NESVIG PROPERTY/D.R. HORTON DEVELOPMENT PROJECT
SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT made and entered into this 18th day of
November, 2002, by and between THE CITY OF ST. PAUL PARK, a municipal
corporation organized under the laws of the State of Minnesota (hereinafter referred to as the
“City”), GREY CLOUD ISLAND TOWNSHIP, a township organized under the laws of the
State of Minnesota (hereinafter referred to as the “Township”), GORDON NESVIG (hereinafter
referred to as the “Owner”), and D.R. HORTON, INC. – MINNESOTA, a corporation organized
under the laws of the State of Delaware (hereinafter referred to as the “Developer”).

WITNESSETH:

WHEREAS, the Owner owns and the Developer has an option to purchase approximately
600 acres of property immediately south of the City, located in the Township, as set forth on
Exhibit “A” attached hereto and made a part hereof (the “Subject Property”)¹, which the
Developer desires to develop for residential and commercial purposes; and,

WHEREAS, the Subject Property is the subject of ongoing contested annexation
proceedings in a matter entitled In Re the Petition for Municipal Boundary Adjustments: St.
Paul Park/Grey Cloud Island Township (A-6185); Cottage Grove/Grey Cloud Island Township
(A-6186); St. Paul Park/Grey Cloud Island Township (OA-718/718-1), OAH Docket No. 15-
2900-13147-2; and,

WHEREAS, the Owner and Developer wish to develop the Subject Property to urban
uses, in a manner consistent with the Metropolitan Council’s Blueprint 2030 policies, guidelines,
strategies, and implementation measures for the Developing Area; and,

¹ The option agreement between the Owner and the Developer also includes 70 acres of property that is located in
the City of Cottage Grove. That 70 acres will remain in Cottage Grove and is not part of the Subject Property as it
has been defined for purposes of this Settlement Agreement.
WHEREAS, the City and Township each wish to have a portion of the Subject Property within its jurisdiction, and each supports the urban development of the entire Subject Property under a single master plan as proposed by the Developer; and

WHEREAS, notwithstanding their strong preference to develop the entire project within the jurisdiction of a single municipality, the Owner and Developer are willing to consider development of the Subject Property under the split jurisdiction of the City and Township if, as discussed below, the City and Township both commit to a Master Development Plan for a planned and staged development and commit to support the project while the Developer seeks approval from all agencies or quasi-governmental agencies that may have any jurisdiction over the Subject Property; and,

WHEREAS, the Developer has requested the right to design and construct the public infrastructure necessary to serve the Subject Property, subject to the review and approval of the City; and the City and Township will agree to allow the Developer to design and construct the public improvements subject to the terms and conditions hereinafter set forth, and,

WHEREAS, the City of Cottage Grove has agreed to resolution of the above-referenced ongoing contested annexation proceedings in the manner described in this Settlement Agreement, and,

WHEREAS, the parties need time to prepare the details of the proposed Master Development Plan and associated comprehensive plan and ordinance amendments before the annexation issues can be finally resolved.

NOW, THEREFORE, in consideration of the premises and of the mutual promises and conditions hereinafter contained, it is hereby agreed by and between the parties hereto as follows:
A. COMMITMENT TO DEVELOPMENT AT URBAN DENSITIES

1. The City and the Township endorse the commercial and residential urban development of the entire Subject Property, including the portion that lies to the west of County Road 75, to densities consistent with the Metropolitan Council’s Blueprint 2030 (Public Hearing Draft, August 28, 2002) policies, guidelines, strategies, and implementation measures for the “Developing Area” of the Twin Cities Metropolitan Area. Specifically, the City and Township recognize and support the Developer’s plan to develop the Subject Property as a planned and staged development to a market-driven density consistent with Developing Area policies (based on 500 acres) as above-described, throughout the Subject Property. The exact final number of units in the development will be determined by market demand, but shall not exceed 2400 units.

