



STAFF REPORT

DATE: 9/13/2022

DISCUSSION

TO: City Council
FROM: Molly Just, Planning Director
AGENDA ITEM: Development Agreement for Commercial and Vertical Residential Development

BACKGROUND:

As the City's MUSA areas develop and we see more high intensity development such as apartment buildings and commercial development on single lots staff have had to consider allowing construction to occur in a sequence more natural to that type of development. The City uses development agreements to ensure that the public improvements necessary to serve a project are constructed along with the proposed development. In the case of single-family residential subdivisions, the predominant development time in City history, building permits are not issued until the public right of way (utilities laid, curb and asphalt, etc.) is constructed and tested. This allows the residential construction to proceed without competing directly with construction of the public right-of-way.

ISSUE BEFORE COUNCIL:

Should the City Council consider changes to development agreement provisions to allow certain commercial and residential construction to proceed sooner than is allowed for traditional single-family residential subdivisions?

DETAILS/ANALYSIS:

With apartment buildings and commercial development that does not include new public streets, there may not be the same need to delay issuance of permits. Each project is different though and we should continue to review each project individually and analyze what is needed when for public improvements. There is probably no one size fits all agreement given the level of care and quality expected for development in Lake Elmo, but there is room for our agreement to adapt to different types of development.

FISCAL IMPACT:

None. Developers would still be expected to fund the provision of improvements necessitated by private development.

ATTACHMENT:

Sample Single-Family Residential Development Agreement – See paragraph 26
Sample Commercial Development Agreement – See paragraph 23

(reserved for recording information)

DEVELOPMENT AGREEMENT
(Public sewer and water)

Wildflower at Lake Elmo 4th Addition

THIS DEVELOPMENT AGREEMENT is dated Feb. 2, 2022, by and between the **CITY OF LAKE ELMO**, a Minnesota municipal corporation (the "City") and Robert Engstrom Companies, a Minnesota corporation (the "Developer").

1. REQUEST FOR PLAT APPROVAL. The Developer has asked the City to approve a plat for Wildflower at Lake Elmo 4th Addition (referred to in this Agreement as the "Subdivision"). The property being platted is situated in the County of Washington, State of Minnesota, and is legally described on **Exhibit A**.

2. CONDITIONS OF PLAT APPROVAL. The City hereby approves the Subdivision on condition that the Developer enter into this Agreement, furnish the security required by it, and record the plat with the County Recorder or Registrar of Titles within 180 days after the City Council approves the final plat.

3. RIGHT TO PROCEED. This Agreement is intended to regulate the development of the Property and the construction therein of certain public and private improvements. Unless separate written approval has been given by the City, within the plat or land to be platted, the Developer may not grade or otherwise disturb the earth, remove trees, or construct public or private improvements or any buildings within the Subdivision until all the following conditions precedent have been satisfied:

- A. the Developer shall address the comments in the City Engineer's review memorandums dated August 2, 2021 before the City releases the final plat for recording. the Developer shall revise the final landscape and tree planting plan for approval by the City before the City releases the final plat for recording.
- B. all easements as requested by the City Engineer and Public Works Department shall be documented on the Final Plat before the execution of the final plat by City Officials.
- C. existing City easements shall be vacated and new easements depicted on the final plat.
- D. the Developer shall submit to the City for approval a Common Interest Agreement/Homeowners' Association documents concerning management of the common areas of Wildflower at Lake Elmo 4th Addition and establishing a homeowner's association before the City issues a building permit for any structure within this subdivision.
- E. the Developer shall enter into a landscape license/public art agreement and maintenance agreement with the City that clarifies the individuals or entities responsible for any landscaping and public art installed in areas outside of land dedicated as public park and open space on the 4th Addition final plat.
- F. street names shall be given the suffix "N" prior to recording of final plat.
- G. the Developer shall prepare and the City shall approve a protective or conservation easement that protects Outlot A from any future development, building or subdivision.

This easement shall be approved by the City before the City releases the final plat for recording.

- H. this Agreement has been executed by the Developer and the City;
- I. the required Security (as hereinafter defined) has been received by the City from or on behalf of the Developer;
- J. final construction plans and specifications have been submitted by the Developer and approved by the City Engineer;
- K. the Developer has paid the City for all legal, engineering, and administrative expenses incurred by the City regarding the City approvals and has given the City the additional City Engineering Administration Escrow required by this Agreement;
- L. the Developer has paid any outstanding assessments and taxes for the property or property being deeded to the City;
- M. the Developer has fulfilled any park dedication requirements as specified under this Agreement;
- N. the Developer has received all necessary permits from the MPCA, MDH, DNR, applicable watershed, Washington County, and any other agency having jurisdiction over the Subdivision;
- O. the Developer has provided the City with a certificate of insurance required by this Agreement;
- P. the Developer, the Developer's engineer and the Developer's contractor(s) have initiated and attended a preconstruction meeting with the City Engineer, and City staff;
- Q. the final plat has been recorded with Washington County;
- R. all homeowners' association declarations, covenants, and restrictions have been submitted, reviewed, and approved by the City Attorney;
- S. a title insurance policy has been issued in the amount of \$100,000 in favor of the City insuring the City's interests as they appear on the plat; and

T. the City has issued a written notice that all above conditions have been satisfied and that the Developer may proceed.

4. PHASED DEVELOPMENT. If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases of the development if the Developer is not in compliance with any term of this Agreement and the non-compliance has not been remedied. Development of subsequent phases of the development may not proceed until development agreements for such phases are approved by the City. Park dedication charges and availability charges for sewer and water referred to in this Agreement are not being imposed on outlots that are designated in the plat for future subdivision into lots and blocks, if any, in the plat. Such charges will be calculated and imposed when these outlots, if any, are platted into lots and blocks.

5. PRELIMINARY PLAT STATUS. If the Subdivision is a phase of a multi-phased preliminary plat, the preliminary plat approval for all phases not final platted shall lapse and be void unless final platted into lots and blocks, not outlots, within seven years after preliminary plat approval.

6. CHANGES IN OFFICIAL CONTROLS. For five years from the date of this Agreement, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the use, development density, lot size, lot layout, or dedications of the approved final plat unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Agreement to the contrary, to the full extent permitted by state law, the City may require compliance with any changes to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Agreement.

7. DEVELOPMENT PLANS. The Developer agrees to develop the Property in accordance with the City approvals, including the terms and conditions of approval of the final plat as detailed in City Council Resolution No. 2021-100 and to construct all improvements in

accordance with the approved construction plans and specifications (collectively, the "Plans") prepared by a professional engineer registered in the State of Minnesota at its sole expense. All terms and conditions of the City approvals are hereby incorporated by reference into this Agreement. The documents which constitute the Plans are those on file with and approved by the City and are listed on **Exhibit B** attached hereto. The Plans may not be modified by the Developer without the prior written approval of the City.

8. IMPROVEMENTS. In developing the Subdivision in accordance with the Plans, the Developer shall make or install at its sole expense the following public and private improvements (collectively, the "Subdivision Improvements"):

- A. Grading and erosion control;
- B. Sanitary sewer;
- C. Water system improvements;
- D. Stormwater improvements (storm sewer pipe, control structures, ponds, BMPs, etc.)
- E. Streets and sidewalk;
- F. Trails;
- G. Underground private utilities;
- H. Landscaping;
- I. Street lighting and signage;
- J. Intersection improvements (turn lanes, by-pass lanes, traffic control, etc.);
- K. Tree preservation and reforestation;
- L. Wetland mitigation and buffers; and
- M. Monuments required by Minnesota Statutes.

All improvements shall be installed in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the approved Plans, the City approvals, the City Code, the City's Engineering Design and

Construction Standards Manual, and the City's Landscape and Irrigation Standards as a condition of City acceptance. In addition, the City may, at the City's discretion and at the Developer's expense, have one or more City inspectors or a soil engineer inspect the Developer's work on a full or part-time basis. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor.

9. CITY ADMINISTRATION AND CONSTRUCTION OBSERVATION. At the time of the City's approval of the final plat for the Subdivision, the Developer shall submit to the City an amount to be escrowed by the City for City administration and construction observation costs in an amount provided under paragraph 36 of this Agreement - Summary of Security Requirements. Thereafter, the Developer shall reimburse the City each month, within 30 days of receiving an invoice, for all administration and construction observation costs incurred by the City during the construction of the Subdivision Improvements by the City's engineering, public works, planning, and landscape architecture staff and consultants. After 30 days of the invoice, the City may draw upon the escrow and stop the work on site until the escrow has been replenished in its full amount. City administration and oversight will include monitoring of construction progress and construction observation, consultation with the Developer and the Developer's professionals on status or problems regarding the project, coordination for testing, final inspection and acceptance, project monitoring during the warranty period, and processing of requests for reduction in the Security. Construction observation shall include, at the discretion of the City, part or full time inspection of proposed public utilities and street construction. Services will be billed by the City on an hourly basis.

The direction and review provided by the City through the inspection of the Subdivision Improvements should not be considered a substitute for the Developer-required management of the construction of the Subdivision Improvements. The Developer must require the Developer's

contractor(s) to furnish the City with a schedule of proposed operations at least five days prior to the commencement of construction of each type of Subdivision Improvement. The City shall inspect all Developer-installed Subdivision Improvements during and after construction for compliance with the Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer will notify the City at such times during construction as the City requires for inspection purposes. Such inspection is pursuant to the City's governmental authority, and no agency or joint venture relationship between the City and the Developer is thereby created.

10. CONTRACTORS/SUBCONTRACTORS. City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a 25 percent ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the Subdivision Improvements identified in Paragraph 8 above.

11. TIME OF PERFORMANCE. The Developer shall install all required Subdivision Improvements by August 31, 2022, with the exception of the final wear course of asphalt on streets. The Developer shall install the bituminous wearing course of streets after the first course has weathered a winter season, consistent with warranty requirements, however, final acceptance of the Subdivision Improvements by the City will not be granted until all work is completed, including the final wear course. The Developer may, however, request an extension of time from the City. If the City grants an extension, it shall be conditioned upon updating the Security posted by the Developer to reflect cost increases and amending this Agreement to reflect the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.

12. MAINTENANCE DURING CONSTRUCTION. The Developer shall be responsible for all maintenance of the Subdivision Improvements including the snow plowing of the streets, roads,

and alleys until the Subdivision Improvements are accepted by the City in writing. The Developer and its contractors must adhere to the City's weight restrictions for all streets both inside and outside of the Subdivision, regardless of whether said streets are included in the City's map of streets with weight restrictions and regardless of whether said streets are fully constructed. The Developer also is responsible to locate all underground utilities until the Subdivision is accepted in writing by the City. Warning signs shall be placed by the Developer when hazards develop in streets to prevent the public from traveling on same and to direct attention to detours. If and when streets become impassable, such streets shall be barricaded and closed by the Developer. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage to ensure that the streets are passable for traffic and emergency vehicles. The Developer shall be responsible for keeping streets within and without the Subdivision clean and clear of dirt and debris that may spill, track, or wash onto the street from the Developer's operations. The Developer shall contract for street cleaning for streets within and immediately adjacent to the Subdivision. At a minimum, scraping and sweeping shall take place on a weekly basis.

Before the City's acceptance of the streets, the City may agree, at the City's sole discretion, to keep the streets open during winter months by plowing snow. The City will consider snow plowing streets on a case by case basis and under the following conditions: 1) the Developer must request in writing the streets it is requesting to be plowed by the City, with such request received prior to October 1st of each winter season that plowing is requested; 2) there must be residences along each street; 3) for streets that do not have the bituminous wear course placed, the Developer must install paved wedges along all curb lines and catch basins of the street; 4) gate valves and manholes must be level with the pavement surface; 5) street curves, center medians, and other protrusions in the right-of-ways must be delineated with "HI-VIS" fiberglass stakes; 6) a site review must be scheduled by the Developer and conducted with the City's Public

Works Department with the Developer in attendance to review the streets that are being requested to be plowed prior to the commitment of plowing by the City; 7) the Developer must agree not to hold the City responsible for any damage caused by snow plowing operations to the streets, curb and gutter, manholes, catch basins, or other infrastructure; and 8) the Developer shall enter into an agreement with the City for plowing of the streets.

