

Inver Grove Heights City Council

Monday, July 12, 2021, at 6:00 p.m.

A G E N D A

NOTICE TO RESIDENTS: If you are interested in participating on **Item 7. Public Comment**, please contact Rebecca Kiernan prior to this meeting via telephone (651) 450-2513 or email (rkiernan@ighmn.gov) to inform her - your name, address and to what you wish to speak on. Individuals may submit written public comments in advance of the meeting by emailing comments to Rebecca Kiernan (rkiernan@ighmn.gov). Comments received prior to 4:00 p.m. on Monday, July 12, 2021, will be provided to the Council at or before the July 12, 2021, meeting.

1. Call to Order

2. Roll Call

3. Presentations

Land Locked Basin Presentation

4. Consent Agenda

All items on the consent agenda are considered routine and have been made available to the City Council at least two days prior to the meeting; the items will be enacted in one motion. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from this agenda and considered in normal sequence.

- A. Minutes from the June 14, 2021 City Council Meeting.
- B. Resolution Approving Disbursements for Period Ending July 6, 2021.
- C. Consider Approval of Personnel Actions.
- D. Approve Custom Grading Agreement for 7880 Boyd Avenue.
- E. Resolution for Approval of Master Joint Powers Agreement for Use of Criminal Justice Data Communications Network.
- F. Resolution Relating to the Development Contract, Storm Water Facilities Maintenance Agreement, and related agreements for the plat of Builder Lot Group/Eagles Landing (Case No. 21-32S).
- G. Resolution for Termination of Declaration of Local Emergency Due to COVID-19 Health Pandemic.
- H. Resolution Memorializing the Findings of Fact and Reasons for Denial Adopted by the Council Relating to Application by Lennar Multifamily Communities LLC for a Comprehensive Plan (Map) Amendment.
- I. Consider Approval of Contract for Services with Ellie Family Services.

5. Public Hearing

- A. Public Hearing for Two-day Liquor License - Church of St Patrick Annual Festival, September 18 and 19, 2021.

6. Regular

Police

- A.** Consider Approval of Budget Amendment to Hire Three Full-time Police Officers Changing the Authorized Strength of Sworn on the Police Department to 45 FTEs.

Parks and Recreation

- B.** Consider Awarding Bid for the Northwest Park Area.

Community Development.

- C.** Consider Approval of Rental License.
- D.** Consider Application for a Chicken License for Property located at 7935 Charles Way.
- E.** Consider the Third Reading of an Ordinance Amendment to allow Market Gardens as a Permitted Use in the E-2, R-1, and R-2 Districts.

7. Public Comment

Public comment provides an opportunity for the public to address the Council on items that are not on the agenda. Comments will be limited to three (3) minutes per person.

8. Mayor and Council Comments

9. Executive Session

10. Adjourn

This document is available upon a three (3) business day request in alternate formats such as braille, large print, audio recording, etc. Please contact Rebecca Kiernan, City Clerk, at 651.450.2513 or rkiernan@ighmn.gov.

**Request for Council Action****Landlocked Basin Study Preliminary Results and Public Engagement Process**

		Fiscal/FTE Impact	Mark all that apply
Meeting Date:	July 12, 2021	None	X
Item Type:	Presentation	Amount included in current budget	
Contact:	Thomas J. Kaldunski 651-450-2572	Budget amendment requested	
Prepared by:	Klay Eckles, Interim Public Works Director	FTE included in current complement	
Reviewed by:	Heather Rand, Interim City Administrator	New FTE requested - N/A	
		Other	

PURPOSE/ACTION REQUESTED

Receive the Draft Landlocked Basin Study-Development of Draft Policies and consider the presentation from Barr Engineering Co. (Barr). Provide initial feedback on policies and public engagement plan.

SUMMARY

The City has hundreds of basins across the city, from small pocket wetlands to lakes, that it attempts to manage in order to minimize flooding using stormwater management tools and infrastructure. One of the great challenges for the City relates to Landlocked Basins (LLBs). There are dozens of LLBs across the city that do not have a natural or constructed outlet that is below the elevations of built structures or long-standing woodlands. For these basins there is always a risk that changes in hydrology, climate or extreme precipitation events could result in damaging and persistent high-water levels.

When talking about flood risk, it is understood that risk can be managed but never eliminated. LLBs have been managed in the past using a range of policies and rules to guide protection strategies for nearby existing properties and structures, as well as govern and guide new development as it occurs near LLBs. Barr has reviewed existing City policy and guidance, as well as similar guidance from nearby cities and watershed management organizations. Barr summarized potential gaps and opportunities in a memo entitled *Landlocked Basin Study - Policy Review Summary* (revised March 29, 2021). After further analysis Barr is now presenting recommendations for potential policy revisions. The attached memorandum includes draft policies intended to address the gaps previously identified and discussed with City staff. Barr is prepared to provide a presentation of the potential policy revisions to Council tonight.

