

This Instrument Drafted By:

Hoff Barry, P.A. (SBL)
100 Flagship Corporate Center, Ste. 200
Eden Prairie, MN 55344

**DEVELOPER'S AGREEMENT
FOR
EVANSWOOD**

THIS DEVELOPER'S AGREEMENT EVANSWOOD (hereinafter referred to as "**Agreement**") entered into this _____ day of _____, 2022 (hereinafter referred to as the "**Effective Date**") by and between MN LANDCO / AREP 3 EVANSWOOD LP, a Limited Partnership (hereinafter referred to as "**Developer**"), and the CITY OF MAPLE GROVE, a Minnesota municipal corporation (hereinafter referred to as "**City**"; Developer and City sometimes individually referred to as "**Party**" and collectively "**Parties**").

RECITALS

WHEREAS, Developer is the fee owner of that land located in Hennepin County, Minnesota, legally described on attached Exhibit 1 (hereinafter referred to as "**Property**"); and

WHEREAS, May 17, 2021, the City Council passed Resolution No. 21-061 conditionally approving PUD – Concept Stage Plan for a 227-lot single-family detached and 154-unit single-family attached development on the Property; and

WHEREAS, on December 20, 2021, the City Council passed Resolution No. 21-181 conditionally approving the Planned Unit Development (hereinafter referred to as "**PUD**") – Development Stage Plan, and preliminary plat for 227 detached single-family lots and 138 attached single-family units, which approvals consist of: (i) the PUD — Development Stage Plan plans for the Property, drafted by Pioneer Engineering, dated October 22, 2021 (hereinafter referred to as the "**Plans**"), which Plans Cover Sheet is attached as Exhibit B to Resolution No. 21-181, (ii) the Plans include the Stie Plan submitted by the Applicant, which is attached as Exhibit C to Resolution No. 21-181; (iii) the Plans include the streetscapes, elevations and exterior design key, dated October 20, 2021, which is attached as Exhibit D to Resolution No. 21-181; and (iii) and the Plans contain the Preliminary Plat for the Property at Sheets 3.10 through 3.15 (hereinafter referred to as the "**Preliminary Plat**"); and

WHEREAS, on December 20, 2021, the City Council conditionally enacted Ordinance No. 21-23, which rezoned the Property from R-A, Single-Family Agricultural to PUD, Planned Unit Development; and

WHEREAS, on _____, the City Council passed Resolution No. _____ (hereinafter Resolution No. 21-061, Resolution No. 21-181, and Resolution No. _____ collectively referred to as the "**City Resolutions**") conditionally approving the final plat for the Property entitled "**_____**", drafted by _____ (hereinafter referred to as the

“**Final Plat**”). The Final Plat is Phase 1 of the Preliminary Plat containing 60 of the 227 detached single-family lots and all 138 attached single-family units; and

WHEREAS, City requires that certain public improvements, including, but not limited to, sanitary sewer, water, storm drainage systems, storm sewer, grading, streets and street lighting, be installed to serve the Property and other properties affected by the development of the Property, all at the expense of Developer (hereinafter referred to as “**Petition Items**”); and

WHEREAS, the City requires that certain on and off-site improvements be installed by Developer within the Property, which improvements typically include, but are not limited to, boulevard sod, drainage swales, erosion control, monumentation, street cleaning and front yard trees (hereinafter referred to as “**Escrow Items**”); and

WHEREAS, this Agreement is entered into for the purpose of setting forth and memorializing for the Parties and subsequent owners the understandings and agreements of the Parties concerning the development of the Property.

NOW, THEREFORE, it is hereby and herein mutually agreed, in consideration of each Party's promises and considerations herein set forth, as follows:

1. INCORPORATION. The above Recitals, the City Resolutions, the Plans, the Final Plat, and all exhibits attached to this Agreement are a material part of this Agreement and are incorporated herein.
2. PETITION FOR IMPROVEMENTS. Developer herein petitions the City to construct as a part of City's Improvement Project No. 21-10 (herein referred to as “**Project No. 21-10**” or “**City's Improvement Project No. 21-10**”), the improvements referred to as “Petition Items” in Exhibit 2, attached hereto and incorporated herein (hereinafter collectively referred to as the “**City Project**”).
3. WAIVER. Developer hereby acknowledges and agrees that said Petition Items will add value to the Property and that the Property will benefit by said improvements in an amount at least equal to the amount of **\$20,296,200**, as shown on Exhibit 2, is proposed to be specially assessed against said Property (hereinafter referred to as “**Special Assessments**”). Developer expressly waives (i) all rights to hearings before the City afforded under Minnesota Statutes, Chapter 429, specifically including hearings under Minn. Stat. §§429.031 and 429.061 and (ii) all rights to appeal in the Courts any objection to any irregularity or noncompliance with statutory procedure, and any claim that the assessment being levied against the Property is excessive, as the said rights therein granted relate to the City Project (hereinafter referred to as the “**Waiver**”).
4. PETITION ITEMS CITY PROJECT; ACCEPTANCE OF SPECIAL ASSESSMENTS. City shall construct as part of its City Project, the Petition Items, pursuant to its regular methods of making public improvements. As prerequisite to the City commencing said construction (i) Developer shall prepare the Property to allow for the construction of the Petition Items, which preparation shall include, but

is not limited to, mass grading and sub-grade elevations as set forth in the development plans approved by the City Council, and (ii) in the event that the actual bid costs for that portion of the City Project (hereinafter referred to as “**Bid Costs**”) are greater than the total amount listed at Section I of Exhibit 2, then an amendment to this Agreement shall be executed between the Parties to increase the Waiver amount, amend Exhibit 2, and increase the Petition Items Surety (defined below) to incorporate the actual Bid Costs and reasonable change orders. In the event that (ii) above is greater than 10% of the total amount listed in Section I of Exhibit 2, Developer shall have the right to terminate this Agreement by written notice to the City, except for its obligations under Section 10 below. Said notice of termination must be provided within five (5) business days of the City providing written confirmation to Developer of the Bid Costs. Developer agrees that Special Assessments for such Petition Items may be levied by City as allocated below, without Developer's objection, after construction is commenced, in accordance with Minn. Stat. Ch. 429 and that City may recover its actual costs and expenses, including, but not limited to, legal, fiscal, and engineering, incurred in connection with the City Project.

Pursuant to Exhibit 2, the per unit cost for the single-family detached lots is \$75,331.00. Phase 1 of Final Plat contains 60 of the 227 approved single-family detached lots. As such, \$4,519,860.00 of the Special Assessments shall be allocated on the buildable single-family detached lots at \$75,331.00 per lot. Also pursuant to Exhibit 2, the per unit costs for the single-family attached (townhome) lots is \$23,159.89. Phase 1 contains 138 of the 138 approved single-family attached (townhome) units. As such, \$3,196,065.00 of the Special Assessments shall be allocated on the buildable single-family attached (townhome) units at \$23,159.89 per unit. The total amount of the Special Assessments above allocation based on the Final Plat is \$7,715,925.00 (hereinafter referred to as the “**Phase 1 Allocation**”). If not sooner paid, said Phase 1 Allocation shall be payable in equal installments together with interest thereon at 5.25% per annum over a period of five (5) years.

The remaining \$12,580,275.00 of the Special Assessments shall be allocated to Outlot A of the Final Plat (hereinafter referred to as the “**Deferred Allocation**”). The Deferred Allocation shall be deferred and interest on the outstanding balance shall accrue at 3% per annum until the earlier of (x) Outlot A being platted as buildable lots, or (y) six (6) years after the Effective Date (hereinafter referred to as the “**Deferment Period**”); provided, however, if (x) above is met such Deferred Allocation principal and interest shall only be activated on that portion of Outlot A of the Final Plat that is actually platted on a per unit basis and if (y) occurs then the city may execute a declaration and then any remaining Deferred Allocation principal and interest shall be activated. Any Deferred Allocation activated as provided for above shall be payable in equal installments together with interest thereon at 5.25% per annum over a period of five (5) years. An amendment to this Agreement is required for subsequent phases of the Preliminary Plat that, among other things, addresses the activation and allocation of the Deferred Allocation.