13. LICENSE. The Developer hereby grants the City, its agents, employees, officers, and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with the development of the Property and this Agreement.

14. CONSTRUCTION ACCESS. Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access through the Subdivision via Wildflower Drive. No construction traffic is permitted on other adjacent local streets.

15. CONSTRUCTION SEQUENCE AND COMPLIANCE. The City will require the Developer to construct the Subdivision Improvements in a sequence which will allow progress and compliance points to be measured and evaluated. The Developer and the Developer's representatives are required to supervise and coordinate all construction activities for all Subdivision Improvements and must notify the City in writing stating when the work is ready for the inspection at each of the measurable points defined in the following paragraphs.

16. EROSION CONTROL. All construction regarding the Subdivision Improvements shall be completed in a manner designed to control erosion and in compliance with the City Code, the City's Engineering Design and Construction Standards Manual, all watershed district permits, the Minnesota Pollution Control Agency's best management practices, and other requirements including the City's permit with the Minnesota Pollution Control Agency for the municipal separate storm sewer system program. Prior to initiating any work on the site, an erosion control plan must be implemented by the Developer and inspected and approved by the City. Erosion and sediment control measures shall be coordinated with the various stages of development. The City may

impose additional erosion control requirements at any stage in development as deemed necessary to maintain a compliant site. All areas disturbed for site improvements must be reseeded by the Developer promptly after the work in the area is complete unless construction of the next stage of the improvements will begin in that area within seven days. The parties recognize that time is of the essence in controlling erosion.

If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the City for any cost the City incurred for such work within 10 days, the City may draw down the Security to pay any costs. The City will not allow any development or site work, utility, or street construction and will not issue any building permits unless the Subdivision is in full compliance with the approved erosion control plan.

If the City issues building permits before the acceptance of public Subdivision Improvements, the Developer assumes all responsibility for erosion control compliance throughout the Subdivision and the City may take such action as allowed by this Agreement against the Developer for any noncompliant issue as stated above. The City will require erosion control plans for individual lots in accordance with the City's building permit requirements, or as required by the City or City Engineer.

17. SITE GRADING. In order to construct the Subdivision Improvements and otherwise prepare the Property for development, it will be necessary for the Developer to grade the Subdivision. All grading must be done in compliance with this Agreement and the approved grading plans. Within 30 days after completion of the grading, the Developer shall provide the City with an "as built" grading plan and a certification by a registered land surveyor or engineer as required in the City's Engineering Design and Construction Standards Manual.

18. STREET AND UTILITY IMPROVEMENTS. All storm sewers, sanitary sewers, watermain, and streets, including turn lane and intersection improvements, shall be installed in accordance with the approved Plans, the City approvals, the City Code, and the City's Engineering Design and Construction Standards Manual. Curb and gutter, the first lift of the bituminous streets, sidewalks, boulevards graded, street signs installed, and all restoration work on the site shall be completed in accordance with the approved Plans. Once the work is completed, the Developer or the Developer's representative shall submit a written request to the City asking for an inspection of the initial improvements. The City will then schedule a walk-through to create a punch list of outstanding items to be completed. Upon receipt of the written punch list provided by the City, the punch list items must be completed by the Developer and the City notified to re- inspect the improvements. The final bituminous wear course shall be installed by the Developer after the first bituminous course has weathered a winter season. Before the placement of the final bituminous wear course, the Developer shall repair or replace all broken or failing curbs, sidewalks and damaged or settled streets as determined by the City from a pre-wear course walk through inspection.

19. LANDSCAPING AND TREE REPLACEMENT IMPROVEMENTS.

- A. The Developer agrees to install or cause to be installed landscaping in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. All landscaping materials such as trees, shrubs, grasses, or other vegetation installed by the Developer must be warrantied and maintained for a period of two years. The two-year warranty period shall be deemed to start once all required landscaping identified as responsibility of Developer in the approved Plans has received acceptance by the City. The Developer agrees to have the installer complete an inspection 30 days prior to the end of the two-year warranty period and

provide the City with a written report identifying the condition of all landscaping. In the event any landscaping installed by the Developer is deemed to be in poor condition or dead, the Developer is to replace the landscaping with like kind materials or as otherwise approved by the City.

- B. The Developer shall be responsible for maintaining regular watering, fertilizing, and over-seeding necessary to establish final lawns and yards as identified in the approved Plans for outlots, public rights-of-way, and any disturbed areas outside the Subdivision boundaries according to a landscape maintenance plan approved by the City. The Developer agrees to achieve "substantial performance" on all seeded or sodded lawns and yards disturbed during the construction of Subdivision Improvements. For the purpose of this Agreement "substantial performance" shall be defined for areas seeded or sodded with a turf or lawn mix as "square foot turf areas with an average blade height of three inches free of eroded, bare, or dead spots and free from perennial weeds or unwanted grasses with no visible surface soil." For areas seeded with a native grass or flower mix "substantial performance" shall be defined as "square foot native grass or flower areas with an average height of eight inches free of eroded, bare, or dead spots and no visible surface soil."

20. SIGNAGE, STREET LIGHTING AND OTHER UTILITIES. The Developer agrees to install street signs, traffic and parking signs, and pavement markings within the Subdivision all in accordance with the approved Plans and the City Engineering Design Standards Manual. Street and traffic sign details shall be submitted by the Developer to the City for approval before their installation. In addition, the Developer shall be responsible for the cost and all coordination work to extend private utilities along with street lighting within the Subdivision all in accordance with the approved plans and right-of-way permits.

21. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction

required by this Agreement, the Subdivision Improvements lying within public easements shall become City property. Prior to acceptance of the public Subdivision Improvements by the City, the Developer must furnish the City with a complete set of reproducible "record" plans and an electronic file of the "record" plans in accordance with the City's Engineering Design and Construction Standards Manual together with the following affidavits:

- Developer/Developer Engineer's Certificate
- Land Surveyor's Certificate

certifying that all construction has been completed in accordance with the terms of this Agreement. All necessary forms will be furnished by the City. Upon receipt of "record plans" and affidavits, and upon review and verification by the City Engineer that the public Subdivision Improvements have been completed in accordance with the terms of this Agreement, the City Engineer will accept the completed public Subdivision Improvements.

22. VILLAGE AREA AUAR FEE. The Developer shall be responsible for the payment of the Village Area Alternative Urban Areawide Review (AUAR) fee as adopted by the City Council with respect to the environmental review completed by the City. The Village Area Alternative Urban Areawide Review (AUAR) fee in the amount of \$230.00 per REC shall be paid by the Developer prior to the City releasing the final plat for recording. The total amount to be paid by the Developer is \$9,430 for the Subdivision.

23. SANITARY SEWER AND WATER UTILITY AVAILABILITY CHARGES (SAC AND WAC). The Developer shall be responsible for the payment of all sewer availability charges (SAC) and all water availability charges (WAC) with respect to the Subdivision Improvements required by the City and any state or metropolitan government agency.

The sewer availability charge (SAC) in the amount of \$3,000.00 per REC shall be paid by the Developer to the City before recording the final plat. The total amount to be paid by the Developer is \$123,000.

The water availability charge (WAC) in the amount of \$3,000.00 per REC shall be paid by

the Developer to the City before recording the final plat. The total amount to be paid by the Developer is \$123,000.

In addition, a sewer connection charge in the amount of \$1,000.00 per REC, a Metropolitan Council sewer availability charge in the amount of \$2,485.00 per REC, and a water connection charge in the amount of \$1,000.00 per REC will be payable by the Developer and collected by the City at the time the City issues a building permit for each lot.

24. STREET LIGHTS. The Developer is responsible for the cost of street light installation consistent with a street lighting plan approved by the City. Before the City signs the final plat, the Developer shall post a Security for street light installation consistent with the approved plan. The required Security is \$30,000 and consists of four decorative lights at \$6,000 each. The Developer shall also pay the City \$129/light (\$516) to reimburse the City for the first year operating costs for the street lights.

25. WETLAND MITIGATION. The Developer shall complete wetland mitigation/restoration in accordance with the approved Plans and in accordance with any applicable Watershed or agency permits. If the mitigation work is found to be incomplete or restoration is unsuccessful, the City may draw down the Security at any time during the warranty period to perform the work if the Developer fails to take corrective measures after being provided reasonable notice by the City.

26. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

- A. The City will not issue a building permit for any lot within the Subdivision, or within a completed phase of the Subdivision in a City preapproved phasing plan, until such time that; 1) sanitary sewer, water, storm sewer, curbing, and one lift of asphalt has been installed and tested for all public streets; 2) boulevard grading has been completed within the entire right-of-way (without hold down grading for the future sidewalk or any other improvements); 3) street and traffic control signs are installed;

4) property monuments have been installed; and 5) grading as-built plans have been submitted and approved by the City. A "preapproved phasing plan" is defined as a phased construction plan that has been submitted by the Developer and approved by the City in advance of the preconstruction meeting for the Subdivision. Once the construction has started, the City will not consider revisions to the phasing plan for the purpose of issuing building permits.

- B. The City Planning Director may authorize the issuance of two building permits for "model homes" before the completion of the Subdivision Improvements and the Developer's obligations described in paragraph 26 (A) above, if there is safe public access to the lots that is sufficient to allow construction to proceed and there is a grading as-built plan approved by the City for the lot and all downstream storm water drainage facilities. However, the City will not issue a certificate of occupancy for any "model home" until all conditions identified in paragraph 26 (A) above have been completed. The Developer shall use the model home(s) only for real estate sales purposes and no other purposes.
- C. Before the City issues building permits, the developer shall place wetland buffer monuments in accordance with the City's zoning ordinance. The monument design shall be approved by the City Planning Department.
- D. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and withholding of other permits, inspections, or actions and the halting of all work in the Subdivision.
- E. If the City issues building permits before the acceptance of the public Subdivision Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of public Subdivision Improvements and damage to public

Subdivision Improvements caused by the City, the Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any third parties.

- F. If the City issues building permits before the construction of front yard sidewalks or trails, the Developer assumes all responsibility for the coordination, liability and costs to; 1) ensure that the sidewalks and trails are constructed before any driveways for any lots with sidewalks or trails; 2) that the sidewalks and trails are constructed continuously from end of street to end of street without exceptions or gaps in the sidewalk or trail; 3) that there is a stop work order on all building construction for impacted lots during the sidewalk and trail construction and curing periods to prohibit traffic prior to City approval; and, 4) that all boulevard grading and restoration re-work is completed immediately following the sidewalk or trail construction.
- G. No sewer and water connection permits may be issued until the streets needed for access have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.

27. RESERVED.

28. RESPONSIBILITY FOR COSTS.

- 1. In the event that the City receives claims from labor, materialmen, or others that work required by this Agreement has been performed and the amounts due to them have not been paid, and the laborers, materialmen, or others are seeking payment from the City, the Developer hereby authorizes the City to commence an Interpleader action pursuant to Rule 22, Minnesota Rules of Civil Procedure for the District Courts, to draw upon the Security in an amount up to 125 percent of the claim(s) and deposit the funds in compliance with the Rule, and upon such deposit, the Developer shall release, discharge, and dismiss the City from any further proceedings as it pertains to the funds deposited with the District Court, except that the Court shall

retain jurisdiction to determine attorneys' fees pursuant to this Agreement.

