Planning Commission and City Council shall consider the plans simultaneously and shall grant or deny development stage plan approval in accordance with the provisions of this chapter.

8. Under City Code § 152.153(H)(5), PUD concept approval only provides direction for the applicant to proceed to PUD development stage submission. The concept plan approval does not convey any development rights or privileges to the applicants.

9. Under City Code § 152.153(I), development stage submissions shall depict and outline the proposed implementation of the PUD general concept stage. Information from the general concept stage may be included for background and to provide a basis for the submitted plan.

10. Under City Code § 152.153(I)(2), the applicant must provide the following information unless the Zoning Administrator excuses the applicant from submitting a specific item or document which it finds to be unnecessary for the consideration of the specific proposal for PUD approval:

- (a) Zoning required;
- (b) Site plan/preliminary plat;
- (c) Residential tabulation;
- (d) Areas of use;
- (e) Architectural plans;
- (f) Landscape plan;
- (g) Grading and drainage plan;
- (h) Erosion control;
- (i) Document changes;
- (j) Preliminary plat;
- (k) Lighting plan; and
- (l) Additional data deemed necessary by the City.

11. The Developer, pursuant to City Code §§ 152.153(A), (H) and (I), submitted the information contained in Exhibit B for the Planning Commission's review and consideration, which consists of the following information:

- A. Towering Bluffs Preliminary Plat;
- B. Development Application;
- C. GIS Towering Bluffs boundary map;
- D. GIS Towering Bluffs overhead map;
- E. GIS zoning map;
- F. Towering Bluffs zoning response letter; and
- G. Towering Bluffs engineering response letter

12. On July 10, 2023, the Planning Commission (i) held a public hearing pursuant to City Code §§ 152.153(G) and (I)(3)(e) to accept testimony relating to the Developer's Towering Bluffs Development Stage Plan (ii) adopted Resolution No. 2023 - 03 recommending that the City Council approve the Developer's Towering Bluffs Development Stage Plan, subject to certain conditions prescribed by the Resolution that must be met, to the satisfaction of the City, prior to or simultaneously with final plan approval.

13. City Code § 152.153(J)(1) states:

Purpose. The final plan is to serve as a complete, thorough and permanent public record of the PUD and the manner in which it is to be developed. It shall

incorporate all prior approved plans and all approved modifications thereof resulting from the PUD process. It shall serve in conjunction with other city ordinances as the land use regulation applicable to the PUD. The final plan is intended only to add detail to and put in final form, the information contained in the general concept plan and the development stage plan and shall conform to the development stage plan in all respects.

14. On or about June 6, 2023, the Developer submitted the Towering Bluffs Final Plan, which consists of the following information contained in Exhibit C:

- A. Towering Bluffs Final Plat;
- B. Towering Bluffs 1st Add., Cannon Falls, Minnesota, Construction Plan for Greg J. Homes, consisting of Sheets C1.0 through C8.2;
- C. Stormwater Management Narrative and Summary dated May 19, 2023;
- D. Storm Sewer Drainage Map;
- E. Storm Sewer Design Computation Sheet;
- F. Spread Calculations;
- G. Sanitary Sewer Engineer's Estimate, Bid Form-4, dated May 17, 2023; and
- H. Developer's letter dated May 18, 2023 with responses to engineering response letter

15. City Code § 152.153(I)(3)(k) requires the City and Developer to enter into a PUD Agreement prescribing the specific terms and conditions approved by the City Council and accepted by the Developer. The Towering Bluffs Phase I PUD Agreement (the "**Towering Bluffs PUD Agreement**") is attached hereto as **Exhibit D**.

16. The Towering Bluffs Development Stage Plan and Towering Bluffs Final Plan meet the City Code requirements, provided they are subject to and meet, to the satisfaction of the City, the conditions set forth in this Resolution.

DECISION

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cannon Falls that, based upon the findings cited herein:

1. The City Council hereby conditionally approves the Towering Bluffs Development Stage Plan, subject to the conditions set forth in paragraph 3 below that must be met, to the satisfaction of the City, prior to release of the Final Plat.

2. The City Council hereby conditionally approves the Towering Bluffs Final Plan, subject to the conditions set forth in paragraph 3 below that must be met, to the satisfaction of the City, prior to release of the Final Plat.

3. The following conditions must be met to the satisfaction of the City prior to the release of the Final Plat:

(a) The conditional approvals granted by this Resolution are subject to the completion of and compliance with all ministerial matters set forth in the City Code and required by the City, including but not limited to, those of Engineering, Planning, Administrative and Legal Departments, *eg.* payment of fees.