To complete the LLB policy review and update process the following steps are recommended:

- ✓ Council reviews the recommended policy changes in the attached memo and the presentation.
- ✓ Council provides feedback to staff of any immediate concerns or comments.
 - Staff holds a city-wide open house to gather feedback from residents prior to Mid-September.
 - Input and feedback will be reviewed, then further revisions considered.
 - A final draft will be presented to the City Attorney for review
 - The final policy document will be presented to Council for possible adoption this fall.

Also, if Council has feedback on this approach staff can adapt at Council's direction.

KE/kf

Attachment

Memorandum

To: Tom Kaldunski, P.E.
From: Greg Williams, Greg Fransen, and Karen Chandler, Barr Engineering Co.
Subject: Landlocked Basin Study – Draft Policy Development
Date: June 30, 2021
Project: 23190328.20-LLBP
c: Steve Dodge, P.E. and Klay Eckles, P.E.

Introduction

The City currently maintains a suite of policies and rules to guide its management of landlocked basins and development on adjacent private property. Barr Engineering Co. (Barr) reviewed existing City policy and guidance, as well as similar guidance from nearby cities and watershed management organizations. Barr summarized potential gaps and opportunities in a memo entitled *Landlocked Basin Study – Policy Review Summary* (revised March 29, 2021). In the memo, Barr included recommendations for updates to City policy and guidance regarding landlocked basin management. Barr presented the recommendations to City staff on March 9, 2021 and discussed potential policy revisions with City staff during an April 21, 2021 conference call and during several subsequent informal phone calls.

This memorandum includes draft policies intended to address the gaps previously identified and discussed with City staff. Review of draft policy by City legal staff is recommended prior to incorporation of these, or similar, policies into City official controls (e.g., ordinances, water resources management plan).

Draft Policies

Draft policies included in this memorandum are grouped into the following categories:

- Flood response policies
- Long-term planning actions
- Revisions to existing policies/ordinances

Flood response policies are intended to define the actions the City will take in response to high or rising water levels in landlocked basins, with the intent of preventing or mitigating flood damage in the short term. Long-term planning actions describe the ongoing role of the City to reduce flood risk that are not associated with a specific circumstance.

Flood Response Policies

Landlocked basins throughout the city of Inver Grove Heights present private and public landowners with unique flood risk challenges. Extreme storm events and long term changes in precipitation levels can mean properties that have not experienced flooding in the past may experience it in the future. The City does not and cannot control climatic factors; it is the responsibility of every property owner to take prudent and appropriate measures to protect against potential risk. Flood risk can never be eliminated – only managed and minimized. Therefore, property owners need to weigh their risk tolerance and plan for appropriate responses to possible flooding.

The City's landlocked basin flood response policies are not intended to be an insurance program or comprehensive protection program for private properties. Rather, these policies are meant to provide some vision and goals for the City's consistent and methodical preparation for and response to flooding associated with landlocked basins. These policies are aimed at improving overall flood protection and mitigation across the city, while providing clear expectations to property owners as to the limits and capabilities of the City related to landlocked basin management.

1. Where practicable, the City will implement temporary flood-proofing and/or pumping to prevent or mitigate the inundation of public utilities and public roadways.
2. The City will evaluate water elevations of landlocked basins when reports from concerned residents are brought to the City's attention. The City will survey or otherwise physically monitor water elevations only if a landowner consents to entry for that purpose or if City easements are in place or public access to the basin is available.
3. The City will develop a high water response plan for landlocked basins where high water concerns have been reported by residents and verified by City evaluation. Factors determining the appropriate response actions will include:
 - High water proximity to low floor elevation of habitable structures (including basement)
 - High water proximity to public roads
 - High water proximity to private driveways, private roads, or other private access
 - High water proximity to a natural or piped overflow
4. Potential City response actions could include:
 - Providing affected residents with bundles of sandbags and sand for filling them
 - Developing a temporary pumping plan to lower water elevations where practicable
5. Habitable structures include homes and attached buildings (e.g., attached garage). Exclusions include, but are not limited to, detached garages, sheds, gardens, landscaping, driveways.