2. Except as otherwise specified herein, the Developer shall pay all costs incurred by it or the City in conjunction with the development of the Subdivision, including but not limited to legal, planning, engineering, and inspection expenses incurred in connection with the City's approval and acceptance of the plat and the Subdivision, the preparation of this Agreement, the City's review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting development of the Subdivision. All amounts incurred and due to the City at the time of the recording of the final plat must be fully paid by the Developer prior to the City executing and releasing the final plat for recording.
3. The Developer shall hold the City and its officials, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from the City's approval of the plat and the development of the Subdivision. The Developer shall indemnify the City and its officials, employees, and agents for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees.
4. The Developer shall reimburse the City for costs incurred in the enforcement of this Agreement, including reasonable engineering and attorneys' fees.
5. The Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, all special assessments referred to in this Agreement. This is a personal obligation of the Developer and shall continue in full force and effect even if the Developer sells one or more lots, the entire Property, or any portion of it.
6. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within 30 days after receipt. Bills not paid within 30 days shall be assessed a late fee per the City adopted fee schedule. Upon request, the City will provide copies of detailed invoices of the work performed by the City

and its consultants.

29. CITY PAYMENTS. The City shall reimburse the Developer in the amount of \$9,102 for oversizing costs associated with the installation of 10-inch trunk sanitary sewer as identified on the Plans. The City also shall reimburse the Developer in the amount of \$20,512 for oversizing costs associated with the installation of 12-inch trunk water main as identified on the Plans. City payments shall be made within 30 days of the City's final acceptance of the Improvements, but only if the Developer is not in default to this Contract. This payment by the City shall be the City's only responsibility with regard to construction of the Improvements and in no case shall act as a waiver of any other right of the City under this Contract or under applicable laws, ordinances or rules.

30. SPECIAL PROVISIONS. The following special provisions shall apply to the Subdivision:

- A. The Developer must notify all home builders about possible City outdoor watering restrictions and that all home builders must notify all home buyers that the City may impose limits on outdoor water use including no watering of grass or sod, unless the Developer is notified by the City that this notice is no longer required. Said decision about whether this notice is no longer required shall be made at the sole discretion of the City. The Developer shall have the City approve the notification message before the release of the final plat by the City for recording.
- B. The Developer must obtain a sign permit from the City Building Official before the installation of any subdivision identification signs.
- C. If applicable, all public trails shall be located within outlots, at least 30' feet in width and either be dedicated to the City in the plat or an easement in a form acceptable to the City be provided. The title policy to be provided to the City shall insure the City's interests in the property.

31. MISCELLANEOUS.

- A. The Developer may not assign this Agreement without the written permission of the City Council. The Developer's obligations hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire Property, or any portion of it.
- B. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a professional engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved Plans. All retaining walls identified on the Plans or by special conditions referred to in this Agreement shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.
- C. Homeowners' association declarations, covenants, and restrictions and other documents related to the homeowners' association shall be submitted to the City before recording of the final plat for review and approval by the City Attorney.
- D. The Developer shall take out and maintain or cause to be taken out and maintained until six months after the City has accepted the public Subdivision Improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them.

Limits for bodily injury and death shall be not less than \$500,000 for one person and \$1,500,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a combination single limit policy of \$1,500,000 or

more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate of insurance evidencing coverage prior to the City signing the plat. The certificate shall provide that the City must be given 30 days' advance written notice of the cancellation of the insurance.

- E. Third parties shall have no recourse against the City under this Agreement.
- F. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, 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.
- H. This Agreement shall run with the land and may be recorded against the title to the Property at the Developer's expense. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the Property being final platted and has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the Property, including, but not limited to, mortgagees; that there are no unrecorded interests in the Property being final platted; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.
- I. 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 hereafter arising, available to 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 shall not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy.

- J. The Developer represents to the City that the Subdivision and the Subdivision Improvements comply or will comply with all City, County, metropolitan, state, and federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances, and environmental regulations. If the City determines that the Subdivision is not in compliance, the City may, at its option, refuse to allow construction or development work in the Subdivision until it is brought into compliance. Upon the City's demand, the Developer shall cease work until there is compliance.

32. EVENTS OF DEFAULT. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

- A. Subject to unavoidable delays, failure by the Developer to commence and complete construction of the public Subdivision Improvements pursuant to the terms, conditions, and limitations of this Agreement.
- B. Failure by the Developer to substantially observe or perform any material covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement.

33. REMEDIES ON DEFAULT. Whenever any Event of Default occurs, the City, subject to any rights of third parties agreed to by the City pursuant to this Agreement, or otherwise by written, executed instrument of the City, may take any one or more of the following:

- A. The City may suspend its performance under the Agreement until it receives assurances from the Developer, deemed adequate by the City, that Developer will cure its default and continue its performance under the Agreement. Suspension of

performance includes the right of the City to withhold permits including, but not limited to, building permits.

- B. The City may initiate such action, including legal or administrative action, as is necessary for the City to secure performance of any provision of this Agreement or recover any amounts due under this Agreement from the Developer, or immediately draw on the Security, as set forth in this Agreement.

34. ENFORCEMENT BY CITY; DAMAGES. The Developer acknowledges the right of the City to enforce the terms of this Agreement against the Developer, by action for specific performance or damages, or both, or by any other legally authorized means. In the event of a default by the Developer as to construction or repair of any of the Subdivision Improvements or any other work or undertaking required by this Agreement, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek an order from any court for permission to enter the Subdivision for such purposes. If the City does such work, the City may, in addition to its other remedies, levy special assessments against the land within the Subdivision to recover the costs thereof. For this purpose, the Developer, for itself and its successors and assigns, expressly waives any and all procedural and substantive objections to the special assessments, including, but not limited to, hearing requirements, and any claim that the assessments exceed the benefit to the land so assessed. The Developer, for itself and its successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes Section 429.081.

The Developer also acknowledges that its failure to perform any or all of the Developer's obligations under this Agreement may result in substantial damages to the City; that in the event of default by the Developer, the City may commence legal action to recover all damages, losses, and expenses sustained by the City; and that such expenses may include, but are not limited to,

the reasonable fees of legal counsel employed with respect to the enforcement of this Agreement.

35. WARRANTY. During the warranty period, the Developer warrants that all Subdivision Improvements will be free from defects and that they will continue to meet all technical specifications and standards. During the warranty period, the Developer agrees to repair or replace any Subdivision Improvement, or any portion or element thereof, which shows signs of failure, normal wear and tear excepted. If the Developer fails to repair or replace a defective Subdivision Improvement during the warranty period, the City may repair or replace the defective portion and may use the Security to reimburse itself for such costs. The Developer agrees to reimburse the City fully for the cost of all Subdivision Improvement repair or replacement if the cost thereof exceeds the remaining amount of the Security. Such reimbursement must be made within 45 days of the date upon which the City notifies the Developer of the cost due under this paragraph. The Developer hereby agrees to permit the City to specially assess any unreimbursed costs against any lots in the Subdivision which have not been sold to home buyers if the Developer fails to make required payments to the City. The Developer, on behalf of itself and its successors and assigns, acknowledges the benefit to the lots within the Subdivision of the repair or replacement of the Subdivision Improvements and hereby consents to such assessment and waives the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.

- A. The required warranty period for all work relating to the public sewer and water shall be two years from the date of final written City acceptance of the work.
- B. The required warranty period for all work relating to street construction, including concrete curb and gutter, sidewalks and trails, materials, and equipment shall be subject to one year from the date of final written acceptance of the work.
- C. The required warranty period for sod, trees, and landscaping is two years from the date of final written City acceptance of the installation.

36. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public Subdivision Improvements, and construction of all public Subdivision Improvements, the Developer shall furnish the City with an irrevocable letter of credit or a cash escrow or a combination of a cash escrow and letter of credit (the "Security") in the amount of \$2,831,861. The bank originating the letter of credit shall be determined by the City to be solvent and creditworthy. The letter of credit shall substantially be in the form attached to this Agreement and must be approved by the City. The amount of the Security was calculated as itemized on **Exhibit C**. If at any time the City reasonably determines that the bank issuing the letter of credit no longer satisfies the City's requirements regarding solvency and creditworthiness, the City shall notify the Developer and the Developer shall provide to the City within 45 days a substitute for the letter of credit from another bank meeting the City's requirements. If the Developer fails to provide the City within 45 days with a substitute letter of credit from an issuing bank satisfactory to the City, the City may draw under the existing letter of credit.

This breakdown is for historical reference; it is not a restriction on the use of the Security. The City may draw down the Security, without notice, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term. If the required public Subdivision Improvements are not completed at least 30 days prior to the expiration of the Security, the City may also draw it down. If the Security is drawn down, the proceeds shall be used by the City to cure the default.

37. REDUCTION OF SECURITY. Upon written request by the Developer and upon receipt of proof satisfactory to the City Engineer that work has been completed in accordance with the approved Plans and the terms of this Agreement and that all financial obligations to the City have been satisfied, the City Engineer may approve reductions in the Security in the following instances:

- A. Upon completion of grading operations, including temporary site restoration. The Developer must submit an as-built grading survey to the City that at a minimum establishes the as-built grades at all lot corners and downstream drainage conveyance systems and storm water ponds. Upon inspection of the site and approval of the as-built survey by the City, 100 percent, or \$0, of the Security associated with grading may be released. This Security reduction does not include amounts related to erosion and sedimentation control.
- B. Up to 75 percent of the Security associated with the itemization on **Exhibit C** may be released upon completion of the following key milestones of the project as determined by the City Engineer:
1. Construction Categories 2 and 3: The amount of \$446,398 may be released when all sanitary sewer and watermain utilities have been installed, all testing and televising has been successfully completed, sanitary sewer as-built inverts have been verified, and the utilities are considered ready for use by the City Engineer.
 2. Construction Categories 4 and 5: The amount of \$1,386,721 may be released when all streets, sidewalks, and storm sewer have been installed and tested, and have been found to be complete to the satisfaction of the City Engineer including all corrective work for any identified punch list items and including verification of storm sewer as-built inverts, but not including the final wear course.
 3. Construction Categories 6-10 and 14-17: The amount of \$131,870 may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) bituminous wear course; (2) street lighting and private utilities; (3) trails; (4) bio retention facilities; (5) iron monuments for lot corners have been installed; (6) all financial obligations

to the City satisfied; (7) the required "record" plans in the form of the City standards have been received and approved by the City; and (8) the public Subdivision Improvements are accepted by the City Engineer and the City Council.

- C. Twenty-five percent of the original Security amount, excluding grading and landscaping improvements shall be retained until: (1) all Subdivision Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.
- D. Twenty-five percent of the original Security amount associated with Landscaping Improvements shall be retained by the City until: (1) all Landscaping Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items being completed by the Developer; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired. Notwithstanding the above, the City may reduce the Security attributable to accepted Landscaping Improvements by up to 38 percent after the first year of acceptance by the City. The City may also further reduce the Security attributable to accepted Landscaping Improvements by up to an additional 37 percent after the second year of acceptance by the City. The City will retain the remaining 25 percent of the Security attributable to accepted Landscaping Improvements until (1) all Landscaping Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items being completed by the Developer; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.
- E. In addition to the above project milestone based Security reductions, the Developer may submit a written request and upon receipt of proof satisfactory to the City Engineer that work is progressing in accordance with the approved Plans and the terms of this

Agreement and that all financial obligations to the City have been satisfied, the City Engineer may approve a one-time reduction in the Security for Construction Categories 2-5 in an amount not to exceed 50 percent of the initial Security amount. This one-time Security reduction does not apply to Categories 4-5 if boulevard sidewalks or trails have not been installed.