(b) The approvals granted by this Resolution apply only to the Property.

(c) The Developer shall comply with the recommendations of the City Engineer set forth in the December 8, 2022 letter from William Angerman, P.E., Cannon Falls Consulting City Engineer, attached hereto in Exhibit B.

(d) Any signage on the Property is not part of the approvals granted by this Resolution and a separate application, subject to review and approval by the City, shall be required.

(e) The City and Developer shall enter into the Towering Bluffs PUD Agreement, subject to final review by the City Attorney, within thirty (30) days of the date of this Resolution. The Towering Bluffs PUD Agreement shall be recorded against and run with the Property. The Developer shall provide the City with recording information prior to the issuance of any permit for the development of the Property.

(f) The Towering Bluffs Development Stage Plan and Towering Bluffs Final Plan shall be consistent with the Final Plat.

(g) The Developer shall submit, for the City's review and consideration, all information required under City Code ch. 151 for the City Council's consideration of the Final Plat.

(h) City Council approval of the Final Plat.

(i) City Council approval of a development agreement governing the Property.

(j) City Council approval of an ordinance rezoning the Property from R-2 Single Family Residential and R-E Residential Estate District to a Planned Unit Development Zoning District.

(k) All construction on and maintenance of the Property shall comply, at all times, with this Resolution, the Towering Bluffs Development Stage Plan, the Towering Bluffs Final Plan, the Final Plat, and City Code.

(l) The Developer shall cause the Towering Bluffs Final Plan, or portions thereof as appropriate, to be recorded with the Goodhue County Registrar. The Developer shall provide the City with a signed copy verifying county recording within forty (40) days of the date of this Resolution.

(m) The Developer shall provide a platting title commitment as required by Minn. Stat. § 505.03. The above-mentioned evidence of title shall be subject to the review and approval of the City Attorney to determine the entities that must execute the Towering Bluffs Final Plat and other documents to be recorded against the Property. Further, the Developer shall provide the City with evidence, which sufficiency shall be determined by the City, that all documents required to be recorded pursuant to this Resolution and by the City Attorney are recorded and all conditions for release of the Towering Bluffs Final Plat have been met prior to the City processing or approving any building permits or other permits applicable to the development of the Property.

(n) The Developer's satisfaction of all park dedication requirements for the Project prior to the City's release of the Final Plat.

(o) Unless otherwise expressly provided for by this Resolution, the Developer shall comply with the requirements of previous approvals for the Property within the timeframes set forth therein.

ADOPTED by the City Council this 1st day of August 2023.

Matt Montgomery, Mayor

ATTEST: _____
Neil L. Jensen, City Administrator

This Instrument Drafted By:
Hoff Barry, P.A.
100 Prairie Center Drive, Suite 200
Eden Prairie, MN 55344

**PLANNED UNIT DEVELOPMENT AGREEMENT
TOWERING BLUFFS
CANNON FALLS, MINNESOTA**

THIS PLANNED UNIT DEVELOPMENT AGREEMENT TOWERING BLUFFS CANNON FALLS, MINNESOTA (the “**Agreement**”) is entered into this ____ day of ____, 2023 (the “**Effective Date**”) by and between GREG J. HOMES OF HASTINGS, INC., a Minnesota corporation (“**Developer**”), and the CITY OF CANNON FALLS, a Minnesota municipal corporation (“**City**.”) Developer and City are each a “**Party**” and collectively the “**Parties**” to this Agreement.

RECITALS:

WHEREAS, Developer is the fee owner and intends to develop a parcel or parcels of land lying within the City and legally described on the attached **Exhibit A** (the “**Property**”); and

WHEREAS, on December 12, 2022, the Planning Commission held a public hearing and adopted Resolution No. 2022-13 conditionally approving Developer’s request to rezone the Property from R-2 Single Family Residential and R-E Residential Estate District to a Planned Unit Development Zoning District and Developer’s preliminary plat for a two-phased residential development (the “**Preliminary Plat**”) based on the information attached hereto as **Exhibit B**;

WHEREAS, on July 10, 2023, the Planning Commission held a public hearing to accept testimony relating to Developer’s general concept plan and development stage plan for Phase I of the Towering Bluffs Planned Unit Development (collectively, the “**Towering Bluffs Development Stage Plan**”) based on the information contained in Exhibit B;

WHEREAS, on August 1, 2023, the City Council enacted Ordinance No. _____ attached hereto as **Exhibit C**, which conditionally rezoned the Property from R-2 Single Family Residential and R-E Residential Estate District to a Planned Unit Development Zoning District;

