

ASSURANCE AGREEMENT LEGENDARY ESTATES

This Assurance Agreement (this "Agreement") is made and entered into the date(s) below written by and among the NIELSON DEVELOPMENT, LLC, a South Dakota limited liability company ("Developer"), KN CONSTRUCTION, INC., a South Dakota corporation ("Builder"), KELLY NIELSON, and individual of _____, South Dakota ("Nielson"), and the CITY OF HARRISBURG, a municipal corporation existing under the laws of the State of South Dakota ("City"), upon the following premises and conditions:

Whereas, Developer has developed and is in the process of developing residential real estate within the City of Harrisburg South Dakota known as Legendary Estates (the "Development");

Whereas, on July 12, 2016 the City issued a Notice to Developer freezing the issuance of all building permits and new development within the Development;

Whereas, Developer and City reached a prior agreement to allow further issuance of building permits in Phases 1-5, but no agreement was reached as to future development;

Whereas, Developer, Builder and City have reached an agreement to provide a drainage easement and other improvements on 401 South Perry Lane as further identified herein;

Whereas, Developer has agreed to complete and otherwise re-grade 401 South Perry Lane to improve drainage in Phases 1-5; and

Whereas, in exchange for the foregoing, the City has agreed to lift its building permit and development freeze of July 12, 2016, provided the regrading is completed by June 1, 2018 and structural improvements are completed before the sale or transfer of 401 South Perry Lane and in no event later than September 1, 2018.

NOW THEREFORE, each and every of the foregoing premises being duly considered and agreed to, the parties do further stipulate and agree as follows:

SECTION 1. Drainage Easement. Within 30 days of the execution of this Agreement, Builder agrees to enter into and otherwise execute a Drainage Easement over and through 401 Perry Lane in the Legendary Addition, as such easement area is depicted on the attached Exhibit 1.

SECTION 2. Regrading. Developer, at its sole cost, agrees to regrade the back and side yard of 401 South Perry Lane to improve drainage as detailed on the attached Exhibit 2. Developer shall submit the grading plans to the City and obtain whatever permit is necessary which acceptance of which the City shall not unreasonably condition, refuse, or delay. The Developer agrees to complete all regrading by no later than June 1, 2018.

SECTION 3. Failure to Complete Regrading. If Developer fails or otherwise refuses to complete the regrading by June 1, 2018, the City may reinstitute the building permit and development freeze issued on July 12, 2016 until such time as the regrading work is completed.

SECTION 4. Structural Improvements. Builder, at its sole cost, shall make improvements to the physical structure located at 401 South Perry Lane to prevent future water infiltration as detailed on the attached Exhibit 2, subject to City's standard building permit and building code requirements. Said improvements shall be completed before the sale or transfer of 401 South Perry Lane and in no event later than September 1, 2018.

SECTION 5. Building Permits. So long as the Developer and Builder are not in default of this Agreement, the City shall review and issue building permits in the Development pursuant to its standard procedures. In the event that the Developer or Builder is in default of any provision of this Agreement, the City may, in addition to any other remedies available to the City in equity or law, refrain from issuing new building permits in the Development.

SECTION 6. Miscellaneous Provisions.

- (A) The respective rights, responsibilities and duties of the parties under this Agreement may be enforced or compelled by order or judgment of the Circuit Court in and for Lincoln County, Second Judicial Circuit, having jurisdiction over the Development, Developer, City, Builder and/or Nielson.
- (B) This Agreement shall be construed and interpreted in accordance with South Dakota law.
- (C) The parties agree that if any part, term, paragraph or provision of this Agreement is in any manner held to be invalid, illegal, void, or in any manner unenforceable, or to be in conflict with any law, then the validity of the remaining portions or provisions of this Agreement shall not be affected, and such part, term, paragraph or provision shall be construed and enforced in a manner designed to effectuate the intent expressed in this Agreement to the maximum extent permitted by law.
- (D) This Agreement represents the entire agreement of the parties as to the subjects expressed. This Agreement may only be amended, modified, or terminated by a further writing between the parties to this Agreement.
- (E) This Agreement shall be binding upon the parties hereto, their heirs, grantees, successors and assigns.

[Signatures begin on next page]

So Agreed, by and among Developer, Builder, Nielson, and City the date(s) below written, due authority of each of the parties and their representatives below being now warranted:

NIELSON DEVELOPMENT, LLC

BY: _____
ITS: _____

Date: _____

KN CONSTRUCTION, INC.

BY: _____
ITS: _____

Date: _____

Kelly Nielson, individually

Date: _____

CITY OF HARRISBURG

By: _____
Mayor

Date: _____

Attest:

Finance Officer

(S E A L)

Exhibit 1

(insert drainage easement)

Exhibit 2

401 South Perry Improvements

Regrading

- Side yard grade lowered by approximately 8 inches to elevation of 1423.0 to permit water to overflow to exit area.
- Cut in valley from lowest curb location in front of house to rear yard
- Remove and lower city sidewalk to allow drainage point at lowest elevation
- Grade backyard so as not to reduce pond volume and to permit overflow to drainage point at lowest elevation

Structural Improvements

- Remove siding and start structural repairs to the foundation to support the raised dirt elevation
- Raise dirt elevation to a maximum of 1422.0 feet
- Basement conversion with lowest point of water entry raised to a minimum of 1424.0 feet
- Add in window wells as needed for legal egress windows
- Seal new wood foundation with water proof material
- Place fill material around foundation to raise elevation no higher than 1422.0 feet
- Make interior repairs as need
- Paint house
- Repair deck