5. PETITION ITEMS SURETY. Developer herein agrees that said Developer shall

pay all installments of said Special Assessments when due. In the event Developer fails to timely pay any installment of said Special Assessments, the City may draw upon the Petition Items Surety (defined below) in an amount equal to the installment due and any fee and cost incurred by the City in conjunction with the said delinquent Special Assessments. Any such draw may be used by the City to pay for any fee and cost incurred by the City in conjunction with the said delinquent Special Assessment and, if the City project is bonded, to pay the required yearly debt services payments, with the remainder to be held by the City. Said amount held by the City shall be liquidated damages and become the property of City in the event the Developer continually fails to timely pay installments of Special Assessment and the Property or any portion of the Property is tax forfeited as a result thereof. Any Petition Items Surety funds referred to herein that are withdrawn that will be used by City for payment of its herein-referred debt service payment when due will constitute a credit against the obligations for the Developer to pay such Special Assessments. Upon payment of the delinquent Special Assessments, City will repay to the surety, to the extent that the delinquent Special Assessments have been paid, the surety monies withdrawn, less any costs incurred by City in conjunction with the said delinquent Special Assessments.

Developer shall provide City with cash or letter of credit, with the form and provider of the letter of credit to be reasonably satisfactory to City, in the amount of 60% of the estimated cost of the City Project prorated on a per lot basis for the Phase 1 Allocation (herein referred to as the “**Petition Items Surety**”). The Petition Items Surety shall thus be in the amount of \$4,630,000.00 calculated as follows:

Total Estimated Share of Cost of Project No. 21-10		\$7,715,925
	X	<u>60%</u>
Surety Requirement:		\$4,629,554.89
USE:		\$4,630,000.00

The Petition Item Surety may be utilized by the City in the manner stated above. At the time of activation of any part of the Deferred Allocation, additional sureties based on the amount of the activated Deferred Allocation shall be required.

6. SURETY RELEASE - PETITION ITEMS. Developer may make application to City to reduce or release all or a portion of the Petition Items Surety as follows:
- (1) When another surety reasonably acceptable to the City is furnished to the City by Developer to replace a prior surety; or
 - (2) The Petition Items Surety may be reduced to an amount equal to sixty percent (60%) of the outstanding Special Assessments principal balance for all property within the Property if the application clearly establishes:

- (i) More than one (1) year has passed after the Special Assessments against the Property have been certified to the County for collection; or
 - (ii) That sixty percent (60%) or more of the principal on the certified Special Assessments, as levied on the Property, has been paid; or
- (3) The Petition Items Surety may be reduced on a per unit basis for units that receive a certificate of occupancy. The reduction shall be, at a minimum, increments of not less than 10 such units.

No reduction shall be made which would result in the Petition Items Surety held being less than sixty percent (60%) of the original surety amount for the Petition Items until the final costs are known and assessed. The Petition Items Surety shall be released in full at such time as the outstanding Special Assessments principal balance for all the Property is paid in full.

7. ON AND OFF-SITE IMPROVEMENTS/ESCROW ITEMS; SURETY. Developer shall also perform all on and off-site improvements set forth on Exhibit 2 as Escrow Items. Developer will provide City with cash or letter of credit, with the form and provider of the letter of credit to be reasonably satisfactory to City, in the sum of \$171,000.00, which figures represents 110% of the estimated cost of said Escrow Items (hereinafter referred to as the “**Escrow Items Surety**”; hereinafter the Petition Items Surety and Escrow Items Surety collectively referred to as “**Surety**”). The Escrow Items Surety shall be a guaranty to City that, except for boulevard improvements (sod and trees), the construction and completion of the Escrow Items by Developer, to City's satisfaction, will be completed on or before _____, 20____, as may be reasonably extended by the City for delays beyond the reasonable control of Developer. The boulevard improvements for each lot or parcel shall be completed to City’s satisfaction within sixty (60) days of the date that a Certificate of Occupancy (temporary or permanent) is issued by City for a building located on the lot, unless the Certificate of Occupancy is issued after October 1st or before April 30th in any given year, in which case the boulevard improvements shall be so completed by the following July 1st. The Escrow Items Surety shall be maintained continuously by Developer until Escrow Items are completed to the City’s reasonable satisfaction. The City will not accept replacement cash or letters of credit from an individual lot owner who has purchased lots within the Final Plat. The Escrow Items Surety shall be released upon certification of the Engineer of City that such items are satisfactorily completed pursuant to this Agreement. Periodically, as payments are made by Developer for the completion of improvements described under Escrow Items and when it is reasonably prudent, Developer may request of City that the Escrow Items Surety be reduced for that portion thereof which has been fully completed and payment made therefor.
8. SURETY DEFICIENCY. In the event that, pursuant to the terms of this Agreement, the City has the right to draw against any Surety, and in the event that the funds