F. It is the intent of the parties that the City at all times have available to it Security in an amount adequate to ensure completion of all elements of the Subdivision Improvements and other obligations of the Developer under this Agreement, including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of the Security shall be evaluated by the City in light of that principle.

38. SUMMARY OF CASH REQUIREMENTS. The following is a summary of the cash requirements under this Agreement which must be paid to the City prior to recording the final plat:

Sewer Availability Charge (SAC):	\$123,000
Water Availability Charge (WAC):	\$123,000
AUAR Fee:	\$9,430
Special Assessments Due:	\$0
Street Light Operating Fee:	\$516
City Base Map Upgrading (\$25.00 per REU):	\$1,025
City Engineering Administration Escrow:	\$50,000
TOTAL CASH REQUIREMENTS:	\$320,971 306,971

39. NOTICES. Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: Bob Engstrom, Robert Engstrom Companies, 4801 W. 81st Street, Suite 101, Minneapolis, MN 55437. Email address tom@engstromco.com, paul@engstromco.com and bob@engstromco.com. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator, or mailed to the City by certified mail in care of the City Administrator at the following address: Lake Elmo City Hall, 3880 Laverne Avenue N., Suite 100, Lake Elmo,

Minnesota 55042.

40. EVIDENCE OF TITLE. The Developer shall furnish the City with evidence of fee ownership of the property being platted by way of a title insurance policy dated not earlier than 30 days prior to the execution of the plat.

41. COMPLIANCE WITH LAWS. The Developer agrees to comply with all laws, ordinances, regulations, and directives of the state of Minnesota and the City applicable to the Subdivision. This Agreement shall be construed according to the laws of the Minnesota.

42. SEVERABILITY. In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other provision of this Agreement.

43. NON-WAIVER. Each right, power, or remedy conferred upon the City by this Agreement is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereafter arising, or available to the City at law or in equity, or under any other agreement. 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 shall not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

44. COUNTERPARTS. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

DEVELOPER

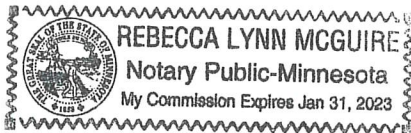
By: Robert Engstrom

Its: President

STATE OF MINNESOTA)
) ss.
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 27, day of January, 2022, by Robert Engstrom, the Developer of a wind power.

[Signature]
NOTARY PUBLIC



DRAFTED BY:
City of Lake Elmo
3880 Laverne Avenue North
Lake Elmo, MN 55042
(651) 747-3901

**EXHIBIT A TO
DEVELOPMENT AGREEMENT**

Legal Description of the Property Being Final Platted

Outlot A, Wildflower at Lake Elmo 3rd Addition, and
Outlots G, H, I, and Q, Wildflower at Lake Elmo 1st Addition;

Washington County, Minnesota

EXHIBIT B TO DEVELOPMENT AGREEMENT

List of Plan Documents

The following documents prepared by Pioneer Engineering, constitute the Plans:

THOSE DOCUMENTS BY

AS FOLLOWS:

<u>SHEET</u>	<u>TITLE</u>	<u>REVISION DATE</u>
1.01 OF 36	COVER SHEET	11-24-21
1.02 OF 36	LEGEND SHEET	11-24-21
1.03 OF 36	REMOVAL PLAN	11-24-21
2.01 OF 36	OVERALL UTILITY	11-24-21
2.11-2.12 OF 36	EROSION CONTROL & SEEDING PLAN	11-24-21
2.20 OF 36	STORMWATER POLLUTION PREVENTION PLAN	11-24-21
3.11-3.17 OF 36	SANITARY SEWER & WATERMAIN CONSTRUCTION	11-24-21
3.21-3.26 OF 36	STORM SEWER CONSTRUCTION	11-24-21
3.31-3.35 OF 36	STREET CONSTRUCTION	11-24-21
3.41 OF 36	DRIVEWAY CONSTRUCTION DETAILS	11-24-21
3.51 OF 36	TRAIL PLAN	11-24-21
3.61-3.62 OF 36	SIGNING, STRIPING & LIGHTING PLAN	11-24-21
4.01-4.07 OF 36	CITY DETAILS	11-24-21
L1-L3	LANDSCAPE PLAN	11-24-21

EXHIBIT C TO DEVELOPMENT AGREEMENT

Subdivision Improvements Cost/Security Amount Estimate

<u>CONSTRUCTION CATEGORY</u>	<u>COST</u>	<u>125 percent</u>
1 <u>Grading</u>	\$--	\$--
2 <u>Sanitary Sewer</u>	\$257,538	\$321,923
3 <u>Watermain</u>	\$218,620	\$273,275
4 <u>Storm Sewer (includes pond structures and outfall pipes)</u>	\$238,267	\$297,834
5 <u>Streets and Sidewalks</u>	\$1,240,902	\$1,551,128
6 <u>Trails</u>	\$50,907	\$63,634
7 <u>Surface Water Facilities (ponds, infiltration basins, other BMPs)</u>	\$12,460	\$15,575
8 <u>Street Lighting</u>	\$24,000	\$30,000
9 <u>Street and Traffic Signs</u>	\$5,220	\$6,524
10 <u>Private Utilities (electricity, natural gas, telephone, and cable)</u>	\$NA	\$NA
11 <u>Landscaping Improvements</u>	\$169,500	\$211,975
12 <u>Tree Preservation and Restoration</u>	\$NA	\$NA
13 <u>Wetland Mitigation and Buffers</u>	\$NA	\$NA
14 <u>Monuments</u>	\$4,100	\$5,125
15 <u>Erosion and Sedimentation Control</u>	\$38,975	\$48,719
16 <u>Miscellaneous Facilities</u>	\$NA	\$NA
17 <u>Developer's Record Drawings</u>	\$5,000	\$6,250
<u>TOTALS</u>	\$2,265,488	\$2,831,861

FORM OF IRREVOCABLE LETTER OF CREDIT

No. _____

Date: _____

TO: City of Lake Elmo

Dear Sir or Madam:

We hereby issue, for the account of _____ (Name of Developer) and in your favor, our Irrevocable Letter of Credit in the amount of \$ _____ available to you by your draft drawn on sight on the undersigned bank.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. _____, dated _____, 20____, of (Name of Bank)";
- b) Be signed by the Mayor or City Administrator of the City of Lake Elmo.
- c) Be presented for payment at _____ (Address of Bank), on or before 4:00 p.m. on November 30, 20____.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be November 30 of each year), the Bank delivers written notice to the Lake Elmo City Administrator that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: City Administrator, City Hall, 3880 Laverne Ave. N. Lake Elmo Minnesota 55042 and is actually received by the City Administrator at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: _____

Its: _____

(reserved for recording information)

DEVELOPMENT AGREEMENT

Crossroads East First Addition

THIS DEVELOPMENT AGREEMENT is dated February 15, 2022, by and between the CITY OF LAKE ELMO, a Minnesota municipal corporation (the "City") and AIRLAKE DEVELOPMENT, INC., a Minnesota corporation and CROSSROADS EAST, LLC, a Minnesota limited liability company (collectively, the "Developer").

- 1. REQUEST FOR PLAT APPROVAL.** The Developer has asked the City to approve a plat for Crossroads East First Addition (referred to in this Agreement as the "Subdivision"). The property being platted is situated in the County of Washington, State of Minnesota, and is legally described on **Exhibit A**.
- 2. CONDITIONS OF PLAT APPROVAL.** The City hereby approves the Subdivision on the condition that the Developer enter into this Agreement, furnish the security required by it, and record the plat with the County Recorder or the Registrar of Titles within 180 days after the City Council approves the final plat.
- 3. RIGHT TO PROCEED.** This Agreement is intended to regulate the development of the

Subdivision property and the construction therein of certain public and private improvements. The Developer has been granted permission by the City to grade the Subdivision property by a separate Grading Agreement dated October 12, 2021 (the "Grading Agreement"). The Developer has also been granted permission by the City to construct certain improvements on the Subdivision property by a separate Site Improvement Agreement dated July 20, 2021 (the "Site Improvement Agreement"). Unless separate written approval has been given by the City within the plat or land to be platted, the Developer may not construct public or private Subdivision Improvements or any buildings on the Subdivision Property until all the following conditions precedent have been satisfied:

- A. the Developer has executed and recorded with Washington County all drainage and utility easements required for the Subdivision by the City Engineer and Public Works Director in the City's standard form or the easements have been dedicated to the City in the plat (with the exception of the drainage and utility easement that will be granted by the Developer to the City for the internal site water main that will be executed and recorded after the watermain is constructed);
- B. this Agreement has been executed by the Developer and the City;
- C. the required Security (as hereinafter defined) have been received by the City from or on behalf of the Developer;
- D. final construction plans and specifications have been submitted by the Developer and approved by the City Engineer;
- E. the Developer has paid the City for all legal, engineering, and administrative expenses incurred by the City regarding the City approvals and has given the City the additional City Engineering Administrative Escrow required by this Agreement;
- F. the Developer has paid any outstanding assessments and taxes for the Subdivision property;

- G. the Developer has fulfilled any park dedication requirements as specified under this Agreement;
- H. the Developer has received all necessary permits from the MPCA, MDH, DNR, applicable watershed, Washington County, and any other agency having jurisdiction over the Subdivision;
- I. the Developer has provided the City with a certificate of insurance required by this Agreement;
- J. the Developer, the Developer's engineer, and the Developer's contractor(s) have initiated and attended a preconstruction meeting with the City Engineer, and City staff;
- K. the final plat has been recorded with Washington County;
- L. a title insurance policy has been issued in the amount of \$100,000 in favor of the City insuring the City's interests as they appear on the plat;
- M. the Developer has executed a stormwater maintenance and easement agreement in the City's standard form;
- N. the Developer has revised the landscaping and tree planting plans to meet the conditions of approval of the final plat and the changes required by the City's Landscape Architect as outlined in his/her memo dated September 24, 2021, including the addition of a landscaping buffer between the Subdivision and the residential properties. Said revised landscaping and tree planting plans must be reviewed and approved by the City's Landscape Architect prior to recording the final plat;
- O. the Developer has revised its plans to identify the location of the emergency vehicle access and the location of the access has been approved by the Fire Chief. Said revised plans must be reviewed and approved by the Fire Chief prior to recording the final plat;
and
- P. the City has issued a written notice that all above conditions have been satisfied and that

the Developer may proceed.

4. CHANGES IN OFFICIAL CONTROLS. For five years from the date of this Agreement, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the use, development density, lot size, lot layout, or dedications of the approved final plat unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Agreement to the contrary, to the full extent permitted by state law, the City may require compliance with any changes to the City's Comprehensive Plan, official controls, platting, or dedication requirements enacted after the date of this Agreement.

5. DEVELOPMENT PLANS. The Developer agrees to develop the Subdivision in accordance with the City approvals, including the terms and conditions of approval of the final plat as detailed in City Council Resolution No. 2021-115 and to construct all improvements in accordance with the approved construction plans and specifications (collectively, the "Plans") prepared by a professional engineer licensed in the State of Minnesota at its sole expense. All terms and conditions of the City approvals are hereby incorporated by reference into this Agreement. The documents which constitute the Plans are those on file with and approved by the City and are listed on **Exhibit B** attached hereto. The Plans may not be modified by the Developer without the prior written approval of the City.

6. IMPROVEMENTS. In developing the Subdivision in accordance with the Plans, the Developer shall make or install at its sole expense the following public and private improvements (collectively, the "Subdivision Improvements"):

- A. Grading and erosion control;
- B. Sanitary sewer;
- C. Water system improvements;
- D. Stormwater improvements (storm sewer pipe, control structures, ponds, BMPs, etc.)
- E. Hudson Boulevard street improvements;
- F. Trails;

- G. Underground private utilities;
- H. Landscaping;
- I. Street lighting and signage;
- J. Tree preservation and reforestation;
- K. Wetland mitigation and buffers;
- L. Emergency vehicle access; and
- M. Monuments required by Minnesota Statutes.