Long-term Planning Policies

6. The City will create maps showing the 100-year water surface elevation of landlocked basins and will make these maps available to the public. The City will update the maps as appropriate when new data becomes available.
7. The City will develop a risk/vulnerability classification system for landlocked basins and systematically evaluate the need for, and feasibility of, constructing outlets from landlocked basins according to risk/vulnerability.
8. The City will systematically prepare emergency response plans for landlocked basins with the highest flood risk/vulnerability (per the above City landlocked basin flood risk/vulnerability classification).
9. The City may pursue capital improvement projects to address landlocked basins with the highest flood risk/vulnerability (per the above City landlocked basin flood risk/vulnerability classification) as feasibility and resources allow.

Revisions to Existing Policies (edits identified in green highlight)

10. Water Resources Management Plan, Section 3.2.2, Goal 5, Policy 22:

The City establishes the following policies regarding new public or private development projects draining to landlocked basins:

- The City will allow only the existing tributary area to discharge to a landlocked basin, unless provision has been made for an outlet from the basin or modeling has been completed that supports increasing the tributary area.
- The City will consider both the water quality and flooding impacts of proposed outlets from landlocked basins on downstream water resources.
- The City will take into consideration the effects of water level fluctuations on trees, vegetation, erosion, and property values. Steeply sloped shorelines that are subject to slope failure and shoreline damage should not be in contact with flood water for extended periods of time
- The City will allow landlocked wetlands to be used for storm water management purposes, provided that the artificial outlet control is placed no lower than one and one-half feet (1.5') below the ordinary high water mark as defined by the Minnesota Department of Natural Resources.

11. **City Code 9-5-8. C. 12:**

Landlocked Basins: For landlocked basin areas, only the existing tributary area will be allowed to discharge to a landlocked basin, unless provisions have been made for an outlet from the basin. The water quality and flooding impacts of proposed outlets from landlocked basins on downstream water resources will be evaluated. Easements obtained for landlocked basin outlets should include continuous lands along the flow path between the natural overflow (NOF) location and the downstream waterbody or storm sewer inlet.

12. City Code 9-5-8. C. 14(a):

Scenario 1: Where the 100-year flood level is zero to six feet (6') below the natural overflow elevation (NOF) the LFE shall be the greater of the 100-year elevation plus two feet (2') or the NOF plus one foot (1'). The NOF must be maintained and an easement obtained over the NOF. Easements obtained for landlocked basins should include continuous lands along the flow path between the natural overflow (NOF) location and the downstream waterbody or storm sewer inlet.

Guidance Documents Referenced in Policy

The draft long-term planning policies included in this memorandum reference additional guidance or program documentation to be developed by the City, including:

- Landlocked basin flood risk/vulnerability classification system

We recommend that this information be developed outside of policy language or City ordinance to facilitate periodic updates. This reference material may be appended to the City's water resources management plan and/or maintained on the City's website.

**INVER GROVE HEIGHTS CITY COUNCIL MEETING
MONDAY, JUNE 14, 2021 - 6:00 P.M. - 8150 BARBARA AVENUE**

1. CALL TO ORDER:

The City Council of Inver Grove Heights met in regular session on Monday, June 14, 2021, in person and via Zoom Video Conferencing (Hybrid Meeting). Mayor Bartholomew called the meeting to order at 6:00 p.m. The Pledge of Allegiance was recited.

Mayor Bartholomew stated tonight they are honoring the passing of Mike Wright who served with the City of Inver Grove Heights as an Engineer Technician until last year. He was a valued, respected, well liked member of the city team. He is missed and remembered every day. Our prayers and support are with Mike, Mike's loved ones, friends, family, and colleagues. There was a moment of silence for Mike Wright.

2. ROLL CALL:

Present In-Person: Mayor Bartholomew, Council Members: Piekarski Krech, Murphy, Gliva, and Dietrich; City Clerk Kiernan, Administration Specialist Wonick, Interim City Administrator/Community Development Director Rand, City Attorney McCauley Nason, Finance Director Hove, Associate Planner Botten, City Planner Hunting, Interim Public Works Director Eckles, and Environmental Specialist Sutherland.

Also Present: Brad Falteysek, Abdo Eick & Meyers.

3. PRESENTATIONS:

2020 Comprehensive Annual Financial Report

Finance Director Amy Hove stated Brad Falteysek is present from the Auditing Firm Abdo Eick & Meyers. He will be presenting an overview of how the 2020 Financial Year ended along with the Financial Statement.

Brad Falteysek, Abdo Eick & Meyers presented the 2020 Comprehensive Annual Financial Report: Auditor's Opinion:

- Issuing an un-modified or clean opinion on the city financial statements. This is the opinion one looks for when having an audit performed.
- This states all audit information in the report is presented in accordance with generally accepted accounting principles.
- The city has applied for the Certificate of Achievement for Excellence in Financial Reporting in the past and will apply for it this year. The city has been awarded in the past. A lot of that dictates how the financial statements are put together and the format they are in.