available thereunder are deficient in amount to pay or reimburse City the amounts due from Developer as required herein, Developer agrees that upon being billed by City, Developer will pay said deficient amount to the City within thirty (30) days of said billing to Developer. If there should be an overage in the amount of utilized security City will, upon making said determination, within a reasonable time period refund to Developer any monies which City has in its possession which are in excess of the Surety needed by City. All Surety money deposited with City shall be used by City for the purposes for which the Surety was given.

- 9. DRAW ON EXPIRING LETTER OF CREDIT. If a Surety is in the form of an irrevocable letter of credit, which by its terms will become null and void prior to the time at which all money or obligation of Developer is paid or completed, it is agreed that Developer shall provide City with a new letter of credit, reasonably acceptable to City as to provider and form, or a cash deposit, at least thirty (30) days prior to the expiration of the said expiring letter of credit. If a new letter of credit is not received as required above, City may declare a default in the terms of this Agreement and thence draw in part or in total, at City's discretion, upon the expiring letter of credit solely to avoid the loss of surety for the continued obligation, with such withdrawal considered thereafter as a cash escrow surety.

- 10. ABANDONMENT OF PROJECT - COSTS AND EXPENSES. City's costs and expenses for the preparation of the feasibility report, plans and specifications and all other costs expended by City and required to be reimbursed by Developer to the City hereunder, which are associated with improvements referred to in Exhibit 2 and/or Developer's plat proposal, shall be paid by Developer even if the proposed development of the Property should be Abandoned by the Developer. For the purposes of this Agreement, "**Abandonment**" or "**Abandoned**" of the development of the Property shall mean the failure of Developer to pay any invoice received by Developer from the City, in the time stated in this Agreement, or pursuant to such other payment schedule as approved in writing by the City, after any required notice and expiration of any applicable cure period.

Developer has provided sureties, in the form of a cash escrow, to City as follows:

<u>PURPOSE</u>	<u>AMOUNT</u>
Costs associated with preparation of feasibility report	\$88,000.00

If the development is Abandoned, the City may withdraw funds from the above-referenced deposit or surety for the purpose of paying City's costs referred to in this section. The above-referenced surety will be released by City to Developer upon Developer providing, and the City accepting, the Petition Items Surety.

- 11. DEVELOPER TO PAY ALL COSTS. It is understood and agreed that amounts set forth in this Agreement as costs, unless specified as fixed amounts, are estimated. The Developer shall pay, within thirty (30) days of demand, all actual expenses

reasonably incurred by the City in relation to the development of the Property. Said expenses shall include, but are not limited to, staff time, including, but not limited to, hourly wage, engineering, legal and other consulting fees reasonably incurred in relation to development of the Property.

12. EROSION AND SILTATION CONTROL.

- A. FINANCIAL GUARANTEE. Before any grading is started on any site, all erosion control measures as shown on the approved erosion control plan, which is part of the Plans, shall be installed pursuant thereto. If the Developer has provided a financial security pursuant to City Code, Chapter 14, Article IV, for a grading permit for the Property prior to the execution of this Agreement (hereinafter referred to as the “**Grading Security**”), then, either: (i) the Grading Security amount shall be deducted from the amount required for the Escrow Items Surety; or (ii) the Developer may replace the Grading Security with the full amount of the Escrow Items Surety. The Grading Security and Escrow Items Surety shall be held to insure, among other things, compliance with this Agreement and City Code and policies during construction. The Grading Security shall not be returned to Developer until all disturbed areas have permanent surfacing, buildings or permanent vegetation re-established.

In the event permanent surfacing, buildings or vegetation are not placed or re-established upon any disturbed area within the time established therefor by the City, City shall provide written notice of such failure to Developer, and Developer shall cure such default within thirty (30) days thereafter. Developer agrees that, if Developer fails to cure such default within such 30-day period, City is hereby granted permission to enter the Property and use the Grading Security and/or the Escrow Items Surety to place vegetation on said disturbed area in the manner prescribed by the approved landscaping plans, or in any other manner the City reasonably deems appropriate. Developer further agrees that should the Grading Security and/or Escrow Item Surety be insufficient to defray all of City’s costs related to such action, Developer will promptly pay City any additional and reasonable costs related thereto. City shall promptly return any portion of the Grading Security remaining after City has reimbursed itself for all reasonable costs related to City’s placement of vegetation pursuant to this Section.

