

PREPARED BY:
Justin M. Johnson
City Attorney, City of Mitchell
612 North Main Street
Mitchell, SD 57301
(605) 990-7940

Developer's Agreement

Lakeridge Phase I

City of Mitchell, South Dakota

This agreement made this 2 day of August, 2021, between Ethan Co-op Lumber Association, owners, hereinafter called "Developer" and the City of Mitchell, a municipal corporation of the State of South Dakota, located in Davison County, hereinafter called the "City".

WHEREAS, the Developer is the owner of approximately 22 acres including approximately 3.44 acres of dedicated ROW, said land being described as follows:

Blocks 1, 2 and 3, Hoppy Drive and Zeke Avenue of Lakeridge Addition, A Subdivision of Irregular Tracts Nos. 1 and 2 in the NW ¼ of Section 10, T 103 N, R 60 W of the 5th P.M., City of Mitchell, Davison County, South Dakota.

WHEREAS, the Developer desires to improve land for residential purposes; and

WHEREAS, the Planning Commission of the City has recommended to the City Council that the proposed subdivision of the above described land be given final approval when the plat thereof was presented to the Planning Commission and City Council on the condition that the Subdivider enter into an agreement with the City relative to the manner and method by which said land is to be developed; that the developer not be in default as to said agreement and all laws and regulations governing said development; and

WHEREAS, the Developer agrees to develop said land as herein described in accordance with this agreement, all City Ordinances, and all laws, plans and regulations governing said development.

NOW, THEREFORE, IN CONSIDERATION OF THE GRANTING OF APPROVAL OF A PLAT OF THE ABOVE DESCRIBED LAND AND THE DEVELOPMENT THEREOF BY THE CITY COUNCIL, the Developer does hereby agree to improve and develop said land as follows and as otherwise regulated by City Ordinances and all laws, plans and regulations governing said development.

Section I. Improvements. Standard for all Subdivisions

All Provisions of Section I apply unless otherwise addressed in Section II.

A. Roads and Streets. The Developer hereby agrees:

1. To grade and surface all roads and streets in the above described property in accordance with the plat of said subdivision and the plans and specifications on file in the Office of the Director of Public Works.
2. That roads and streets will be completed and presented to the City before occupancy is permitted.
3. That no occupancy will be permitted until roads and streets have been dedicated to and accepted by the City.

B. Sanitary Sewer. The Developer hereby agrees:

1. To construct, furnish, install and provide a complete sewerage system throughout the entire subdivision, all in accordance with the plans, specifications and drawings on file in the Office of the Director of Public Works. Materials oversizing expenses resulting from City service requirements that are over what the developer would normally be responsible for will be reimbursed to the developer by the City.
2. That construction of a sanitary sewer will be completed and acceptable to the City before any occupancy is permitted.
3. That no occupancy will be permitted until the sanitary sewer lines have been dedicated to and accepted by the City.

C. Water. The Developer hereby agrees:

1. To construct, install, furnish and provide a complete system of water distribution throughout the entire subdivision in accordance with the plans and specifications on file in the office of the Director of Public Works. Materials oversizing expenses resulting from City service requirements that are over what the developer would normally be responsible for will be reimbursed to the developer by the City.
2. That construction of the system of water distribution will be completed and acceptable to the City before any occupancy is permitted.
3. That no occupancy will be permitted until the water distribution system has been dedicated to and accepted by the City.

D. Surface Water Drainage. The Developer hereby agrees:

1. To construct, install, furnish and provide adequate facilities for storm and surface water drainage and detention/retention throughout the entire subdivision in accordance with the plans and specifications on file in the office of the Director of Public Works.
2. That construction of surface and storm water drainage facilities shall be completed and acceptable to the City before occupancy is permitted.

E. Sidewalks. The Developer hereby agrees:

1. To design a complete system of sidewalks along all public streets and dedicated pedestrian walkways within the entire subdivision.
2. The construction of all sidewalks shall be completed for each lot by either the Developer or owner prior to permitting occupancy of the property.

F. Landscaping. The Developer hereby agrees to place the below noted requirements in their covenants.

1. Gravel shall not be permitted as an acceptable driveway material.
2. Landscape rock shall not be permitted within the City right-of-way.

G. Testing. Developer shall employ at its sole expense a professional qualified, independent testing company to perform all testing of materials or construction that may reasonably be required by the City to ensure compliance with City standards and specifications. Developer shall furnish the City with certified copies of test results and shall release and authorize full access to the City and its designated representatives to all work-up materials, procedures and documents used in preparing test results.