WHEREAS, on August 1, 2023, the City Council adopted Resolution No. _____ attached hereto as **Exhibit D**, which conditionally approved (i) the Towering Bluffs Development Stage Plan and (ii) the final plans and related information for Towering Bluffs (collectively, the “**Towering Bluffs Final Plan**”);

WHEREAS, on August 1, 2023, the City Council adopted Resolution No. _____ attached hereto as **Exhibit F** (Resolution No. ____ and Resolution No. ____ are collectively referred to herein as the “**City Resolutions**”), which conditionally approved (i) the Towering Bluffs 1st Addition Final Plat drafted by James R. Hill, Inc. (the “**Final Plat**”), which consists of Phase I of the

Preliminary Plat containing 21 detached single-family lots, Outlot A, and easements dedicated to the public for public ways, drainage and utilities and (ii) the Towering Bluffs Development Agreement (the “**Development Agreement**”);

WHEREAS, this Agreement is entered into for the purpose of (1) setting forth and memorializing the understandings and agreements of the Parties concerning the use of the Property as a PUD and in accordance with the City Resolutions, Towering Bluffs Development Stage Plan, Towering Bluffs Final Plan, Final Plat, Ordinance No. ____, and City Code, and (2) putting subsequent owners of the Property on notice of the limitations and obligations of the Parties concerning the Property.

NOW, THEREFORE, it is hereby and herein mutually agreed, in consideration of promises and considerations of City and Developer herein set forth, as follows:

1. Incorporation. The above Recitals and all exhibits attached to this Agreement are a material part of this Agreement and are incorporated herein.

2. Zoning. The zoning of the Property is Planned Unit Development Zoning District. The City Resolutions and all exhibits thereto, Ordinance No. ____, and City Code shall govern the zoning of the Property.

3. Development; Maintenance. Development of, construction on and maintenance of the Property shall be done in accordance with and shall comply, at all times, with the Development Agreement, the City Resolutions and all exhibits thereto, this Agreement, and all applicable sections of the City Code and other governmental rules and regulations. Further, all plans for construction on individual lots within the Property are subject to the review and approval of the City for compliance with the Towering Bluffs Development Stage Plan and Towering Bluffs Final Plan at the time application is made for a building permit. Such applicants must make all changes to said construction plans as required by the City. If an applicant does not make the required changes, the City shall not issue the building permit requested by such applicant.

4. PUD Requirements. The Developer shall comply with all the requirements set forth in Resolution No. ____ conditionally approving the Towering Bluffs Development Stage Plan and Towering Bluffs Final Plan and this Agreement, to the satisfaction of the City and prior to the issuance of any permits for the development of the Property.

5. Developer to Pay All Costs. Developer shall pay, within thirty (30) days of demand, all reasonable expenses that the City incurs in direct relation to the development of the Property and this Agreement. Said expenses shall include, but are not limited to, staff, engineering, legal and other consulting fees reasonably incurred in relation to this Agreement.

6. Violation of Agreement. In the event the Developer, including its successors and permitted assigns, violates any of its covenants or agreements in this Agreement and such violation is not corrected, or commenced to be corrected by the Developer, (which correction shall be diligently and promptly pursued and completed), within thirty (30) days after written notice specifying such violation, the City is hereby granted the right and privilege to declare a default in

any or all of the terms of this Agreement and pursue any remedies at law or equity against the Developer.

7. Certificate of Occupancy. No Certificate of Occupancy shall be issued for any building constructed on any lot within the Property until the Developer has complied with the Development Agreement, the City Resolutions and all exhibits thereto, this Agreement, and all applicable sections of the City Code and other governmental rules and regulations. If the Developer is in default under this Agreement, the City may, among other remedies set forth in this Agreement, withhold future Certificates of Occupancy issued for the Property.

8. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each referred to as a “**Notice**”) shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); or (b) when received or rejected by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) when received or rejected by the addressee if sent by United States Postal Service (receipt requested); provided, that a Notice may be sent by e-mail where expressly permitted by this Agreement or by telephone where expressly permitted by this Agreement (any such telephone Notice shall be followed by an email confirmation within a reasonable time period). A Notice must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a Notice given in accordance with this Section):

If to City: City of Cannon Falls
 c/o City Administrator
 918 River Road
 Cannon Falls, MN 55009

With copy to: Hoff Barry, P.A.
 Attn: Shelley M. Ryan
 100 Prairie Center Drive, Ste. 200
 Eden Prairie, MN 55344

If to Developer:

With copy to:

9. Proof of Title/City Attorney Requirements. The Developer shall provide a platting title commitment as required by Minn. Stat. § 505.03. Such evidence of title shall be subject to the review and approval of the City Attorney to determine the entities that must execute the Final Plat and other documents to be recorded against the Property. Further, the Developer shall provide the City with evidence, which sufficiency shall be determined by the City, that all documents required to be recorded pursuant to the City Resolutions and by the City Attorney are recorded and all conditions for release of the Final Plat have been met prior to the City processing or approving any building permits or other permits applicable to the development of the Property.