- B. EROSION CONTROL. Developer shall be responsible for compliance with the approved erosion control plan, which is part of the Plans. Developer will be given telephone or e-mail notice when an unsatisfactory condition exists that is determined to be a Developer's responsibility. Work to correct said unsatisfactory condition shall commence within 48 hours from the time of the telephone or e-mail notice. If said corrective work is not commenced within 48 hours of said telephone or e-mail notice, Developer hereby grants City permission to proceed with said corrective work and agrees to pay all reasonable expenses incurred by City in relation thereto. If it is determined,

by the City that the unsatisfactory condition could result in degradation of downstream water quality, Developer shall, upon telephone notice, immediately proceed to correct said unsatisfactory condition. If Developer does not immediately respond to said unsatisfactory condition, Developer hereby grants City the right to enter upon the Property and correct said condition at Developer's expense. City shall be entitled to all of its costs and expenses including, but not limited to actual legal, fiscal, administrative and engineering. For reimbursement for said costs and expenses, City may, at its option and in addition to other remedies available, invoice Developer for direct payment from the Grading Security or the Escrow Items Surety.

13. PARK DEDICATION. Pursuant to Statue Statute and City Code, the Final Plat requires park dedication via a land dedication and/or a cash equivalent based on the rate approved by the City Council when the Final Plat is released for recording. The Park Dedication obligation for the Final Plat is a combination of land dedication and cash dedication. Applicant shall donate to the City, via Warranty Deed, Outlots B, D, E, and I of the Preliminary Plat (hereinafter referred to as the “**Outlots**”). A portion of the Outlots will be utilized for public trails. The trail corridor will be split into two designated trail corridors. The northern section of trail that connects Troy Ln. to 105th Ave. is part of the planned regional trail system. The trail system located throughout the remaining outlots will be developed as a city parks trail corridor. Park dedication credit will be provided for the trail corridor totaling 7.79 acres of land (2.47 acres for regional trail and 5.32 acres for inter park trails) with the total net acreage of the Property is 118.83 acres. The remainder of the Outlots include floodplain and wetland areas that are not eligible for a park dedication credit. Grading permits for the Property will not be issued until such time that the location of the trail corridor is approved by the City. The Applicant, as part of the grading of the Property, shall engineer and grade the trail corridor to meet City standards.

The balance of the park dedication obligation shall be paid in cash. The City's current single-family rate is \$4,236.00 per unit/lot. The park dedication credit for the trail corridor land dedication is calculated as a percentage of land area against the per unit fee. The maximum land dedication is up to 10% of the net acreage (11.90 acres of 118.83 acres). The 7.79 acres of trail land dedication satisfies 65% of the obligation, the remaining obligation shall be satisfied with a cash dedication based on the adjusted single-family rate of \$1,483.00. Assuming the Final Plat is released prior to the City Council adjusting the park dedication rate, the park dedication amount to be paid shall be \$293,634.00 (198 units/lots times \$1,483.00). If the Final Plat is not released prior to the City Council adjusting the park dedication rate, the above-referenced payment shall be adjusted based upon the formula approved by City for the year in which the Final Plat is released for filing. The park dedication fee, as set forth above, shall be paid prior to the Final Plat being released for filing at the Hennepin County Government Center. Park dedication for future phases of the Preliminary Plat shall be determined at the time of future phase final plat application and will be based on the then current park dedication rate adopted by the City Council adjusted by the above-described land dedication adjustment.