He stated the Council would be accepting and receiving the report as well as the presentation. In the past this was done on separate nights. Previously it was presented at a Work Session and then at a regular Council Meeting. There are no changes they can make to the financial statements as far as presentation or how it's put together. The format was changed and this was brought to the Council in one meeting. Minnesota Legal Compliance:

- The State Auditor requires them to go through a series of checklists to ensure different State Statutes are followed.
 - They require them to test as a part of the Financial Statement Audit.

- They go through that and issue a Legal Compliance Report on the different State Statutes required to test.
- Not reporting any legal compliance findings. It is a clean report.

Single Audit:

- This is an audit the Federal Government requires when spending \$750,000 or more of Federal expenditures and are required to spend it.
 - The city received the CARES Act funding this past year. That triggered a single audit.
 - Different compliance tests were required around the Federal Award.
 - They are not reporting any non-compliance with the Federal Awards and how they were spent.

Results: General Fund – Fund Balances:

- Annual Budget: There was a slight decline from 2020 to 2021. The city changed the way they were budgeting for the transfer to the Pavement Management Fund.
- The City would record those funds directly into the Pavement Management Fund instead of recording the tax levy in the General Fund and transferring it into the Pavement Management Fund next year.
- This is one of the reasons why there is a decrease in the budget line item.
- There is a Fund Balance Policy that was adopted several years ago to keep the minimum reserve level at 40-45% of the following year's budget.
- At the end of 2020 the city is just over 50%. Slightly above minimum requirement.
- In the past the city has been at or above the minimum. Staying consistent.

Actual Results: Budgeted amounts compared to actual amounts and the variants:

- Revenues were \$121,000 over budget. Within .4% of the actual budget.
- Expenditures came in just slightly over 1%. \$250,000 over what was budgeted.
- Transfers In. Transferred \$2.6 million dollars in. More than what was budgeted.
 - Had to do with the CARES money.
 - Deposited the CARES funding into a special revenue fund and transferred money into the General Fund to reimburse the General Fund for eligible expenditures that fell under the CARES program.
- General Fund increase fund balance, \$1.4 million dollars, to finish at 12.9.

General Fund Revenues by Type:

- Taxes make up the majority of how the city supports general operations. \$22 million dollars. Increase has been slight each year, but consistent from 2018-2020.
- License and Permits were down slightly from 2019.
- Transfers were up. (Due to CARES funding)
- Other: Includes interest, charges for services. Up slightly.

General Fund Expenditures by Type:

- Other: Includes Culture and Recreation, transfers out, and Community Development.
 - Category with the biggest increase was Community Development, specifically Inspections. Up \$1 million dollars from the previous year.

Special Revenue Fund Balances:

- Have five Special Revenue Funds.
 - Special Revenues Funds are if having a committed or restricted revenue source.
 - A Restricted Revenue Source would be a third party restricting how monies are spent coming in.
 - A Committed Revenue Source would be Council passing a Resolution saying they would only spend these revenues for a specific purpose once they come in.

- Community Center, Convention and Visitor's Bureau, Recreation, Franchise, and Economic Development Authority.
 - The Community Center. Has a slight increase. Has a deficit of \$1.7 million. Slight increase in fund balance at \$36,000.
 - Franchise Fee Fund. Has \$3.2 million dollars in reserves. This fund would be closed in 2021 and moved into the Pavement Management Fund. The money was committed for pavement management.

They are looking to see if revenue sources are meeting expenditures. Each one listed broke even or increased.

Debt Service Funds: Almost \$3.5 million.

- Total assets \$4.3 million
- Difference between cash and assets would be like taxes receivable, special assessment receivable. Anything receivable they do not have in cash.
- Over the next five years principle and interest payments. \$2.8 to \$2.9 million dollars of debt service requirements related to Governmental Bonds.
- Have almost \$31 million dollars of Bonds outstanding at year end.

Capital Projects Fund Balances:

- Shows how fund balance reserves are split out. Either restricted or assigned sources.
- Have approximately \$5 million dollars of restricted sources.
- \$4 million of that is related to tax increment districts.
- \$1 million dollars is for parks. Collecting Park Dedication Fees.
- Money set aside for equipment purchases or construction projects in the future.

Internal Service Funds:

- These are funds that have a central function that operates for the entire city.
- These funds charge out to other departments.
- Charges on an annual basis.
- Support like Insurance, central equipment purchases, compensated absences, central stores, city facilities.
 - Charging enough to support disbursements.
 - Cash Balances from year to year:
 - 2017 had approximately \$13.5 million dollars.
 - 2020 ended with just over \$15 million dollars in cash reserves.