2. The City and the Township will support and assist with the Developer’s efforts to receive all necessary government and agency approvals to develop the Subject Property, including without limitation, any steps necessary to change the designation of the portion of the Subject Property lying within the Critical Area from Rural Open Space District to either Urban Developed District or Urban Diversified District, whichever the Developer determines will best support the type of development proposed for the Subject Property. The Developer will periodically inform the City and Township as to the status of discussions with various governmental agencies regarding the Subject Property.

3. The City and Township will timely amend their Comprehensive Plans, and Critical Area Plans (subject to Metropolitan Council and Department of Natural Resources approval, respectively) and any land-use restrictions, capital improvement plans, or other official controls, and also adopt appropriate ordinances to accommodate the development of the Subject Property at urban densities as proposed by the Developer. The Developer will, however, offer to
the Township and City proposed draft Plan amendments and ordinances, all to be drafted by the Developer’s consultants at the Developer’s expense.

4. So long as the aggregate amount does not exceed $25,000.00, Developer shall reimburse the City and Township for all costs which the City and Township incur during the term of this Settlement Agreement in the discharge of the duties hereby imposed on the City and Township pursuant to paragraph G.1. herein, including but not limited to, engineering, legal, and planning consultants; and, where deemed appropriate by the City Council and Town Board, travel costs incurred by City and Township officials occasioned by attending meetings with third parties at Developer’s request.

5. The development of the Subject Property will be implemented by way of a Master Development Plan, a flexible Planned Unit Development Ordinance, a Master Development Agreement for planned and staged development, and a Preliminary Plat for the entire project. The development will be implemented and final platted in phases, all in accordance with the approved Master Development Plan, and will use individual phase Development Agreements.

6. If any outside governmental or quasi-governmental entity with jurisdiction over some or all of the Subject Property imposes any restrictions or policies that prevent urban development within the Township area of the Subject Property, attributable to the fact of Township governmental jurisdiction, the Owner, Developer, Township, and City agree that they will support annexation to the City of all affected portions of the Subject Property and will support and enter into joint annexation resolutions to accomplish such annexation, as necessary.

**B. DIVISION BETWEEN CITY AND TOWNSHIP**

1. The City and Township agree that the Developer’s Master Development Plan will not divide the Subject Property between the two jurisdictions along the dividing line previously set forth in the Administrative Law Judge’s Order of December 29, 2000, but will make a
reasonable division of the Subject Property between the two jurisdictions (subject to possible later minor adjustments during actual development of the Subject Property), that will preserve the identity of each, and work within the overall development plans of the Developer.

2. In order to implement the division of the Subject Property between the two jurisdictions in accordance with paragraph B.1. above, the parties agree that they will enter into joint annexation resolutions to annex or detach portions of the Subject Property, as necessary.

C. SCHEDULES

1. The City, Township, Developer, and Owner agree to exercise good faith efforts to carry out their respective actions and responsibilities as set forth in the Development Planning Schedule attached as Exhibit “B”.

2. If the Developer terminates its contract to purchase the Subject Property with the Owner and unconditionally withdraws its applications to develop the Subject Property, the Developer will withdraw from its participation in the annexation proceedings.

D. GENERAL DEVELOPMENT PLAN

1. The Developer shall prepare and submit to the City and Township a Master Development Plan for the entire Subject Property for review and approval by the City and Township.

2. It is understood and agreed that the Subject Property shall receive preliminary plat approval for the entire project and shall be final platted in phases in accordance with the approved Master Development Plan.

3. It is understood and agreed that the Subject Property will be developed as a Planned Unit Development to include commercial, single family detached and attached housing, with possible mixed-use components. The total number of residential units in the Planned Unit Development shall be as described in paragraph A.1. of this Settlement Agreement. It is
understood and agreed that it is anticipated that there will be a need for flexibility to permit adjustments to the size and location of each type of use to satisfy future market demands.

4. The Developer at its sole expense shall employ private planning and engineering consultants to prepare land use plans, engineering drawings, and construction specifications for installation of municipal and private infrastructure throughout the Subject Property. The parties anticipate that all such infrastructure will be installed by independent contractors hired and paid by the Developer.