14. LAND DEDICATION; CONVEYANCE.
- A. The City has vacated that land legally described on attached Exhibit 3. The City agrees to convey said property via Quit Claim Deed at the time of recording of the Final Plat. In consideration for the said property, the Developer shall be dedicating to the City right-of-way and other public ways on the Final Plat.
 - B. The Developer shall convey marketable title, acceptable to the City, to Outlot H of the Final Plat, at the time the Final Plat is recorded, via Warranty Deed. A credit against the Special Assessments, as set forth in Exhibit 2, has been applied in exchange for the said Warranty Deed.
 - C. The Developer shall convey the Outlots to the City as set forth in Section 13. of this Agreement.
15. PAYMENT OF SPECIAL ASSESSMENTS UPON SALE. The Parties hereto further agree that all Special Assessments levied or pending on City Project No. 21-10 or any other City project previously levied, or to be levied as a part of activating previously deferred assessments against the Property, or portion thereof, if not paid prior thereto, shall be paid by the Developer on the sale or transfer of fee ownership interest in any portion of the Property, with the exception of the property described in Sections 14.B and 14.C. above, to a third party other than a subsidiary or other affiliate of Developer. If only a portion of the Property is transferred, Developer shall pay the said Special Assessments attributable only to that portion which is being sold or transferred.
16. MAINTAIN PUBLIC PROPERTY DAMAGED OR CLUTTERED DURING CONSTRUCTION. Developer agrees to assume full financial responsibility for any damage which may occur to public property including, but not limited to, streets, street subbase, base, bituminous surface, curb, utility system including, but not limited to, watermain, sanitary sewer or storm sewer when said damage occurs as a result of the activity which takes place during the development of the Property, except for damage caused by the City, its employees, agents or contractors in connection with City's construction of the Petition Items or its willful misconduct or gross negligence. Developer further agrees to pay all costs required to repair the streets and/or utility systems damaged or cluttered with debris when occurring as a direct or indirect result of the construction that takes place on the Property by Developer, its agents, employees, and contractors. In the event Developer fails to maintain or repair the damaged public property referred to aforesaid, the City shall provide written notice of such failure to Developer and, if such failure is not cured within thirty (30) days thereafter, Developer hereby agrees that City may undertake making or causing said damage or clutter to be repaired or cleaned. When City undertakes such repair, Developer shall reimburse City for all of its expenses within thirty (30) days of its billing to Developer. If Developer fails to pay said bill within thirty (30) days of being billed, the City may, among other available remedies, draw from the Escrow Items Surety.

17. STREET CLEANING.

- A. Developer shall contract with a street cleaning firm to provide street cleaning services within and immediately adjacent to the Property. A copy of said contract shall be submitted to and approved by City prior to the issuance of a grading permit. This contract shall name City as an authorized agent to order street cleaning services as City deems necessary. City agrees to direct its contractor for the City Project to keep the streets clean from any debris caused by or arising in connection with the City Project. The cost of the street cleaning under the contract shall be paid for by Developer.
- B. During development of the Property, Developer shall keep the streets adjoining its development free of dirt and debris caused by its development. In the event dirt and/or debris has accumulated on streets within or adjacent to the Property, City is hereby authorized to immediately commence street cleaning operations if the streets are not cleaned by the Developer by 3:30 PM the day of the violation. If conditions are such that street cleaning operations are immediately necessary, City may perform the necessary street cleaning. City will then bill the Developer for all associated street cleaning costs. Failure to reimburse City for street cleaning costs within thirty (30) days of such billing will result in City, in addition to other available remedies, drawing funds from the Escrow Item Surety.

18. CLUSTER BOX UNIT REQUIREMENTS. The Developer shall install cluster box units as required by the United States Postal Service (hereinafter the cluster box units and the area near and adjacent to allow its reasonable use referred to as the “**CBU**”). The Plans shall be modified prior to issuance of any certificate of occupancies for the Property, subject to the review and approval of the City Engineer, to comply with the requirements of the United States Postal Service for the CBU. Prior to release of the Final Plat, the Developer shall submit a maintenance declaration or contain such maintenance responsibility in homeowner association documents, subject to the review and approval of the City Engineer, to apportion to all lots of the Property the responsibility and cost to maintain the CBU.

19. VIOLATION OF AGREEMENT. In the event that Developer, its successors or assigns violates any of the covenants and agreements herein contained, City shall give written notice thereof to the Developer. Unless otherwise expressly provided for herein, if Developer fails to cure such violation within thirty (30) days after such notice, City, in addition to all other remedies available by law or under this Agreement, is hereby granted the right and privilege to declare all of the Special Assessments levied as taxes or otherwise and any deficiencies governed by this Agreement due and payable immediately to the City in full and may exercise any other right in this Agreement. Developer hereby grants City and City’s employees, representatives or agents the right to enter the Property to perform any act deemed necessary by City to complete Developer’s obligations created herein.