Water Fund:

- Make sure operating receipts are meeting operating disbursements plus debt service requirements.
- What the city is charging for rates meets the requirements.
- Ended 2020 with \$9.3 million dollars cash.
- Minimum balance not recommended falling below. Takes 100% of the following years debt service requirements, plus six months/50% of the operating expenditures for the year.
- Recommend having a minimum of that on hand.
- The city is well above the minimum.
- Receipts have fallen short of disbursements and debt service requirements on an annual basis.
- With the Sewer Fund, cash has been holding steady due to other revenue sources such as connection fees.
- In 2020 the city received approximately \$500,000 of connection fees. Not included in operating receipts because it is more of a capital type receipt.

Golf Course Fund:

- 2020 had a good year.
- Had Anniversary Memberships for 2021, 2022, and 2023.

- \$1.5 million in revenue. This will record as revenue over the coming years. All the cash came in, in 2020.
- Cash jumped up to \$1.6 million dollars this year.

Cash and Investment Balances by Fund Type:

- Total cash in the city.
- Broken out by General Government, Capital Projects, Debt Service, Special Revenue.
- A majority is in Capital Projects with Enterprise Funds coming in next.
- Finish the year just under \$83 million in cash. Up from \$73 million the year before.

Mayor Bartholomew referenced the General Fund and the 50% stating a good portion of the cash is due to the CARES money received and held. He requested the Finance Director provide an accurate number of what the percentage would be if the CARES money wasn't there. Mr. Falteysek responded CARES money was used for Public Safety Payroll. That allowed for savings in other areas. Mayor Bartholomew stated they need to stay with the policy.

Mayor Bartholomew asked due to COVID and the complexity, he hoped everything went smoothly. Mr. Falteysek responded everything went smoothly. They have been doing remote audits for a while now.

Mayor Bartholomew commented on the presentation asking how long Mr. Falteysek has been doing the audit for the city. Mr. Falteysek responded it has been a little more than four years. Mayor Bartholomew stated the presentation is wonderful, it's to the point, shows important high points. He appreciated that.

4. CONSENT AGENDA:

- A.
 - i. Minutes from the May 3, 2021 City Council Work Session.
 - ii. Minutes from the May 10, 2021 City Council Meeting.
- B. Disbursements for Period Ending June 8, 2021. **Resolution 2021-159**
- C. Consider Approval of Personnel Actions.
- D. Consider Final Pay Voucher No. 2, Engineer's Final Report, and **Resolution 2021-160** Accepting Work for City Project No. 2019-05 – Sleepy Hollow Park Storm Sewer Repair.
- E. Consider **Resolution 2021-161** Establishing a Pavement Management Program Citizen's Advisory Task Force.
- F. Consider **Resolution 2021-162** Supporting Parking Restrictions on 80th Street From Blaine Avenue to Cahill Avenue.
- G. Consider Approval of Encroachment Agreement for Landowner Improvements within City Drainage and Utility Easement for 8360-8389 Bravo Way (Lot 1, Block 1, East Campus Addition).
- H. Consider **Resolution 2021-163** Approving an Easement Encroachment Agreement with Magellan Pipeline for Public Improvements Related to Canvas at Inver Grove Heights Development.
- I. Consider Approval of a Letter of Support for Dakota County CIP and its Transportation Sales and Use Tax Capital Improvement Program (TSUT-CIP) for 2021-2026.
- J. Consider **Resolution 2021-164** Accepting the MS4 Annual Report for 2020.
- K. Consider **Resolution 2021-165** Awarding Contract for City Project No. 2021-08 – Southern Trunk Watermain Improvements.
- L. Consider **Resolution 2021-166** Authorizing Engineering Services Proposal from Kimley-Horn for Assistance in Preparing Program Updates Required by the 2021 MS4 Permit.
- M. Receive 2020 Comprehensive Annual Financial Report.
- N. Consider Approval of a **Resolution 2021-167** relating to the Improvement Agreement, Storm Water Facilities Maintenance Agreement and Permanent Drainage and Utility Easement for the landscape contractor's business located at 2660 – 50th Street.

O. Consider Approval of a **Resolution 2021-168** relating to a Variance for Kellie Kronberg to allow a front yard setback Variance for property located at 3180 70th Street.

P. Consider Approval of a **Resolution 2021-173** Making an Election Not to Waive Statutory Tort Limits for Liability Insurance Purposes.

Q. Consider Approval of the Purchase of Police Radios.

R. Consider Approval of a **Resolution 2021-169** Approving Purchase Agreement with Kurt Rechtzigel.

Motion by Gliva second by Murphy to approve the Consent Agenda.

Ayes: 5

Nays: 0 Motion carried.