All improvements shall be installed in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards as a condition of City acceptance. In addition, the City may, at the City's discretion and at the Developer's expense, have one or more City inspectors or a soil engineer inspect the Developer's work on a full or part-time basis. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor.

7. CITY ADMINISTRATION AND CONSTRUCTION OBSERVATION. At the time of the City's approval of the final plat for the Subdivision, the Developer shall submit to the City an amount to be escrowed by the City for City administration and construction observation costs in an amount provided under paragraph 32 of this Agreement - Summary of Security Requirements. Thereafter, the Developer shall reimburse the City each month, within 30 days of receiving an invoice, following submission of an invoice to the Developer, for all administration and construction observation costs incurred by the City during the construction of the Subdivision Improvements by the City's engineering, public works, planning, and landscape architecture staff

and consultants. After 30 days of the invoice, the City may draw upon the escrow and stop work on the site until the escrow has been replenished in its full amount. City administration and oversight will include monitoring of construction progress and construction observation, consultation with the Developer and the Developer's professionals on status or problems regarding the project, coordination for testing, final inspection and acceptance, project monitoring during the warranty period, and processing of requests for reduction in the Security. Construction observation shall include, at the discretion of the City, part- or full-time inspection of proposed public utilities and street construction. The City will bill for the services on an hourly basis.

The direction and review provided by the City through the inspection of the Subdivision Improvements should not be considered a substitute for the Developer-required management of the construction of the Subdivision Improvements. The Developer must require the Developer's contractor(s) to furnish the City with a schedule of proposed operations at least five days prior to the commencement of construction of each type of Subdivision Improvement. The City shall inspect all Developer-installed Subdivision Improvements during and after construction for compliance with the Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer will notify the City at such times during construction as the City requires for inspection purposes based on a schedule established for this purpose. Such inspection is pursuant to the City's governmental authority, and no agency or joint venture relationship between the City and the Developer is thereby created.

8. CONTRACTORS/SUBCONTRACTORS. City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a 25 percent ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the Subdivision Improvements identified in paragraph 5 above.

9. TIME OF PERFORMANCE. Subject to unavoidable delays including adverse weather conditions, the Developer shall install all required Subdivision Improvements by December 31, 2022. The Developer may, however, request an extension of time from the City, and the City agrees to grant a reasonable extension for delays. Such extension will not be the basis for placing the Developer in default based on the schedule of improvements. If the City grants the time extension, it shall be conditioned upon updating the Security or escrow posted by the Developer to reflect cost increases, if any, and amending this Agreement to reflect the extended completion date.

10. MAINTENANCE DURING CONSTRUCTION. The Developer shall be responsible for all maintenance of the Subdivision Improvements until the Subdivision Improvements are accepted by the City in writing. The Developer and its contractors must adhere to the City's weight restrictions for all streets both inside and outside of the Subdivision, regardless of whether said streets are included in the City's map of streets with weight restrictions and regardless of whether said streets are fully constructed. The Developer also is responsible to perform gopher state one utility locates for all underground utilities until the Subdivision Improvements are accepted in writing by the City. Warning signs shall be placed by the Developer when hazards develop in streets to prevent the public from traveling on same and to direct attention to detours. If and when streets become impassable, such streets shall be barricaded and closed by the Developer. The Developer and its contractors must keep Hudson Boulevard North and Lake Elmo Avenue open to traffic at all times unless a right-of-way obstruction permit is obtained from the City for Hudson Boulevard North or from Washington County for Lake Elmo Avenue. The Developer shall be responsible for keeping streets within and outside of the Subdivision clean and clear of dirt and debris that may spill, track, or wash onto the street from the Developer's operations. The Developer shall contract for street cleaning for streets within and immediately adjacent to the Subdivision. At a minimum, scraping and sweeping shall take place on a weekly basis and on a

daily basis during heavy tracking days.

11. LICENSE. The Developer hereby grants the City, its agents, employees, officials, and contractors a license to enter the Subdivision to perform all work and inspections deemed appropriate by the City in conjunction with the development of the Subdivision and this Agreement.

12. CONSTRUCTION ACCESS AND PARKING. Construction traffic access and egress for all work on the site is restricted to access via Hudson Boulevard North at the approved new driveway location and designated rock construction entrance per the approved erosion control plans. No construction traffic is permitted on other adjacent streets or at any other location along Hudson Boulevard North. The Developer must maintain adequate access for emergency vehicles that is acceptable to the City in its sole discretion at all times during construction.

All construction parking and staging, including the loading and unloading of equipment and supplies during the construction of the Subdivision Improvements must be completed interior to the project site and is not allowed to occur on a public street or within any public right-of-way. The Developer and contractors shall be responsible for the repair and restoration of any damage to the street, curb, trail, sidewalk, and boulevard caused by the construction activities. Such work shall meet all City standards and specifications.

13. CONSTRUCTION SEQUENCE AND COMPLIANCE. The City will require the Developer to construct the Subdivision Improvements in a sequence that will allow progress and compliance points to be measured and evaluated. The Developer and the Developer's representatives are required to supervise and coordinate all construction activities for all Subdivision Improvements and must notify the City in writing stating when the work is ready for the inspection at each of the measurable points defined in the following paragraphs. The Developer may utilize temporary stormwater treatment methods for the Subdivision until the stormwater basins on the site are constructed by the Developer within the Subdivision. If the City

Engineer determines that the Developer's temporary treatment of stormwater for the Subdivision is not being managed properly by the Developer, the City may issue a stop work order.

14. EROSION CONTROL. All construction regarding the Subdivision Improvements shall be completed in a manner designed to control erosion and in compliance with the City Code, the City's Engineering Design and Construction Standards Manual, all watershed district permits, the Minnesota Pollution Control Agency's best management practices, and other requirements including the City's permit with the Minnesota Pollution Control Agency for the municipal separate storm sewer system program. Before initiating any work on the site, the Developer must implement an erosion control plan and have the City inspect and approve the erosion control measures. The Developer shall coordinate and install erosion and sediment control measures with the various stages of development. The City may impose additional erosion control requirements at any stage in development as deemed necessary to maintain a compliant site. The Developer shall promptly reseed all areas disturbed for Subdivision Improvements after the work in the area is complete unless construction of the next stage of the Subdivision Improvements will begin in that area within seven days. The parties recognize that time is of the essence in controlling erosion.

If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the City for any cost the City incurred for such work within 10 days, the City may draw on the Security to pay any costs. The City will not allow any development or site work, utility, or street construction and the City will not issue any building permits unless the Subdivision is in full compliance with the approved erosion control plan.

15. SITE GRADING. In order to construct the Subdivision Improvements and otherwise

prepare the site for development, it will be necessary for the Developer to grade the Subdivision property. All grading must be done in compliance with the Grading Agreement, this Agreement, and the grading plans on file with the City. Within 30 days after completion of the grading, the Developer shall provide the City with an "as built" grading plan and a certification by a registered land surveyor or engineer as required in the City's Engineering Design and Construction Standards Manual.

16. STREET AND UTILITY IMPROVEMENTS. All storm sewers, sanitary sewers, watermain, and streets, including any turn lane or intersection improvements, shall be installed in accordance with the approved Plans, the City approvals, the City Code, and the City's Engineering Design and Construction Standards Manual. Curb and gutter, the first lift of the bituminous streets, trails, boulevards graded, street signs installed, and all restoration work on the site shall be completed in accordance with the approved Plans. Once the work is completed, the Developer or the Developer's representative shall submit a written request to the City asking for an inspection of the initial improvements. The City will then schedule a walk-through to create a punch list of outstanding items to be completed. Upon receipt of the written punch list provided by the City, the punch list items must be completed by the Developer and the City notified to re-inspect the improvements. Before the placement of the final bituminous wear course, the Developer shall repair or replace all broken or failing curbs, trails and damaged or settled streets as determined by the City from a pre-wear course walk through inspection.

17. LANDSCAPING AND TREE REPLACEMENT IMPROVEMENTS.

- A. The Developer agrees to install or cause to be installed landscaping in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. All landscaping materials such as trees, shrubs, grasses, or other vegetation installed by the Developer must be warrantied and maintained for a period

of two years. The two-year warranty period shall be deemed to start once all required landscaping identified as responsibility of the Developer in the approved Plans has received acceptance by the City. The Developer agrees to have the installer complete an inspection 30 days prior to the end of the two-year warranty period and provide the City with a written report identifying the condition of all landscaping. In the event any landscaping installed by the Developer is deemed to be in poor condition or dead, the Developer is to replace the landscaping with like kind materials or as otherwise approved by the City.

- B. The Developer shall be responsible for maintaining regular watering, fertilizing, and over-seeding necessary to establish final lawns and yards as identified in the approved Plans for outlots, public rights-of-way, and any disturbed areas outside the Subdivision boundaries according to a landscape maintenance plan approved by the City. The Developer agrees to achieve "substantial performance" on all seeded or sodded lawns and yards disturbed during the construction of Subdivision Improvements. For the purpose of this Agreement "substantial performance" shall be defined for areas seeded or sodded with a turf or lawn mix as "square foot turf areas with an average blade height of three inches free of eroded, bare, or dead spots and free from perennial weeds or unwanted grasses with no visible surface soil." For areas seeded with a native grass or flower mix "substantial performance" shall be defined as "square foot native grass or flower areas with an average height of eight inches free of eroded, bare, or dead spots and no visible surface soil."

18. SIGNAGE, STREET LIGHTING AND OTHER UTILITIES. The Developer agrees to install street signs, traffic and parking signs, and pavement markings within the Subdivision all in accordance with the approved Plans and the City Engineering Design Standards Manual. Street and traffic sign details shall be submitted by the Developer to the City for approval before their installation. The Developer shall install "no parking" signs along the emergency vehicle access

road. In addition, the Developer shall be responsible for the cost and all coordination work to extend private utilities along with street lighting within the Subdivision all in accordance with the approved plans and right-of-way permits.

19. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction required by this Agreement, the Subdivision Improvements lying within public easements shall become City property. Prior to acceptance of the public Subdivision Improvements by the City, the Developer must furnish the City with a complete set of reproducible "record" plans and an electronic file of the "record" plans in accordance with the City's Engineering Design and Construction Standards Manual together with the following affidavits:

- Developer/Developer Engineer's Certificate
- Land Surveyor's Certificate

certifying that all construction has been completed in accordance with the terms of this Agreement. All necessary forms will be furnished by the City. Upon receipt of "record plans" and affidavits, and upon review and verification by the City Engineer that the public Subdivision Improvements have been completed in accordance with the terms of this Agreement, the City Engineer will accept the completed public Subdivision Improvements.

20. PARK DEDICATION. The Developer shall pay a cash contribution of \$170,400 in satisfaction of the City's park dedication requirements. The City requires a \$6000 per acre park dedication fee for commercial subdivisions. The charge was calculated as follows: \$6000 x 28.4 acres = \$170,400. The park dedication fee shall be paid by the Developer before recording the final plat.

21. SANITARY SEWER AND WATER UTILITY AVAILABILITY CHARGES (SAC AND WAC). The Developer shall be responsible for the payment of all sewer availability charges (SAC) and all water availability charges (WAC) with respect to the Subdivision Improvements required by the City and any state or metropolitan government agency.

The sewer availability charge (SAC) in the amount of \$3,000.00 per Residential Equivalent

Charge ("REC") shall be paid by the Developer or the Developer's contractor on behalf of the Developer to the City at the time the City issues a building permit for each building with the development. The City acknowledges that the Developer has prepaid for 42 SAC credits and said 42 SAC credits shall be applied against the total number of SACs required.