20. NOTIFICATION INFORMATION. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (hereinafter each referred to as a “**Notice**” or “**Notices**”) shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); or (b) when received or rejected by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) when received or rejected by the addressee if sent by United States Postal Service via certified or registered mail (receipt requested); provided, that Notices may be sent by e-mail or telephone under Section 16 and Section 17. Notices must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a Notice given in accordance with this Section):

If to City:

City of Maple Grove
c/o City Clerk
12800 Arbor Lakes Parkway
Maple Grove, Minnesota 55369
Adietl@maplegrovern.gov
(763) 494-6000

With copy to:

Hoff Barry, P.A.
Attn: Scott B. Landsman
100 Prairie Center Drive, Ste. 200
Eden Prairie, MN 55344
slandsman@hoffbarry.com
(952) 746-2700

If to Developer:

MN LANDCO/AREP 3 EVANSWOOD, LP

21. MISCELLANEOUS.

- A. ATTORNEY'S FEES. Developer will pay City reasonable attorney's fees to be fixed by the Court in the event a suit or action is brought to enforce the terms of this Agreement, or in the event an action is brought upon a letter of credit furnished by Developer as provided herein and, in either event, the City is the prevailing party in such action.
- B. ACCESS. City shall have access to the Property for the purpose to construct the Petition Items and to conduct any reasonable inspections. Such access

rights include, but are not limited to, the right to displace soil and store items and machinery related to the said improvements.

- C. AGREEMENT EFFECT. The terms and conditions of this Agreement shall be binding on the Parties hereto, their respective successors and assigns and the benefits and burdens shall run with the Property. The Developer shall record this Agreement along with the Final Plat and before any mortgages being recorded. The Developer shall provide the City with recording information prior to any permits for the development of the Property being issued. Upon request by Developer, the City covenants to provide a recordable Certificate of Completion within a reasonable period of time following the request, upon the completion of the work and responsibilities required herein, payment of all costs and fees required and compliance with all terms of this Agreement.
- D. GOVERNING LAW. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Minnesota.
- E. NO THIRD-PARTY BENEFICIARIES. This Agreement is for the sole benefit of the Parties and their respective successors and assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- F. HEADINGS. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.
- G. TIME IS OF THE ESSENCE. Time is of the essence in the performance of the terms and obligations of this Agreement.
- H. MODIFICATION. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party.
- I. WARRANT OF AUTHORITY. Developer warrants and guarantees that it has the authority to enter into this Agreement and to make it a covenant on and runs with the Property as a first and prior lien and that it is binding all current and future owners.
- J. DATA PRACTICES COMPLIANCE. Developer may have access to data collected or maintained by the City to the extent necessary to perform Developer's obligations under this Agreement. Developer agrees to maintain all data obtained from the City in the same manner as the City is required under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 or other applicable law (hereinafter referred to as the "Act").

Developer will not release or disclose the contents of data classified as not public to any person except at the written direction of the City. Upon receipt of a request to obtain and/or review data as defined in the Act, Developer will immediately notify the City. The City shall provide written direction to Developer regarding the request within a reasonable time, not to exceed ten (10) days. The City agrees to indemnify, hold harmless and defend Developer for any liability, expense, cost, damages, claim, and action, including attorneys' fees, arising out of or related to Developer's complying with the City's direction. Subject to the aforementioned, Developer agrees to defend and indemnify the City from any claim, liability, damage or loss asserted against the City as a result of Developer's failure to comply with the requirements of the Act and this Section 21.J. Upon termination and/or completion of this Agreement, Developer agrees to return all data to the City, as requested by the City.

- K. NON-WAIVER. The action or inaction of the City shall not constitute a waiver or amendment of the provisions of this Agreement. The waiver by or the failure of the City to enforce any particular section, portion or requirement of this Agreement at any particular time shall not in any way constitute a waiver of any other section, provision, requirement, time element, or the right to enforce such provision at a subsequent time. To be binding, any 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.

- L. CUMULATIVE RIGHTS. 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 hereinafter arising, available to the 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 will not be a waiver of the right to exercise at any time thereafter any other right, power, or remedy.

The remainder of this page intentionally left blank; signature pages follow

IN WITNESS WHEREOF, the Parties herein have executed this Agreement on the day and year first above written.