5. PUBLIC HEARING:

6. REGULAR AGENDA:

Community Development:

A. JOSHUA & ELIZABETH SCHMIDT – Consider an Ordinance Rezoning the property from R-1C, Single Family Residential District to R-3C, Multiple Family Residential District for property located at 4046 – 66th Street. Ordinance 1413

Associate Planner Heather Botten discussed the request for property located south of 66th Street in between Dawn Avenue and Concord Boulevard. The property is zoned R-1C Single Family Residential District. Surrounding uses have an R-2 District to the west (two family residential district), a School to the south, and other single-family zoning to the north and east. The property is 1.06 acres in size and currently has an existing home and detached garage on the property. The home was built in 1960 and was built and constructed to be used with the option of a tri-plex. The owners are requesting a rezoning of the property to R-3A, Multiple Family District. A future owner could obtain a Rental License to operate a legal tri-plex on the property.

If rezoning is successful, the owners would come in for a Conditional Use Permit. During that process they would be looking at site plan/site plan review. The process also requires neighbor notification and a Public Hearing. There are no changes proposed to the property or to the existing home. The R-3A District is established for multiple family dwellings that are three- and four-unit buildings. Rezoning to R-3A is consistent with the existing Comprehensive Plan designation of LDR (Low Density Residential). Staff believes the proposed lower density multifamily zoning would be compatible with the existing established uses in the neighborhood, current Comprehensive Plan designation, and with the existing home. Staff recommends approval of the request as presented. At the June 1st Public Hearing, the Planning Commission unanimously recommended approval of the request.

Mayor Bartholomew stated a few emails were received and asked if those have been entered into the record. Those were included at the Planning Commission level.

Elizabeth Anderson Schmidt, 251 Stanley Street, West St. Paul, Joshua Schmidt, same address, introduced themselves to the Council.

Councilmember Gliva asked if the home was currently occupied by three units. Mr. Schmidt responded no, once they learned they needed a Rental License, everyone was moved out and currently sits empty. The intent was to sell and are trying to get it rezoned for that purpose.

Councilmember Piekarski Krech expressed concern about the neighborhood because this has been a single-family residential area. There are a couple of other homes in the neighborhood that could be called duplexes if wanted to divide and used that way. She was concerned about starting to move these things along. The home began as a garage and has been added onto over a number of years to what it currently is. She was concerned about dropping a tri-plex into a R-1C area. The area back on Dawn was developed as duplex lots. This area has always been R-1C. She asked what slippery slope they start. There are two other homes in the block that could become “duplexes” under this scenario.

Ms. Schmidt addressed the neighbors’ letters commenting the letters mention concerns with traffic and a Police Presence. Due to COVID they were unable to remove tenants because of the eviction moratorium. They were advised by various legal professionals and the Police Department to call the Police anytime there was a problem so there was accurate documentation of incidents to assist with an eviction case. They proceeded to trial four times to secure an emergency conviction. She commented in their effort to rezone the property and receive a Rental License, it would add a layer(s) of legitimacy to the process. With a Rental License, having something that is revocable to ensure compliance seems to be the best option.

Councilmember Piekarski Krech commented that this would rezone the property but still do not know if the house would legally meet requirements for a tri-plex rental unit. Associate Planner Botten agreed and stated currently they would be looking at the land use. During the Conditional Use Permit process, engineering, building, and the Fire Marshal would all be looking at the request and doing necessary inspections with Conditional Use Permit (CUP) approval. That would come before the Council for review. Councilmember Piekarski Krech felt the process was backwards, determining whether or not the facility met requirements. Once it’s rezoned then it’s rezoned whether the building meets the requirement or not. Associate Planner Botten responded the Conditional Use Permit process is expensive and timely, they wanted to make sure it was approved for the rezoning first before moving forward with the CUP.

Councilmember Piekarski Krech commented she could see doing it this way if the lot was empty. They would rezone with the house possibly not meeting the requirements of the rezoning. Mayor Bartholomew asked if rezoning would be contingent on the Conditional Use Permit. Associate Planner Botten responded rezoning is an Ordinance Amendment and they don’t typically condition Ordinance Amendments. She stated if the Applicants are open to it, rezoning could be tabled until the CUP is caught up. The Applicant’s have not made application for that yet, so it could be another six to eight weeks.

Ms. Schmidt stated it would likely make sense to table it to give them time to catch up. When beginning the process, they were informed by Code Enforcement that a CUP would not be required in order to make this a legal rental. They were informed 2.5 weeks ago that a CUP was required for the property. Councilmember Piekarski Krech believed it was because it was going to be a tri-plex, if a single-family rental, a CUP may not be required.