5. The Township agrees that it will use the City’s staff, consultants, and inspectors to review and approve the plans prepared by the Developer and its consultants and to issue permits for development and construction of any improvements (including buildings) in or on the Subject Property. Proposed plats of those portions of the Subject Property located within the Township after jurisdictional division discussed in paragraph B.1. hereof shall, nevertheless, be reviewed by the Township’s Planning Commission and Township Board.

6. The City and Township recognize that infrastructure may need to be constructed ahead of the platting process for particular phases of the anticipated development of the Subject Property. The Developer seeks the ability to construct various utility facilities, including but not limited to trunk lines, collector lines and arterials, without going through the platting process for all affected portions of the Subject Property. The City and Township agree to permit such infrastructure work so long as it is consistent with the Master Development Plan.

E. **STREETS AND UTILITIES**

1. The Developer shall have the right to design and construct the public improvements necessary to serve the Subject Property, subject to the review and approval, and inspection of the City and Township, subject to the terms and conditions of the Master Development Agreement to be entered into by and among the parties hereto. The Developer
agrees to pay the administrative costs of such inspections to the extent such costs are typically paid by the Developer in comparable developments.

2. In the event that the parties agree at a future date that certain infrastructure within the Subject Property should be funded by assessments, any assessments and fees or connection charges for necessary infrastructure to be provided by the City and the Township to serve the Subject Property, if any such infrastructure is not installed and paid for by the Developer, will be reasonable and customary and comparable to those charged in the metropolitan area.

3. The Developer shall be reimbursed the cost of oversizing, at the request of the City or the Township, any trunk facilities that it constructs and that are necessary to serve any lands beyond the Subject Property boundaries. To the extent such facilities are oversized at the Developer’s request, including any oversizing to serve the 70 acres in Cottage Grove referenced in footnote 1 above, the Developer agrees to pay the associated costs of oversizing.

4. Expenses, including restoration, directly associated with connecting the trunk facilities of the Subject Property to the main water or sewer interceptors of the City shall not be the responsibility of the City or Township.

F. CITY TO PROVIDE ALL URBAN SERVICES

1. The City and Township agree that they will enter into an agreement under which the City will provide all urban services to the Subject Property, including but not limited to police and fire protection, public works, administration of water and sewer charges, snowplowing, street maintenance, building permit administration, and park and recreation administration, and the City will bill the Township for such services.

2. All parties agree that the portion of the Subject Property developed within the Township cannot be taxed at a higher rate than the portion of the Subject Property developed
within the City. There shall be no differentiation in urban services or in taxes for like kinds and uses of property throughout the Subject Property.

G. CONTINUANCE OF PENDING ANNEXATION PROCEEDINGS

1. It is understood and agreed that the pending annexation proceedings should be held in abeyance while the parties seek to negotiate and enter into a detailed Master Development Agreement, which incorporates the Master Development Plan. All parties will agree to a six-month continuance of the pending proceedings. The Owner will not dismiss his annexation appeal, and no party can object that the Owner’s rights in the pending annexation proceeding have expired, until all of the following have occurred:

a. The parties agree upon and enter into a Master Development Agreement.

b. The City and Township finalize, adopt, and request any other necessary governmental approvals of their comprehensive plan amendments (subject to Metropolitan Council review and approval) and any Critical Area Plans (subject to Department of Natural Resources approval) or other capital improvement plans and official controls needed to permit development of the Subject Property in accordance with the Developer’s proposed plans. All parties will use their best efforts to complete this process within six months. If this process is not completed within six months, the parties will agree to a reasonable further continuance of the pending annexation proceedings in order to allow the parties to complete the above approval process.

c. The City and Township receive written confirmation from the Metropolitan Council and Department of Natural Resources, that their comprehensive plan amendments and any Critical Area Plans or other capital improvement plans and official controls have been approved to permit development of the Subject Property in accordance with the Developer’s proposed plans.
2. Upon satisfaction of the conditions stated in paragraph G.1. above, the parties agree that the pending annexation proceeding shall be dismissed.

3. All parties agree that the terms of this Settlement Agreement are permanent and will survive any future dismissal of the pending annexation proceeding.