H. Drawings of Construction Record. The Developer shall supply the City with drawings of construction record showing the grades of all underground utilities. The drawings of construction record shall be signed and sealed by a professional engineer licensed in the state of South Dakota with a statement indicating the project was constructed in accordance with the design intent. The Developer shall contact the City during the installation of the water main to coordinate as-built GPS records.

Section II. Provisions Specific to This Subdivision

NA

Section III. Dedication

Subject to all of the other provisions of this agreement and the exhibits hereto attached the Developer shall, without charge to the City, upon completion of all of the above described improvements, unconditionally give, grant, convey and fully dedicate the same to the City, its successors and assigns forever free and clear of all encumbrances. After such dedication, the City shall have the right to connect or integrate other sewer or water facilities provided

hereunder as the City decides, with no payment or award to, or constitute acceptance of any improvement by the City.

Section IV. Miscellaneous Requirements.

A. Survey Monuments. The Developer hereby agrees to properly place and install all survey or other monuments required by statute or ordinance prior to final plat approval. Interior piping shall be installed after the improvements are completed; before the sale of any lot and prior to the City's final street acceptance.

B. Grade. The Developer hereby agrees to furnish to the Director of Public Works a copy of a plan showing the street grade in front of each lot and finished yard grade. This information shall be provided in the plans, specifications and drawings on file in the Office of the Director of Public Works.

C. Reimbursement of Costs to the City.

The Developer hereby agrees to reimburse the City for any costs incurred by the City for engineering, inspection, administrative and legal expenses from outside entities.

1. Engineering and administrative costs for outside consultants shall be charged at the rate the consultant charges the City, if needed.
2. The developer shall reimburse the City for the water main extension from Highway 37 to the connection point to the development. The City shall charge the developer for the cost of materials.

D. Covenants. Private covenants in the subdivision shall not conflict with the Planned Unit Development and this developer's agreement. The most stringent provision shall be followed if conflicts arise.

Section V. Roads, Sanitary Sewer, Water and Storm Water Guaranty.

The Developer shall guarantee the improvement described in this agreement against defect due to faulty materials or workmanship which appear within a period of one year from the date of acceptance by the City as herein provided and shall pay for any damages resulting there from to City property.

Section VI. Method of Improvement.

The Developer hereby agrees to engage contractors for all work included in this agreement who are qualified to perform the work and who shall be listed as qualified for such work by the City. The Developer further agrees to use materials and make the various installations in accordance with the approved plans and specifications made a part of this agreement by reference and including those standard specifications of the City.

Section VII. Issuance of Occupancy Permits.

The Developer hereby agrees no occupancy shall be permitted until all streets, public utilities and improvements have been installed and are approved for connection by the City of Mitchell. No building permits shall be issued until the improvements in Section I., A, B, C and D are contracted for and copies of the executed contract are supplied to the City.

The Developer agrees to cooperate with the City to prevent the occupancy of any dwelling units before required improvements have been accepted. The City will not be obligated to provide any services to any unit built in the Subdivision until all required improvements have been accepted and may terminate any services provided during construction if a unit is occupied before an occupancy permit is issued by the City.

Section VIII. City Responsibility.

The Developer hereby agrees the City will perform no repair, maintenance or snow removal or provide utility services on any improvements until accepted by the City.

Section IX. Termination

The Developer hereby agrees that this agreement shall be terminated after the one-year guaranty period as set forth in Section V has expired or thirty (30) days after all deficiencies have been corrected which were identified during the one-year guaranty period, whichever is more stringent.

IN WITNESS WHEREOF, the Developer has caused this Agreement to be signed this _____ day of _____, 2021.

[signature pages follow]

ETHAN CO-OP LUMBER ASSOCIATION

Signature

Signature

Print Name

Print Name

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF DAVISON)

On this _____ day of _____, 2021, before me, the undersigned officer, personally appeared Dan Boehmer., who acknowledged himself to be a member of Ethan Co-op Lumber Association, a South Dakota corporation, and that in his official capacity, being authorized to do so, executed the foregoing instrument for the purposes stated therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public – South Dakota
My Commission Expires:_____

CITY OF MITCHELL, SOUTH DAKOTA

Robert B. Everson, Jr., Mayor

Attest:

Michelle Bathke, Finance Officer

(seal)

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF DAVISON)

On this 2nd day of August, 2021, before me, the undersigned officer, personally appeared Robert B. Everson, Jr. and Michelle Bathke, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Mitchell, a South Dakota municipal corporation, and that in their official capacities, being authorized to do so, executed the foregoing instrument for the purposes stated therein.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public – South Dakota
My Commission Expires:_____

(seal)