The water availability charge (WAC) in the amount of \$3,000.00 per REC shall be paid by the Developer or the Developer's contractor on behalf of the Developer at the time the City issues a building permit for each building within the development. The City acknowledges that the Developer has prepaid for 42 WAC credits and said 42 WAC credits shall be applied against the total number of WACs required.

In addition, a sewer connection charge in the amount of \$1,000.00 per REC, a Metropolitan Council sewer availability charge in the amount of \$2,485.00 per REC, and a water connection charge in the amount of \$1,000.00 per REC will be payable by the Developer and collected by the City at the time the City issues a building permit for each building with the development.

22. WETLAND MITIGATION. The Developer shall complete wetland mitigation/restoration in accordance with the approved Plans and in accordance with any applicable Watershed or agency permits. If the mitigation work is found to be incomplete or restoration is unsuccessful, the City may draw down the Security at any time during the warranty period to perform the work if the Developer fails to take corrective measures after being provided reasonable notice by the City.

23. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

A. The City will issue a footing and foundation permit for a building within the Subdivision provided that the final plat has been recorded with Washington County. The City will issue a vertical construction permit for a building within the Subdivision provided that all on-site utilities within the Subdivision have been installed by the

Developer and have been inspected and approved by the City, including as-built verification surveys of all storm and sanitary sewer structures. The City will not issue a certificate of occupancy for any building within the Subdivision until all public Subdivision Improvements (including, but not limited to the emergency vehicle access) have been installed by the Developer and accepted by the City. For the purposes of this Agreement, the City will not accept any Subdivision Improvements until as-built record drawings are submitted for review and are approved by the City verifying that the Subdivision Improvements have been installed in accordance with the approved Plans.

- B. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and withholding of other permits, inspections, or actions and the halting of all work in the Subdivision.
- C. If the City issues building permits before the acceptance of the public Subdivision Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of public Subdivision Improvements and damage to public Subdivision Improvements caused by the City, the Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any third parties.
- D. No sewer and water connection permits may be issued until the streets needed for access have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.

24. RESPONSIBILITY FOR COSTS.

- A. In the event that the City receives claims from labor, materialmen, or others alleging that work required by this Agreement has been performed and the amounts due to them have not been paid, and the laborers, materialmen, or others

are seeking payment from the City, the Developer hereby authorizes the City to commence an Interpleader action pursuant to Rule 22, Minnesota Rules of Civil Procedure for the District Courts, to draw upon the Security in an amount up to 125 percent of the claim(s) and deposit the funds in compliance with the Rule, and upon such deposit, the Developer shall release, discharge, and dismiss the City from any further proceedings as it pertains to the funds deposited with the District Court, except that the Court shall retain jurisdiction to determine attorneys' fees pursuant to this Agreement.

- B. Except as otherwise specified herein, the Developer shall pay all costs incurred by it or the City in conjunction with the development of the Subdivision, including but not limited to legal, planning, engineering, and inspection expenses incurred in connection with the City's approval and acceptance of the plat and the Subdivision, the preparation of this Agreement, the City's review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting development of the Subdivision. All amounts incurred and due to the City at the time of the recording of the final plat must be fully paid by the Developer prior to the City executing and releasing the final plat for recording.
- C. The Developer shall hold the City and its officials, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from the City's approval of the plat and the development of the Subdivision unless caused by the negligence, action, or inaction of the City. The Developer shall indemnify and defend the City and its officials, employees, and agents for all costs, damages, or expenses that the City may pay or incur in consequence of such claims, including attorneys' fees.
- D. The Developer shall reimburse the City for costs incurred in the enforcement of

this Agreement, including reasonable engineering and attorneys' fees.

- E. The Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, all special assessments referred to in this Agreement. This is a personal obligation of the Developer and shall continue in full force and effect even if the Developer sells one or more lots, the entire Subdivision, or any portion of it.
- F. The Developer shall pay in full all bills submitted to it by the City through the established escrow for obligations incurred under this Agreement within 30 days after receipt. Bills not paid by the Developer within 30 days shall be assessed a late fee per the City adopted fee schedule. Upon request, the City will provide copies of detailed invoices of the work performed by the City and its consultants.

25. SPECIAL PROVISIONS. The following special provisions shall apply to the Subdivision and include the Conditions of Approval of the Final Plat and Final PUD Plans:

- A. The Developer must implement all changes and modifications to the plans requested by the City Engineer in the City Engineer's memorandum addressing Crossroads East First Addition Final Plat and PUD Plans dated September 15, 2021 prior to the City approving the construction plans.
- B. The Developer must obtain sign permits for any signs in the Subdivision. In order to receive a sign permit, the Developer must submit a sign plan to the City for review and approval.
- C. The Developer shall enter into a Landscape License Agreement with the City that clarifies the individuals or entities responsible for maintenance of any landscaping installed within in the public right-of-way.

- D. The Developer shall submit a lighting plan for the Subdivision to the City for its review and approval. Said lighting plan must be approved by the City prior to the issuance of any building permits.
- E. The Developer shall address the comments in the City Engineer's review memorandums dated September 15, 2021 before the City releases the final plat for recording. The City Engineer shall review and approve the final construction plans prior to the recording of the Final Plat. All changes and modifications to the plans requested by the City Engineer in the memorandums dated September 15, 2021 and any future reviews shall be incorporated into these project documents before the City approves the final plans.
- F. The Developer must submit an updated title policy for review and approval by the City Attorney before approval of the development agreement and recording of the final plat.
- G. Prior to the execution of the Final Plat by City officials, the Developer shall enter into a Developer's Agreement acceptable to the City Attorney and approved by the City Council that delineates who is responsible for the design, construction, and payment of the required improvements for the Crossroads East Final Plat and Final PUD Development Plans with financial guarantees, therefore.
- H. All easements as requested by the City Engineer and Public Works Department shall be documented on the Final Plat before the execution of the final plat by City Officials.
- I. As per the Fire Department comments dated September 20, 2021, the location of the secondary access must be identified, and plans and specifications must be provided prior to recording the final plat.

- J. The Developer shall revise the final landscape and tree planting plan, including provisions to meet screening and bufferyard requirements, for approval by the City before the City releases the final plat for recording.
- K. The allowable land uses are limited to those listed as Permitted or Conditional uses in the Business Park District.
- L. The Developer must provide the City with a detailed breakdown of the types of uses and their floor spaces with a detailed parking calculation for each building in the development with the required building permits. There shall be no deviation from the required number of parking spaces.
- M. That all storm water facilities internal to the site shall be privately owned and maintained. A storm water maintenance and easement agreement in the City's standard form shall be executed and recorded with the final plat for all 100-year high water level areas and to protect all overland emergency flow paths.
- N. The Developer must meet all City standards and design requirements, including but not limited to building materials, parking, lighting and signage, unless specifically addressed otherwise in these conditions.
- O. Before the installation or construction of any subdivision identification signs or directional markers within the development, the Developer shall submit sign plans to the City for review and obtain a sign permit from the City. A signage plan for the entire development including size and location of monument signs, wall signs and signage for tenant spaces must be submitted prior to approval of the initial sign permit.
- P. The Developer must notify any purchasers or tenants of the buildings on the site that the City may impose restrictions or limits on outdoor water use that may include no vehicle washing and no watering of grass, sod, or landscaping.

- Q. The Developer must provide the Fire Department and the Sheriff's Department with keys, key cards, or other acceptable methods of entry for quick access into the buildings for emergency service calls.
- R. No building permits will be issued until the final plat is recorded.

26. MISCELLANEOUS.

- A. The Developer may not assign this Agreement without the written permission of the City Council. The Developer's obligations hereunder shall continue in full force and effect even if the Developer sells the Subdivision or any portion of it.
- B. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a professional engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved Plans. All retaining walls identified on the Plans or by special conditions referred to in this Agreement shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.
- C. The Developer shall take out and maintain or cause to be taken out and maintained until six months after the City has accepted the public Subdivision Improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them.

Limits for bodily injury and death shall be not less than \$500,000 for one person and \$1,500,000 for each occurrence; limits for property damage shall be not less than

\$200,000 for each occurrence; or a combination single limit policy of \$1,500,000 or more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate of insurance evidencing coverage prior to the City signing this Agreement. The certificate shall provide that the City must be given 30 days' advance written notice of the cancellation of the insurance.

- D. Third parties shall have no recourse against the City under this Agreement.
- E. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portions of this Agreement.
- F. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, 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.
- G. This Agreement shall run with the land and may be recorded against the title to the Subdivision property at the Developer's expense. The Developer covenants with the City, its successors and assigns, that it is the fee owner of the Subdivision and has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the Subdivision property, including, but not limited to, mortgagees; that there are no unrecorded interests in the Subdivision property being final platted; and the Developer will indemnify, defend, and hold the City harmless for any breach of the foregoing covenant.
- H. 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 hereafter arising, available to 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 shall not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy.

- I. The Developer represents to the City that the Subdivision and the Subdivision Improvements comply or will comply with all City, County, metropolitan, state, and federal laws and regulations, including but not limited to subdivision ordinances, zoning ordinances, and environmental regulations. If the City determines that the Subdivision is not in compliance, the City may, at its option following written notice and a reasonable opportunity to cure, refuse to allow construction work on the Subdivision until it is brought into compliance. "Reasonable" shall be defined for these purposes as the City's estimate as to the amount of time it would take the Developer to bring the Subdivision into compliance. Upon the City's demand, the Developer shall cease work until there is compliance.

27. EVENTS OF DEFAULT. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

- A. Subject to unavoidable delays, and following written notice and an opportunity to cure, failure by the Developer to commence and complete construction of the Subdivision Improvements pursuant to the terms, conditions, and limitations of this Agreement.
- B. Failure by the Developer, following written notice and an opportunity to cure, to substantially observe or perform any material covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement.

28. REMEDIES ON DEFAULT. Whenever any Event of Default occurs, the City, subject to any rights of third parties agreed to by the City pursuant to this Agreement, or otherwise by

written, executed instrument of the City, may take any one or more of the following:

- A. The City may suspend its performance under the Agreement until it receives assurances from the Developer, deemed adequate by the City that the Developer will cure its default and continue its performance under the Agreement. Suspension of performance includes the right of the City to withhold permits, including, but not limited to, building permits and certificates of occupancy.
- B. The City may initiate such action, including legal or administrative action, as is necessary for the City to secure performance of any provision of this Agreement or recover any amounts due under this Agreement from the Developer, or immediately draw on the Security, as set forth in this Agreement.

29. ENFORCEMENT BY CITY; DAMAGES. The Developer acknowledges the right of the City to enforce the terms of this Agreement against the Developer, by action for specific performance or damages, or both, or by any other legally authorized means. In the event of a default by the Developer as to construction or repair of any of the Subdivision Improvements or any other work or undertaking required by this Agreement, the City may, at its option and following written notice and an opportunity to cure, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek an order from any court for permission to enter the Subdivision for such purposes. If the City does such work, the City may, in addition to its other remedies, levy special assessments against the land within the Subdivision to recover the costs thereof. For this purpose, the Developer, for itself and its successors and assigns, expressly waives any and all procedural and substantive objections to the special assessments, including, but not limited to, hearing requirements, and any claim that the assessments exceed the benefit to the land so assessed. The Developer, for itself and its successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes Section

429.081.

The Developer also acknowledges that its failure to perform any or all of the Developer's obligations under this Agreement may result in substantial damages to the City; that in the event of default by the Developer, the City may commence legal action to recover all damages, losses and expenses sustained by the City; and that such expenses may include, but are not limited to, the reasonable fees of legal counsel employed with respect to the enforcement of this Agreement.