H. MISCELLANEOUS

1. AMENDMENT. This Settlement Agreement may only be amended or extended by written agreement executed by all of the parties hereto.

2. NOTICES. Any notice required to be given to any party shall be in writing and deemed given if personally delivered upon the other party; or if deposited in the United States mail and sent certified mail, return receipt requested, postage prepaid and addressed to the other party at the address set forth below.

a. Developer. Notices to Developer shall be addressed to the parties set forth as follows:

1. D.R. Horton – Minnesota
   Attn: Don Patton
   20860 Kenbridge Court
   Suite 100
   Lakeville, MN 55044

2. Bridgeland Consulting
   Attn: Peter Gualtieri
   15026 Bridgewater Court
   Savage, MN 55378

b. City. Notices to the City shall be addressed to the following party:

1. Mr. Barry Sittlow
   City Administrator
   City of St. Paul Park
   600 Portland Avenue
   St. Paul Park, MN 55071

c. Township. Notices to the Township shall be addressed to the following party:

1. Mr. Richard Mullen
   Town Clerk
   Grey Cloud Island Township
   P.O. Box 4
   St. Paul Park, MN 55071
d. Owner: Notices to the Owner shall be addressed as follows:

1. R. Gordon Nesvig  
P.O. Box 255  
Cottage Grove, MN 55016

3. **INTERPRETATION.** This Settlement Agreement has been negotiated by and between the representatives of all of the parties, all persons knowledgeable in the subject matter of this Settlement Agreement, and each party had the opportunity to have the Settlement Agreement reviewed and drafted by its respective legal counsel. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Settlement Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Settlement Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Settlement Agreement.

4. **CAPTIONS.** Titles or captions of sections and paragraphs contained in this Settlement Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Settlement Agreement or the intent of any provisions.

5. **RELATIONSHIP OF PARTIES.** Nothing in this Settlement Agreement shall create a joint venture, partnership, or principal-agent relationship between the parties.

6. **NON-ASSIGNABILITY.** Developer may not assign the entirety of its interests in this Settlement Agreement without the consent of the City and Township, which consent shall not unreasonably be withheld.

7. **WAIVER.** No waiver of any right or obligation of either party hereto shall be effective unless in a writing, specifying such waiver, executed by the party against whom such waiver sought to be enforced. A waiver by either party of any of its rights under this Settlement
Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at the time.

8. ATTORNEY’S FEES. In the event of any controversy, claim or dispute relating to this Settlement Agreement, or the breach or interpretation thereof, each party shall bear its own costs.

9. FURTHER ASSURANCES. The parties each agree to make, execute and deliver such other documents, and to undertake such other and further acts, as may be reasonably necessary to carry out the intent of this Settlement Agreement.

10. ENTIRE AGREEMENT. This Settlement Agreement contains the entire agreement of the parties with respect to the matters covered by this Settlement Agreement and no other statement or representation by any employee, officer or agent of any party, which is not contained in this Settlement Agreement, shall be binding or valid.

11. EXECUTION. Four originals of this Settlement Agreement shall be executed and delivered by all parties so that each may possess an executed original.
IN WITNESS WHEREOF, the parties have set their hands and seals on the day and year first above written.

CITY
CITY OF ST. PAUL PARK
By: Donald A. Muller
Its: 
By: Its: CITY ADMINISTRATOR

TOWNSHIP
GREY CLOUD ISLAND TOWNSHIP
By: Phillip A. Doer
Its: Chair
By: Richard E. Mulder
Its: Clerk

OWNER
R. Gordon Nesvig

DEVELOPER
D.R. HORTON, INC. – MINNESOTA
By: Neil R. Hansen
Its: 
By: Its: 
EXHIBIT A

Legal Description for Subject Property

Lots 1 to 24, inclusive, Block 114, WERTHEIMER'S FIRST ADDITION, as surveyed and platted and now on file and of record in the office of the Register of Deeds of Washington County, Minnesota, including any streets vacated or being vacated which accrue to said property by the reason of said vacation; and,