CITY OF MAPLE GROVE,
a Minnesota municipal corporation

BY: _____
Mayor

AND: _____
City Clerk

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)ss.
CITY OF MAPLE GROVE)

On this ___ day of _____, 2022, before me personally appeared Mark Steffenson and Amy Dietl to me known to be the persons described in the foregoing instrument and who did say they are, respectively, the Mayor and City Clerk of the CITY OF MAPLE GROVE, Minnesota, a municipal corporation, and that the seal affixed to said instrument is the corporate seal of said municipal corporation, and that said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council, and said Mark Steffenson and Amy Dietl acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

_____,
a _____

By: _____

Its: _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

This instrument was acknowledged before me on this ___ day of _____, 2022, by
_____, the _____ of
_____, a _____, on
behalf of said _____.

Notary Public

EXHIBIT 1

Legal Description for
The Property

[insert legal description]

EVANSWOOD, according to the recorded plat thereof, Hennepin County, Minnesota.

EXHIBIT 2

I. PETITION ITEMS

Evanswood Single Family Detached	Units	Amount¹	Unit Cost
Sanitary Sewer	227	\$2,558,618	\$11,271
Water Main	227	\$2,018,586	\$8,892
Storm Sewer	227	\$1,994,525	\$8,786
Streets	227	\$5,786,786	\$25,492
Internal Trail	227	\$234,411	\$1,033
Erosion Control	227	\$595,642	\$2,624
Trunk Benefit Assessments ²	227	\$3,987,527	\$17,566
Conveyance of Outlot H ³	227	-\$75,961	-\$335
Total		\$17,100,135	\$75,331

Notes: 1) Lateral benefit amounts adjusted by 6.1% to reflect bids above Feasibility Estimate
 2) Includes Right of Way Credit of \$834,340.94 and Pond Credit of \$329,312.42 per Feasibility Report
 3) 21,954 SF @ \$3.46/acre

Evanswood Townhomes	Units	Amount¹	Unit Cost
Sanitary Sewer	138	\$909,040	\$6,587
Water Main	138	\$623,581	\$4,519
Storm Sewer	138	\$518,033	\$3,754
Erosion Control	138	\$64,198	\$465
Trunk Benefit Assessments ²	138	\$1,165,714	\$8,447
Stockpile Site Preparation ³	138	-\$84,500	-\$612
Total		\$3,196,065	\$23,159.89

Notes: 1) Lateral benefit amounts adjusted by 13.4% to reflect bids above Feasibility Estimate
 2) Includes Right of Way Credit of \$34,177.88, Right of Way Purchase of \$242,878.16, and Pond Credit of \$19,953.82 per Feasibility Report
 3) Based on Fehn Companies proposal dated 3/24/22

II. ON AND OFFSITE IMPROVEMENTS/ESCROW ITEMS.

The following and those items that are required improvements as part of State Statute, City Code and the resolutions approving the development of the Property:

A. Boulevard Improvements

1. Installation of boulevard sod.
2. Planting of boulevard trees in compliance with the Plans, this Agreement and City Code. Said boulevard tree shall be of a variety as identified in the Maple Grove Arbor Committee Suggested Tree Variety listing, and shall not be planted within the street right-of-way or within a drainage and utility easement.

B. Grading/Erosion Control

All site grading shall be graded in accordance with the approved grading and development plan. All erosion control shall be installed per the erosion control plan approved by the City Engineer.

C. Monumentation

Lot Corner Pins

Install lot corner pins and/or monuments at locations shown on the final plat which will not have said pins and/or monuments installed at the time the final plat will be recorded at Hennepin County.

D. Boulevard Erosion Control

All erosion controls shall be maintained in the boulevard area.

E. Street Cleaning

All streets in the vicinity of this development shall be kept free of any dirt and debris during all phases of construction.

Escrow Items Surety Requirements: \$171,000.00

EXHIBIT 3

That portion of 105th Avenue North described as follows:

All that part of the westerly 50.00 feet of 105th Avenue North as delineated on Parcel 50, MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY PLAT NO. 27-223.

Together with:

All that part of the westerly 25.00 feet of 105th Avenue North as delineated on Parcel 50, MINNESOTA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY PLAT NO. 27-212, Hennepin County, Minnesota.