30. WARRANTY. During the warranty period, the Developer warrants that all Subdivision Improvements will be free from defects and that they will continue to meet all technical specifications and standards. During the warranty period, the Developer agrees to repair or replace any Subdivision Improvement, or any portion or element thereof, which shows signs of failure, normal wear and tear excepted. If the Developer fails to repair or replace a defective Subdivision Improvement during the warranty period, the City may repair or replace the defective portion and may draw upon the Security to reimburse itself for such costs. The Developer agrees to reimburse the City fully for the cost of all Subdivision Improvement repair or replacement if the cost thereof exceeds the remaining amount of the Security. Such reimbursement must be made within 45 days of the date upon which the City notifies the Developer of the cost due under this paragraph. The Developer hereby agrees to permit the City to specially assess any unreimbursed costs against the Subdivision if the Developer fails to make required payments to the City. The Developer, on behalf of itself and its successors and assigns, acknowledges the benefit to the Subdivision of the repair or replacement of the Subdivision Improvements and hereby consents to such assessment and waives the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.

- A. The required warranty period for all work relating to the public sewer and water shall be two years from the date of final written City acceptance of the work.
- B. The required warranty period for all work relating to public street construction,

including the improvements and turn lanes on Hudson Boulevard North and Lake Elmo Avenue, the concrete curb and gutter, trails and sidewalks, materials and equipment shall be one year from the date of final written City acceptance of the work.

- C. The required warranty period for sod, trees, and landscaping is two years from the date of final written City acceptance of the installation.

31. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public Subdivision Improvements, and construction of all public Subdivision Improvements, the Developer shall furnish the City with an irrevocable letter of credit or cash escrow or a combination of a cash escrow and a letter of credit (the "Security") in the amount of \$3,460,753. The bank originating the letter of credit shall be determined by the City to be solvent and creditworthy. The letter of credit shall substantially be in the form attached to this Agreement and must be approved by the City. The amount of the Security was calculated as itemized on **Exhibit D**. If at any time the City reasonably determines that the bank issuing the letter of credit no longer satisfies the City's requirements regarding solvency and creditworthiness, the City shall notify the Developer and the Developer shall provide to the City within 45 days a substitute for the letter of credit from another bank meeting the City's requirements. If the Developer fails to provide the City within 45 days with a substitute letter of credit from an issuing bank satisfactory to the City, the City may draw under the existing letter of credit.

This breakdown is for historical reference; it is not a restriction on the use of the Security. The City may draw upon the Security, without notice, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term. If the required public Improvements are not completed at least 30 days prior to the expiration of the Security, the City may also draw upon it. If the Security is drawn upon, the proceeds shall be used by the City

to cure the default.

The Developer has posted a security with the City with respect to the Grading Agreement. The Developer may have the City release the security posted by it pursuant to the Grading Agreement and post a new Security or it may allow the security posted under the Grading Agreement to be applied towards the Security required by this Agreement.

32. REDUCTION OF SECURITY. Upon written request by the Developer and upon receipt of proof satisfactory to the City Engineer that work has been completed in accordance with the approved Plans and the terms of this Agreement and that all financial obligations to the City have been satisfied, the City Engineer may approve reductions in the Security in the following instances:

- A. Upon completion of grading operations, including temporary site restoration. The Developer must submit an as-built grading survey to the City that at a minimum establishes the as-built grades at all lot corners and downstream drainage conveyance systems and storm water ponds. Upon inspection of the site and approval of the as-built survey by the City, 100 percent, or \$468,200 of the Security associated with grading may be released. This Security reduction does not include amounts related to erosion and sedimentation control.
- B. Up to 75 percent of the Security associated with the itemization on **Exhibit C** may be released upon completion of the following key milestones of the project as determined by the City Engineer:
 - 1. Construction Categories 2 and 3: The amount of \$754,394 may be released when all sanitary sewer and watermain utilities have been installed, all testing and televising has been successfully completed, sanitary sewer as-built inverts have been verified, and the utilities are considered ready for use by the City Engineer.
 - 2. Construction Categories 4 and 5: The amount of \$939,590 may be released

when all streets, sidewalks, and storm sewer have been installed and tested, and have been found to be complete to the satisfaction of the City Engineer including all corrective work for any identified punch list items and including verification of storm sewer as-built inverts, but not including the final wear course.

3. Construction Categories 6-10 and 14-17: The amount of \$140,476 may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) bituminous wear course; (2) street lighting and private utilities; (3) trails; (4) bio retention facilities; (5) iron monuments for lot corners have been installed; (6) all financial obligations to the City satisfied; (7) the required "record" plans in the form of the City standards have been received and approved by the City; and (8) the public Subdivision Improvements are accepted by the City Engineer and the City Council.
- C. Twenty-five percent of the original Security amount, excluding grading and landscaping improvements shall be retained until: (1) all Subdivision Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.
- D. Twenty-five percent of the original Security amount associated with Landscaping Improvements shall be retained by the City until: (1) all Landscaping Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items being completed by the Developer; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired. Notwithstanding

the above, the City may reduce the Security attributable to accepted Landscaping Improvements by up to 38 percent after the first year of acceptance by the City. The City may also further reduce the Security attributable to accepted Landscaping Improvements by up to an additional 37 percent after the second year of acceptance by the City. The City will retain the remaining 25 percent of the Security attributable to accepted Landscaping Improvements until (1) all Landscaping Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items being completed by the Developer; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.

- E. It is the intent of the parties that the City at all times have available to it Security in an amount adequate to ensure completion of all elements of the Subdivision Improvements and other obligations of the Developer under this Agreement, including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of the Security shall be evaluated by the City in light of that principle.

33. SUMMARY OF CASH REQUIREMENTS. The following is a summary of the cash requirements under this Agreement which must be paid to the City prior to the execution of this Agreement by the City:

Park Dedication:	\$170,400
City Engineering Administration Escrow:	\$50,000
TOTAL CASH REQUIREMENTS:	\$220,400

34. NOTICES. Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents or mailed to the Developer by certified mail at the following address: Airlake Development, Inc., 2866 White Bear Avenue, Maplewood, MN 55109, Attn: Dan Regan (dregan@launchproperties.com) and Crossroads East, LLC, 7200 Hudson Boulevard North, Suite 230, Oakdale, MN 55128, Attn: David Johnson (d.johnson@crossroadsproperties.net). Notices also may be delivered to the Developer via email to the above email addresses, provided that a hard copy of the notice is also delivered by certified mail or hand delivery. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator or mailed to the City by certified mail in care of the City Administrator Kristina Handt (khandt@lakeelmo.org) at the following address: Lake Elmo City Hall, 3880 Laverne Avenue N, Suite 100, Lake Elmo, Minnesota 55042. Notices may also be delivered to the City via email to the above email address, provided that a hard copy of the notice is also delivered by certified mail or hand delivery.

35. EVIDENCE OF TITLE. The Developer shall furnish the City with evidence of fee ownership of the Subdivision property being platted by way of a title insurance policy dated not earlier than 30 days prior to the execution of the plat.

36. COMPLIANCE WITH LAWS. The Developer agrees to comply with all laws, ordinances, regulations, and directives of the state of Minnesota and the City applicable to the Subdivision property. This Agreement shall be construed according to the laws of the state of Minnesota.

37. SEVERABILITY. In the event that any provision of this Agreement shall be held invalid, illegal, or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other provision of this Agreement.

38. NON-WAIVER. Each right, power, or remedy conferred upon the City by this Agreement

is cumulative and in addition to every other right, power, or remedy, express or implied, now or hereafter arising, or available to the City at law or in equity, or under any other agreement. 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 shall not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

39. COUNTERPARTS. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

40. GRADING AGREEMENT AND SITE IMPROVEMENT AGREEMENT. Upon execution of this Agreement by the Developer and the City and the posting of the Security required under this Agreement, the Grading Agreement and the Site Improvement Agreement shall be deemed to be null and void and the City shall sign a release of the Grading Agreement and Site Improvement Agreement that may be recorded by the Developer in the property records.

CROSSROADS EAST, LLC

By: David W Johnson

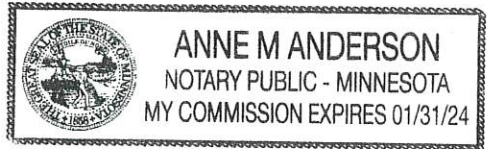
Its: MANAGING PARTNER

STATE OF MINNESOTA)
) ss.
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 11th day of February 2022, by David W Johnson the Managing Partner of Crossroads East, LLC, a Minnesota limited liability company on behalf of the company.

Anne M Anderson

NOTARY PUBLIC



DRAFTED BY:
City of Lake Elmo
3880 Laverne Avenue North, Suite 100
Lake Elmo, MN 55042
(651) 747-3901

**CONTRACT PURCHASER CONSENT TO
DEVELOPMENT AGREEMENT**

Crossroads East, LLC, which/who has a contract purchaser's interest in all or part of the Property, the development of which is governed by the foregoing Development Agreement, hereby affirms and consents to the provisions thereof and agrees to be bound by the provisions as the same may apply to that portion of the Property in which there is a contract purchaser's interest.

Dated this 10th day of February, 2022.

CROSSROADS EAST, LLC

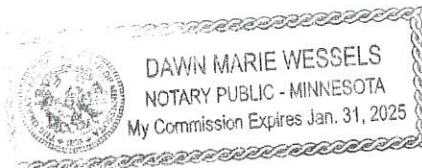
By: David W Johnson
Its: Matthew Portner

STATE OF MINNESOTA)
) ss.
COUNTY OF Washington)

The foregoing instrument was acknowledged before me this 10th day of February, 2022.

Dawn Marie Wesels
NOTARY PUBLIC

DRAFTED BY:
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042
(651) 747-3901



**EXHIBIT A TO
DEVELOPMENT AGREEMENT**

Legal Description of the Property

Lot 1 and Lot 2, Block 1 and Outlots A, B, and C, Crossroads East First Addition, according to the recorded plat thereof, County of Washington, State of Minnesota.

EXHIBIT B TO DEVELOPMENT AGREEMENT

List of Plan Documents

The following documents prepared by Kimley-Horn and Associates constitute the Plans:

SHEET NUMBER	TITLE	REVISION DATE
C000	COVER SHEET	11/30/2021
C001	CONSTRUCTION PHASE I	11/30/2021
V100	PRELIMINARY PLAT	11/30/2021
C100	PRIVATE INFRASTRUCTURE GENERAL NOTES	11/30/2021
C101	PUBLIC INFRASTRUCTURE GENERAL NOTES	11/30/2021
C200	OVERALL EXISTING CONDITIONS MAP	11/30/2021
C201	ON-SITE EXISTING CONDITIONS MAP	11/30/2021
C202	EXISTING CONDITIONS MAP	11/30/2021
C203	EXISTING CONDITIONS MAP	11/30/2021
C204	EXISTING CONDITIONS MAP	11/30/2021
C205	EXISTING CONDITIONS MAP	11/30/2021
C206	DEMO & EROSION CONTROL PLAN	11/30/2021
C207	HUDSON BLVD DEMO PLAN	11/30/2021
C208	HUDSON BLVD DEMO PLAN	11/30/2021
C209	HUDSON BLVD DEMO PLAN	11/30/2021
C301	HUDSON BLVD EROSION CONTROL PLAN	11/30/2021
C302	HUDSON BLVD EROSION CONTROL PLAN	11/30/2021
C303	HUDSON BLVD EROSION CONTROL PLAN	11/30/2021
C400	OVERALL SITE PLAN	11/30/2021
C401	SITE PLAN	11/30/2021
C402	SITE DETAILS	11/30/2021
C403	HUDSON BLVD CONSTRUCTION NOTES	11/30/2021
C404	HUDSON BLVD ALIGNMENT PLAN	11/30/2021
C405	HUDSON BLVD ALIGNMENT TABULATION	11/30/2021
C406	HUDSON BLVD CONSTRUCTION PLAN	11/30/2021
C407	HUDSON BLVD CONSTRUCTION PLAN	11/30/2021
C408	HUDSON BLVD CONSTRUCTION PLAN	11/30/2021
C409	HUDSON BLVD CONSTRUCTION PLAN	11/30/2021
C410	HUDSON BLVD CONSTRUCTION PLAN	11/30/2021
C411	HUDSON BLVD DRIVEWAY DETAILS	11/30/2021
C412	HUDSON BLVD DRIVEWAY DETAILS	11/30/2021
C413	TYPICAL SECTIONS	11/30/2021
C414	TYPICAL SECTIONS	11/30/2021
C415	HUDSON BLVD SUPERELEVATION PLANS	11/30/2021
C416	HUDSON BLVD SUPERELEVATION PLANS	11/30/2021
C417	STORM AND SANITARY LATERALS	11/30/2021
C500	OVERALL GRADING PLAN	11/30/2021
C501	GRADING PLAN	11/30/2021
C501A	GRADING PLAN QUADRANT A	11/30/2021
C501B	GRADING PLAN QUADRANT B	11/30/2021
C501C	GRADING PLAN QUADRANT C	11/30/2021
C501D	GRADING PLAN QUADRANT D	11/30/2021