10 Cluster Box Unit Requirements. The Developer shall install cluster box units as required by the United States Postal Service (the cluster box units and the area near and adjacent to allow its reasonable use are referred to as the “CBU”). The Towering Bluffs Development Stage Plan and Towering Bluffs Final Plan shall be modified prior to release of the Final Plat, subject to the review and approval of the City Engineer, to comply with the requirements of the United States Postal Service for the CBU. Prior to release of the Final Plat, the Developer shall submit a maintenance declaration or contain such maintenance responsibility in homeowner association documents, subject to the review and approval of the City Engineer, to apportion to all lots of the Property the responsibility and cost to maintain the CBU.

11. MISCELLANEOUS.

a. Attorneys’ Fees. If any action is brought to enforce the terms of this Agreement and the City prevails, the Developer will pay the City’s costs and reasonable attorneys’ fees to be fixed by the Court.

b. Entire Agreement. This Agreement and any other documents incorporated herein by reference constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

c. Agreement Effect. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and permitted assigns and the benefits and burdens shall run with the Property. The Developer shall record this Agreement against the title to the Property along with the recording of the Final Plat. The Developer warrants and guarantees that this Agreement shall have priority on the property records over any other lien or encumbrance. The Developer shall provide the City with evidence, which sufficiency shall be determined by the City, that this Agreement is recorded and all conditions herein have been satisfied prior to the City processing or approving any building permits or other permits applicable to the development of the Property.

d. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota.

e. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and assigns and nothing herein, express, or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

f. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

g. Time is of the Essence. Time is of the essence in the performance of the terms and obligations of this Agreement.

h. Modification. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party.

i. Warrant of Authority. The Developer warrants and guarantees that it has the authority to enter into this Agreement and to make it a covenant on the Property binding all current and future owners.

j. Compliance with City Code § 152.153(J)(2)(g). Pursuant to City Code § 152.153(J)(2)(g), the Developer shall make application for and receive (on the condition that the Developer complies with the requirements of the Development Agreement, the City Resolutions and all exhibits thereto, this Agreement, and all applicable sections of the City Code and other governmental rules and regulations) a building permit and construction activities on the Property shall commence on or before July 31, 2024. In such event of failure of the Developer to meet the above deadline, the Development Agreement, the City Resolutions and all exhibits thereto, this Agreement, and all approvals granted under the same for the development of the Property shall become null and void with no further action required by either the Developer or City.

k. Non-Waiver. The action or inaction of the City shall not constitute a waiver or amendment of the provisions of this Agreement. The waiver by or the failure of the City to enforce any particular section, portion, or requirement of this Agreement at any particular time shall not in any way constitute a waiver of any other section, provision, requirement, time element, or the right to enforce such provision at a subsequent time. To be binding, any 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.

l. Cumulative Rights. 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 hereinafter arising, available to the City, at law or in equity, or under any other agreement, and each and every right, power, and 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 and will not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy.

The remainder of this page intentionally left blank; signature pages follow

IN WITNESS WHEREOF, the Parties herein have executed this Agreement as of the Effective Date.

CITY OF CANNON FALLS,
A Minnesota municipal corporation

BY: _____
Mayor

AND: _____
City Administrator

STATE OF MINNESOTA)
COUNTY OF GOODHUE)ss.
CITY OF CANNON FALLS)

On this ____ day of _____, 202, before me personally appeared Matt Montgomery and Neil Jensen to me known to be the persons described in the foregoing instrument and who did say they are, respectively, the Mayor and City Administrator of the CITY OF CANNON FALLS, Minnesota, a municipal corporation, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and that said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council, and said Matt Montgomery and Neil Jensen acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

GREG J. HOMES OF HASTINGS, INC.,
a Minnesota corporation

By: _____

Gregory A. Jablonske

Its: CEO

STATE OF MINNESOTA)
) SS.

COUNTY OF _____)

This instrument was acknowledged before me on this ____ day of _____, 2023,
by Gregory A. Jablonske, the CEO of GREG J. HOMES OF HASTINGS, INC., a Minnesota
corporation, on behalf of said corporation.

Notary Public