Associate Planner Botten stated the CUP is for the tri-plex. Single family and duplexes do not require a CUP. If tabling Council needs to make sure the Applicants are agreeable to extending the 60 days. Mayor Bartholomew asked where they were at with the 60 days. Associate Planner Botten responded it ends June 18th. The 60 days can be automatically extended.

Mayor Bartholomew stated options are to further discuss the request or table and receive an automatic extension of the 60 days. Ms. Schmidt responded they would table.

City Attorney Bridget McCauley Nason recommended tabling to a date certain. 60 days from the 18th would be toward the end of August. The first regular City Council meeting is August 9th. This provides

enough time for the CUP Application to come through the Planning Commission process. Associate Planner Botten responded they would try to make that work and if not, would work with the Applicant to have them extend the review period.

City Attorney McCauley Nason stated the Motion would be to extend the original 60-day deadline out for an additional 60 days and to continue the Agenda Item to the August 9th City Council Meeting.

Motion by Piekarski Krech second by Gliva to extend the original 60-day deadline out for an additional 60 days and to continue the Agenda Item to the August 9th City Council Meeting for Ordinance 1413 Rezoning the property from R-1C, Single Family Residential District to R-3C, Multiple Family Residential District for property located at 4046 – 66th Street.

Ayes: 5

Nays: 0 Motion carried.

B. KAYAK PROPERTIES – Consider an Ordinance Rezoning the property from R-1A, Single Family Residential District to R-1C, Single Family Residential District for property located at 2644 – 70th Street. Ordinance 1414

City Planner Allan Hunting stated the property is located at 2644 70th Street. The Applicant would like to divide the property and create two additional lots. In order to do this, they request rezoning. It is currently zoned R-1A, which has a 40,000 square foot minimum lot size. In order to divide further they would have to rezone to R-1C which has a minimum 12,000 square foot lot size.

There is an existing house on the site that has access onto 70th. The existing house would remain with a lot created around it. Two additional lots would be created with access onto Bovey. All lot sizes would be a little over 20,000 square feet and in conformance. The density for the project is consistent with the LDR and R-1C. Rezoning is consistent with the area. The balance of single family would be all R-1C. If rezoning is successful, the Applicant would have to come back through the preliminary and final plat application process. Staff would review the plan, the drawings, grading, and utilities. All lots would have to be connected to city sewer and water. Staff recommends approval of the zoning request as presented.

Mayor Bartholomew asked about the original house and if it was currently hooked up to sewer. City Planner Hunting responded it is hooked up to sewer but has its own well water. Once it goes through platting it would have to be hooked up to city water. Mayor Bartholomew stated draining issues were discussed at the Planning Commission, he asked if that would be addressed during final plat. City Planner Hunting responded a resident may have brought that up separately with the Engineering Department. It would be looked at separate from this application.

Councilmember Piekarski Krech asked if it was known where the lot was located that had drainage issues. City Planner Hunting responded he did not know. A resident had spoke at the meeting and contacted Engineering about a current existing situation. Engineering would follow up. It wasn't directly related to what would occur in this location.

Terry Buchanan, 5174 Lexington Avenue, Shoreview, Minnesota, introduced himself to the Council. He believed the person they had been speaking about lived to the south.

Motion by Murphy second by Dietrich to approve KAYAK PROPERTIES – An Ordinance 1414 Rezoning the property from R-1A, Single Family Residential District to R-1C, Single Family Residential District for property located at 2644 – 70th Street.

Councilmember Piekarski Krech commented the lots are larger sized lots.

Ayes: 5

Nays: 0 Motion carried.

C. RACHEL DEVELOPMENT – Consider the following for property located at 7855 Cahill Avenue;

1. A Resolution relating to a Comprehensive Plan Amendment to change the land use designation from CC, Community Commercial to MDR, Medium Density Residential.

2. An Ordinance to change the zoning from B-3, General Business District to R-3C, Multiple Family Residential District. Ordinance 1415

Associate Planner Botten discussed the request for property located on the west side of Cahill across from Cub Foods. The property is on 3.81 acres, zoned B-3 (General Business District), and guided for Community Commercial. The Applicant requests a Comprehensive Plan Amendment and rezoning to change the land use and zoning to a designation that would allow for a multiple family development. The Applicant would like to develop a 40-unit Senior Assisted Living and Memory Care facility. If requests are successful, a Conditional Use Permit Application would be required for site plan design and review. The CUP process is a public process, surrounding property owners would be notified.

The Applicant requests changing the Land Use Designation to MDR (Medium Density Residential). This allows for a density of 8-12 units per acre. The concept plan shows 10.5 units per acre. The Applicant also requests rezoning the property to R-3C multiple family. The R-3 District allows for multiple family dwellings with more than seven units. The concept plan shows a single level facility with forty units.