Lots 8 to 24, inclusive, Block 115, in WERTHEIMER'S FIRST ADDITION, as surveyed and platted and now on file and of record in the office of the Register of Deeds of Washington County, Minnesota, including any streets vacated or being vacated which accrue to said property by the reason of said vacation; and,

Block 113, Lots 12 to 20, inclusive, Block 116; and Block 121; of Division No. 4 of St. Paul Park, as surveyed and platted and now on file and of record in the Office of the Register of Deeds Washington County Minnesota; and,

Block "D"; Lots 2 and 3, Block 122, of Division No. 4 of St. Paul Park, as surveyed and platted and now on file and of record in the office of the Register of Deeds of Washington County, Minnesota; and, those portions of the North Half Section 13 and Government Lots 1 and 2 of Section 14, Township 27 North, Range 22 West, lying between the East Bank of the Mississippi River and right-of-way of the Chicago, Burlington and Quincy Railroad, and lying South of the South line of 15th Avenue extended easterly and westerly, which avenue is a platted and dedicated street in said Division No. 4 of St. Paul Park; all of the land described in this paragraph being subject to an easement for flowage purposes by the United States of America as set forth in that certain judgement made and entered in the District Court of the United States, District of Minnesota, Third Division, on October 30th, 1935, a certified copy of which was recorded in the office of the Register of Deeds of Washington County, Minnesota, on November 1st, 1935, in Book 128 of Deeds, page 295; and,

That part of Government Lot 1, Section 14, and the North One-half of Section 13, Township 27 North, Range 22 West, lying South of Blocks 122 and D of Division No. 4 of St. Paul Park and Westerly of the East line of said Block D extended Southerly to the South line of 15th Street, County of Washington, State of Minnesota.

Together with any roads streets or alleys adjacent to the above property, and also those roads streets or alleys within the above property which have been vacated, or may be vacated which accrue to any of the above described property by reason of such vacation.
Lot three (3), Section Fourteen (14); The Northwest Quarter of the Northwest Quarter (NW ¼ of NW ¼), Section Twenty-four (24); and

The North half of the Southeast Quarter (N ½ of SE ¼), the North Half of the Southwest Quarter (N ½ of SW ¼), and the Southwest Quarter of the Southwest Quarter (SW ¼ of SW ¼), Section Thirteen (13); all in Township Twenty-seven (27) North, Range Twenty-two (22) West; and,

EXCEPTING therefrom the following, to-wit: That part of the Northwest Quarter of the Northwest Quarter (NW ¼ of NW ¼) in said Section Twenty-four (24) lying on Grey Cloud Island consisting of ten (10) acres, more or less; and,

EXCEPTING all of the following: A tract of land in the Northeast Quarter (NE ¼) of the Southwest Quarter (SW ¼) of Section Thirteen (13), Township Twenty-seven (27) North, Range Twenty-two (22) West, described as follows, to-wit: Beginning at the intersection of the East and West Quarter line of said Section Thirteen (13) with the center line of County Road No. 75 as now established; thence West along the East and West Quarter line 401.94 feet to an iron stake; thence South 7 degrees East 254.90 feet to an iron stake; thence East 159.94 feet to an iron stake; thence North 220 feet to an iron stake; thence East 214.89 feet to the center line of County Road No. 75; thence North 7 degrees West along the center line of County Road No. 75 a distance of 33.25 feet to the point of beginning. Subject to rights of County Road No. 75. Containing 1.2 acres more or less; and

A tract of land situated in the S ¼ S ¼ Section 13 and the N ½ of Section 24, T. 27 N, R. 22 W of the Fourth Principal Meridian, Washington County, Minnesota more particularly described as follows, to wit; and