C502	HUDSON BLVD GRADING PLANS	11/30/2021
C503	HUDSON BLVD GRADING PLANS	11/30/2021
C504	GRADING DETAILS	11/30/2021
C505	GRADING DETAILS	11/30/2021
C506	GRADING DETAILS	11/30/2021
C507	RETAINING WALL LAYOUT	11/30/2021
C508	EXISTING WATERMAIN PROFILE	11/30/2021
C600	UTILITY PLAN	11/30/2021
C601	PUBLIC WATERMAIN PROFILE	11/30/2021
C602	CITY DETAILS	11/30/2021
C603	CITY DETAILS	11/30/2021
C604	CITY DETAILS	11/30/2021
C605	CITY DETAILS	11/30/2021
C606	CITY DETAILS	11/30/2021
C700	TRAFFIC CONTROL DETAILS	11/30/2021
C701	TRAFFIC CONTROL DETAILS	11/30/2021
C702	TRAFFIC CONTROL DETAILS	11/30/2021
C703	DETOUR PLAN	11/30/2021
C704	HUDSON BLVD SIGNING & STRIPING TITLE	11/30/2021
C705	HUDSON BLVD SIGNING & STRIPING PLAN	11/30/2021
C706	HUDSON BLVD SIGNING & STRIPING PLAN	11/30/2021
C707	HUDSON BLVD SIGNING & STRIPING DETAILS	11/30/2021
C708	HUDSON BLVD SIGNING & STRIPING DETAILS	11/30/2021
C709	HUDSON BLVD SIGNING & STRIPING DETAILS	11/30/2021
C800	CROSS SECTIONS	11/30/2021
C801	CROSS SECTIONS	11/30/2021
C802	CROSS SECTIONS	11/30/2021
C803	CROSS SECTIONS	11/30/2021
C804	CROSS SECTIONS	11/30/2021
C805	CROSS SECTIONS	11/30/2021
C806	CROSS SECTIONS	11/30/2021
C807	CROSS SECTIONS	11/30/2021
C808	CROSS SECTIONS	11/30/2021
L100	OVERALL LANDSCAPE PLAN	11/30/2021
L101	LANDSCAPE PLAN	11/30/2021
L102	LANDSCAPE SCHEDULE	11/30/2021
L103	LANDSCAPE DETAILS	11/30/2021
L104	LANDSCAPE CROSS SECTION WEST	11/30/2021
L105	LANDSCAPE CROSS SECTION EAST	11/30/2021
L106	TREE INVENTORY AND PRESERVATION PLAN	11/30/2021

**EXHIBIT C TO
DEVELOPMENT AGREEMENT**

Subdivision Improvements Cost/Security Amount Estimate

<u>CONSTRUCTION CATEGORY</u>	<u>COST</u>	<u>125 percent</u>
1 Grading	\$468,200	\$585,250
2 Sanitary Sewer	\$489,910	\$612,388
3 Watermain	\$314,777	\$394,471
4 Storm Sewer (<i>includes pond structures and outfall pipes</i>)	\$167,791	\$209,739
5 Street and Sidewalks	\$834,438	\$1,043,048
6 Trails	\$31,896	\$39,870
7 Surface Water Facilities (<i>ponds, infiltration basins, other BMPs</i>)	\$57,050	\$71,313
8 Street Lighting	NA	NA
9 Street and Traffic Signs	\$8,720	\$10,900
10 Private Utilities (<i>electricity, natural gas, telephone, and cable</i>)	NA	NA
11 Landscaping Improvements	\$343,645	\$429,556
12 Tree Preservation and Restoration	NA	NA
13 Wetland Mitigation and Buffers	NA	NA
14 Monuments	NA	NA
15 Erosion and Sedimentation Control	\$46,925	\$58,656
17 Developer's Record Drawings	\$5,250	\$6,563
<u>TOTALS</u>	\$2,768,602	\$3,460,753

FORM OF IRREVOCABLE LETTER OF CREDIT

No. _____

Date: _____

TO: City of Lake Elmo

Dear Sir or Madam:

We hereby issue, for the account of _____ (Name of Developer) and in your favor, our Irrevocable Letter of Credit in the amount of \$ _____ available to you by your draft drawn on sight on the undersigned bank.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. _____, dated _____, 20____, of (Name of Bank)";
- b) Be signed by the Mayor or City Administrator of the City of Lake Elmo.
- c) Be presented for payment at _____ (Address of Bank), on or before 4:00 p.m. on November 30, 20____.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be November 30 of each year), the Bank delivers written notice to the Lake Elmo City Administrator that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: City Administrator, City Hall, 3880 Laverne Ave. N., Suite 100, Lake Elmo Minnesota 55042 and is actually received by the City Administrator at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: _____

Its _____



County Recorder/Registrar
Washington County, Minnesota

ABSTRACT

Package: 602367

Date: 8/22/2022

Time: 10:44 AM

G - CITY OF LAKE ELMO

<u>Fee</u>	<u>Doc #/Cert#</u>	<u>Amount</u>
AMN	4382483	\$46.00
AMN	4382484	\$46.00
AGR	4382485	\$46.00
Total Due:		\$138.00
Charge		\$138.00

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement ("Third Amendment") is made and entered into this 11th day of August, 2022, by and between the City of Lake Elmo, a municipal corporation under the laws of Minnesota (the "City") and Airlake Development, Inc., a Minnesota corporation and Crossroads East, LLC, a Minnesota limited liability company (collectively, the "Developer").

RECITALS:

A. The City and the Developer have entered into a Development Agreement dated February 15, 2022 and recorded with Washington County on 4/27/22, 2022 as Document No. 4368780 (the "Development Agreement"); and

B. The Development Agreement relates to that subdivision located in Lake Elmo, Minnesota known as Crossroads East 1st Addition and the property is legally described on Exhibit A attached hereto (the "Property"); and

D. The Parties entered into a First Amendment to Development Agreement on April 5, 2022 (the "First Amendment"); and

E. As part of the First Amendment, the City authorized Developer to proceed with vertical construction of the buildings on the Property prior to completion of the public Subdivision Improvements and the Parties agreed to a schedule to complete the public Subdivision Improvements; and

F. The Parties entered into a Second Amendment to Development Agreement on August 3, 2022, (the "Second Amendment"); and

G. As part of the Second Amendment, the Parties further amended the Development Agreement to extend the deadline for completion of Public Improvements; and

the City granted the requested extension provided that certain restrictions were placed on tenant improvements and the Public Improvements were completed on a revised schedule; and

H. The Parties now wish to remove the restrictions on the tenant improvements.

NOW, THEREFORE, in consideration of the above recitals, which are expressly incorporated herein, and for other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the City and the Developer agree to this Third Amendment to the Development Agreement as follows:

1. Paragraph 23 of the Development Agreement is hereby amended as follows:

23. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

- A. The City will issue a footing and foundation permit for a building within the Subdivision provided that the final plat has been recorded with Washington County. The City will issue a vertical construction permit for a building within the Subdivision prior to installation of the on-site utilities within the Subdivision.
- B. With respect to the construction of the Public Improvements, defined as the public sanitary sewer, public watermain (including watermain internal to the site), Hudson Boulevard street, trail, boulevard, and storm sewer improvements, and emergency vehicle access, the Developer must complete all work no later than September 30, 2022. Should any of the Public Improvements not be Complete by September 30, 2022, the Developer understands and agrees that the City may immediately issue a stop work order on any building construction and any other private improvements within the Subdivision until the Public Improvements have been deemed Complete by the City Engineer. The City will not issue a certificate of occupancy for any building, or part thereof, within the Subdivision until Developer has installed all public Subdivision Improvements (including, but not limited to the emergency vehicle access and other Public Improvements) and such Improvements

have been deemed Complete by the City Engineer. For the purposes of this Agreement, the term "Complete" means that all required testing has been conducted and approved, city engineering inspections have been scheduled and conducted, punch lists have been developed and fully addressed, and as-built record information has been submitted in accordance with the City as-built format requirements, including manhole invert verification showing inverts installed within construction specification tolerances, with all testing, inspections and as-built information demonstrating that the public Subdivision Improvements, including the Public Improvements, have been completed as depicted and described in the approved plans and specifications.

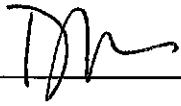
- C. Developer may submit Building Tenant improvement applications to the City Building Official, but Developer agrees that the City will not issue a Certificate of Occupancy until the Public Improvements have been deemed Complete by the City Engineer.
- D. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and withholding of other permits, inspections, or actions and the halting of all work in the Subdivision.
- E. If the City issues or has issued building permits before the acceptance of the public Subdivision Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of public Subdivision Improvements and damage to public Subdivision Improvements caused by the City, the

Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any third parties.

F. No sewer and water connection permits may be issued until the streets needed for access have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.

2. All other terms and conditions of the Development Agreement shall remain in full force and effect.

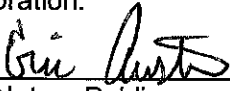
AIRLAKE DEVELOPMENT, INC.

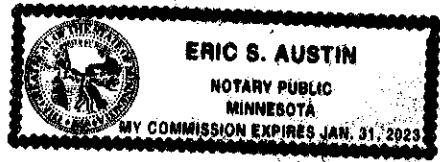
By: 

Its: Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF Washington)

The foregoing instrument was acknowledged before me this 1st day of August, 2022, by Daniel O. Ryan, the Vice President of Airlake Development, Inc., a Minnesota corporation, on behalf of the corporation.


Notary Public



CROSSROADS EAST, LLC

By: David W Johnson

Its: President

STATE OF MINNESOTA)
) ss.
COUNTY OF Washington)

The foregoing instrument was acknowledged before me this 10th day of August, 2022, by David W Johnson, the President of Crossroads East, LLC, a Minnesota limited liability company, on behalf of the company.

Dawn Marie Wesels
Notary Public

This document was drafted by:

Kennedy & Graven, Chartered (RGT)
Fifth Street Towers
150 South 5th Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300

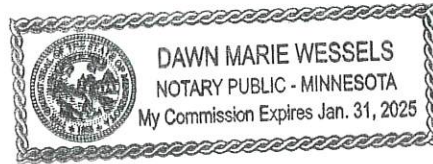


EXHIBIT A

Legal Description of the Property

All lots and outlots located within the plat of Crossroads East First Addition, according to the recorded plat thereof, County of Washington, State of Minnesota.