

TO: MAYOR AND CITY COUNCIL

FROM: Laura Qualey, Economic Development

SUBJECT: Hardwood Estates 2nd Subdivision Early Model Home Permit Agreement for Fieldstone Family Homes, Inc.

MEETING DATE: May 21st, 2024

BACKGROUND

The EDA met on May 2nd, 2024 to review, discuss and approve the terms of a Purchase Agreement with Fieldstone Family Homes, Inc. from Burnsville for the sale of five lots in the new Hardwood Estates 2nd Subdivision. The EDA held a public hearing on May 20th, 2024 to sell the properties to Fieldstone Family Homes, Inc. which was uncontested and approved unanimously. A closing date is scheduled within the next couple of weeks.

The builder would like to construct two model homes before the curb/gutter and road is complete and is requesting permission from the City Council to approve an Early Model Home Agreement. Attached is the Agreement which gives the builder approval to build up to two model homes before construction of the roads in Hardwood Estates 2nd Subdivision and before 72nd Ave Way is complete. WHKS has added language within the Agreement which holds the builder to terms a Development Agreement would typically cover such as erosion control, interference of Hardwood Estates construction efforts, etc.

The two lots they would be building on are the first two lots at the end of the existing 72nd Ave Way on the east side which would start the new subdivision.

The reasoning for the Early Model Agreement is it takes Fieldstone Homes roughly 120 days to complete a home and they would like to have at least one model completed for the Fall Parade of Homes in August; ideally two models.

The agreement states that all purchase agreements will be completed before home construction begins and no certificate of occupancy will be issued until the base layer of asphalt is installed.

STAFF RECOMMENDATION

The EDA recommends that Council approve the Early Model Home Permit Agreement for Fieldstone Family Homes, INC.

REQUESTED COUNCIL ACTION

Please make a motion to approve the Early Model Home Permit Agreement for Fieldstone Family Homes, INC. in Hardwood Estates 2nd Subdivision.

EARLY MODEL HOME PERMIT AGREEMENT

This Early Model Home Permit Agreement (this "Agreement"), entered on this _____ day of _____, 2024 between the **CITY OF CANNON FALLS, MINNESOTA**, a municipal corporation of the State of Minnesota, hereinafter referred to as "City" and **FIELDSTONE FAMILY HOMES, INC**, a Minnesota corporation, hereinafter referred to as the "Builder" (collectively, the "Parties").

WHEREAS, the **CANNON FALLS ECONOMIC DEVELOPMENT AUTHORITY**, a public body, corporate and politic and political subdivision under the laws of the State of Minnesota hereinafter referred to as "EDA", and Builder have executed a Purchase Agreement dated _____ of _____, 2024;

WHEREAS, the Purchase Agreement is comprised of Block 2 Lots 1 and 2 as well as three additional lots , Block 2 Lots 3-5 under contract for future purchase (collectively, the "Properties");

WHEREAS, the Builder, desires to apply for and be issued early building permits to commence construction on early model homes ("Early Model Homes"), prior to completion of the building of the public streets serving the Property; and

WHEREAS, the EDA has approved this Agreement that sets forth conditions for building permits for Early Model Homes.

NOW, THEREFORE, for good and valuable consideration in hand received and acknowledge both as to receipt and sufficiency, the Parties do hereby agree as follows:

1. Builder, through its agent, a licensed contractor, may "pull" building permits for residential dwellings to be used as Early Model Homes in the Hardwood Estates 2nd Subdivision development prior to completion of building of public streets serving the Property. The number of Early Model Homes on the Property shall not exceed two (2).
2. Builder has provided construction design and is in full compliance with the Declaration of Covenants terms of Hardwood Estates 2nd Subdivision.
3. Certificates of Occupancy for Early Model Homes will only be issued after the applicable governmental authority or his/her designee finds it meets the applicable Building Code and all public improvements (including street completed to base pavement) are completed.
4. Any of the Early Model Homes may be utilized as a sales office once it has its Certificate of Occupancy.
5. The City reserves the right to ensure that the requirements of this Agreement are being followed. If a violation occurs, the Builder will be notified in writing/email and shall come into compliance within ten (10) business days of the notification. If the Builder does not come into compliance as determined by the City, permits issued pursuant to this Agreement may be suspended by the City until such time as the Builder brings the Property into compliance.
6. This Agreement constitutes the complete, final, and exclusive embodiment of the entire agreement between the Parties.
7. This Agreement may be executed in one (1) or more duplicated counterparts, each of which shall be deemed an original and part of the complete Agreement.
8. The Builder agrees to not stage equipment or vehicles in the road right of way if it interferes with the overall City subdivision construction. Builder understands access may be limited at times during street construction and site grading. Builder acknowledges private utilities (gas, electric, cable, etc) will not be available until after curb and gutter is installed in the subdivision. The City's contracted completion date for Hardwood Estates is June 30, 2024. Access via 72nd Ave. Way will be limited until the project completion date of September 27, 2024.
9. Builder agrees to transfer the MPCA NPDES storm water permit to the impacted lots and comply with all erosion control requirements.
10. Any notice of other communication required or permitted under this Agreement will be effective only if it is in writing and delivered personally or sent by fax, e-mail, or certified mail, postage prepaid, addressed as follows:

If to the City:

Neil Jensen, City Administrator 918
River Road
Cannon Falls, MN

If to the Builder:

Fieldstone Family Homes, Inc
Attn: Trent Johnson
801 East Cliff Road
Suite 135
Burnsville, MN 55337

10. This Agreement will be construed and enforced in accordance with the substantive laws of the State of Minnesota without regard to any conflict of laws principles that would require the application of laws of a different state.
11. The Parties shall be subject to the exclusive jurisdiction of the Federal and state courts of the State of Minnesota in any suit or proceeding arising out of or relating to this Agreement.
12. Neither Party may assign this Agreement or assign any rights or delegate any obligation under this Agreement without the other Party's written consent, not to be unreasonably withheld, except that such Party may assign this Agreement, without the other Party's written consent pursuant to a merger, acquisition, or sale of all or substantially all of such Party's assets relating to this Agreement. Any attempt or purported assignment in violation of this section will be null and void.
13. No amendments or variations to the terms of this Agreement shall be valid unless made in writing and signed by the Parties.
14. If any provision of this Agreement is determined invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement. The court may modify the provision(s) in question in order to be rendered enforceable in a manner consistent with the intent of the Parties.

[Signature Page Follows]

The Parties have read, understand, and agree to the terms and conditions set out in this Agreement dated this _____ day of _____, 2024.

"City"
CITY OF CANNON FALLS, MINNESOTA,
a Minnesota Municipal Corporation

Name: Matt Montgomery
Mayor, City of Cannon Falls

Name: Neil Jensen
City Administrator

The Parties have read, understand, and agree to the terms and conditions set out in this Agreement dated this _____ day of _____ 2024.

"Builder"
FIELDSTONE FAMILY HOMES, INC.

Name: _____

Its: _____