Commencing at the Northeast corner of said N ½ of Section 24 and run South along the East line of said N ½ Section 24 a distance of 1,218.5 feet to the intersection with the Westerly line of said Railroad Company's 100 foot wide right-of-way and the Point of Beginning of the tract being described; thence S 18 degrees 52 minutes E, along said Westerly right-of-way line 733.7 feet to the intersection with the centerline of Grey Cloud Trail, extended Southerly from County Road 75; thence N 70 degrees 15 minutes W, along said extended centerline and the centerline of said road 1,160.2 feet; thence N 52 degrees 04 minutes W, along said centerline 247.8 feet; thence N 54 degrees 36 minutes W, along said centerline 1,347.9 feet; thence N 55 degrees 52 minutes W, along said centerline 1,012.06 feet to the centerline of County Road 75 extended; thence N 08 degrees 09 minutes W, along said centerline 1,390.01 feet to the intersection with the North line of said S 1/2 S 1/2 Section 13; thence East along said North line 2,339.89 feet to the intersection with said Westerly line of said Railroad Company's 100 foot wide right-of-way; thence S 18 degrees 52 minutes E, along said Westerly right-of-way line 2,682.7 feet to the point of Beginning and containing 143.04 acres, more or less.
## EXHIBIT B
Development Planning Schedule
10/16/02

<table>
<thead>
<tr>
<th>Task</th>
<th>Responsible Parties</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Workshop for Annexation Division and Joint Annexation Agreement</td>
<td>C &amp; T</td>
<td>Oct. 21</td>
</tr>
<tr>
<td>2. Resolution adopting Settlement Agreement</td>
<td>C &amp; T</td>
<td>Nov. 12 &amp; 18</td>
</tr>
<tr>
<td>3. Prepare &amp; submit to C &amp; T Draft Comprehensive Plan Amendment and Critical Area Amendment</td>
<td>Horton</td>
<td>Dec. 16</td>
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<tr>
<td>4. Prepare &amp; Submit to C &amp; T Draft PUD &amp; Mixed Use Ordinance</td>
<td>Horton</td>
<td>Dec. 16</td>
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<tr>
<td>5. Prepare &amp; Submit to C &amp; T Master Development Plan and Master Development Agreement</td>
<td>Horton</td>
<td>Jan. 13</td>
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<tr>
<td>6. Review &amp; Adopt Final Comp Plan Amendment, PUD/Mixed Use Ordinance, Critical Area Amendment</td>
<td>C &amp; T</td>
<td>Jan. 21</td>
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<tr>
<td>7. Submit to Met Council, Comp Plan Amendment and Critical Area Amendment (60 day review)</td>
<td>C &amp; T</td>
<td>Jan. 27</td>
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<tr>
<td>8. Submit to DNR Critical Area Amendment (45 day review)</td>
<td>C &amp; T</td>
<td>Jan. 27</td>
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<tr>
<td>10. Order Preparation of AUAR by Horton</td>
<td>C &amp; T</td>
<td>Feb. 18</td>
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<tr>
<td>11. Prepare &amp; Submit to C &amp; T Preliminary Plat and PUD documents for entire project</td>
<td>Horton</td>
<td>March 17</td>
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<tr>
<td>12. Prepare &amp; Submit to C &amp; T Draft AUAR</td>
<td>Horton</td>
<td>March 17</td>
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<tr>
<td>13. Review AUAR and submit to EQB (30 day review)</td>
<td>C &amp; T</td>
<td>March 27</td>
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<tr>
<td>14. Respond to Met Council &amp; DNR Comments on Critical Area Amendment and Comp Plan Amendment</td>
<td>Horton, C &amp; T</td>
<td>Apr. 10</td>
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<tr>
<td>15. Review Preliminary Plat and adopt subject to AUAR</td>
<td>C &amp; T</td>
<td>Apr. 21</td>
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<td>16. Prepare &amp; Adopt Updated CIP</td>
<td>C &amp; T</td>
<td>Apr. 28</td>
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<tr>
<td>17. Adopt Final Comp Plan &amp; Critical Area</td>
<td>C &amp; T</td>
<td>Apr. 29</td>
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<tr>
<td>18. Respond to AUAR Comments</td>
<td>Horton, C &amp; T</td>
<td>May 6</td>
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<tr>
<td>19. Adopt Preliminary Plat &amp; Final AUAR, Final Master Development Plan and Agreement</td>
<td>C &amp; T</td>
<td>May 12</td>
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</tbody>
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C = City of St. Paul Park  
T = Grey Cloud Island Township  
Horton = D.R. Horton, Inc. - Minnesota