She stated the property is surrounded by commercial to the south and east, single family to the north, and park property to the west. Staff believes the proposed zoning and land use changes do not appear to be out of character for the surrounding areas. They feel it would be a good transitional use from single family and commercial property. Staff recommends approval of both requests as presented, with the three Conditions listed in the Comprehensive Plan Resolution. The Planning Commission unanimously recommended approval of the request as submitted at their May 18th Public Hearing.

Councilmember Piekarski Krech asked if this was the same location as the previous storage proposal. Associate Planner Botten responded yes. Councilmember Piekarski Krech thought there were drainage issues and asked if this had the same. Associate Planner Botten responded they would have the same requirements the storage facility had. Drainage or grading plans have not been reviewed at the site yet but they are aware of the conditions.

Councilmember Murphy asked what else may go on a property like this when zoned General Business. Associate Planner Botten responded General Business allows for retail, neighborhood services, car sales, restaurants and banks. Storage is no longer allowed in a B-3 District.

Mayor Bartholomew asked if there was a condition regarding the Comprehensive Plan Amendment and if so, if it had to be platted prior. Associate Planner Botten responded the Comp Plan Amendment would be contingent upon CUP approval.

David Stradtman, Rachel Development, Otsego, Minnesota, stated some cities consider this type of facility a commercial use. Those that live in this type of facility don't live independently, don't have cars, drive, or travel on their own. They are there for assistance and memory care. It's a good transitional use adjacent to commercial uses with residential.

Mayor Bartholomew asked what the nearest city was with this type of facility. Mr. Stradtman responded they have one currently under construction in Apple Valley. It has 64 units in a commercially guided site. They have one that just opened in Prior Lake and one nearing completion in Savage. They have several others in process in the metro.

Mayor Bartholomew asked if the Applicant was aware there are some drainage issues on the property. Mr. Stradtman responded they have a Site Project Engineer who will exam in detail all of the stormwater. They would look into it further as they get into the process and detail.

Mayor Bartholomew said he is always reluctant to change from B-3. They have been looking at this property for some time. He believed it was going to be a good fit and they would be a good neighbor. It's a good benefit to citizens in the city, not only for the people requiring it, but for families. He stated he can support the Comprehensive Plan Amendment and zoning change.

Councilmember Murphy struggles with it. He commented it's something that is needed, but there is little space left in the city to put retail businesses for people to shop. Mayor Bartholomew stated the struggle with the area is getting a B-3 in that is acceptable to the neighbors. They have struggled with that for years. He felt it this was an opportunity to have a good business neighbor and helps the city.

Interim City Administrator/Community Development Director Heather Rand stated having had discussions with the Commercial Real Estate Brokers, the site is unique as it has some minor pollution in the ground that would have to be remedied. There are stormwater management issues that would have to be maintained on the site. That increases development costs. This area needs a use that would generate enough revenue to offset the development cost. She has been told by Commercial Brokers who have looked at the site for retail or restaurant, say they can't make a go of it because of the costs. That is why there was the storage facility with three stories that could have generated enough revenue to make it work. She stated this request is for memory care that hopes to generate enough revenue to make a go of the site. With memory care, visitors come and go and hope they would shop and frequent restaurants. That is why Staff supports this. She did not believe small retail was likely in the short term.

Councilmember Piekarski Krech said being against the storage facility in that location, this was more acceptable. The people visiting would shop here, the employees would bring more people in. There are quite a few empty spaces in the city. She was unsure how to fill them, but likely need to work more on infilling, as she hasn't seen any new ideas or plans come forward in the last year or two. She would support his because it would bring more employment into town.

Mayor Bartholomew stated the Comprehensive Plan requires four votes; the rezone is three votes.

Motion by Piekarski Krech second by Bartholomew to approve the RACHEL DEVELOPMENT – for property located at 7855 Cahill Avenue;

1. A Resolution relating to a Comprehensive Plan Amendment to change the land use designation from CC, Community Commercial to MDR, Medium Density Residential.

Subject to the conditions listed in the report.

Ayes: 2

Nays: 3 (Murphy, Dietrich, Gliva) Motion fails.

City Attorney McCauley Nason stated by virtue of the Motion failing is essentially a denial of the Comprehensive Plan Amendment Application. She asks those who voted against approval (the three nays) to state on the record what their reasons for their vote was. A written Resolution would be included in the next Council packets related to the grounds of denial.

Councilmember Murphy stated he voted negative because he wants to preserve the B-3 for future use. He doesn't believe there are enough quality places to put retail businesses to shop for our residents.

Councilmember Dietrich stated her reason was the same.

Councilmember Gliva stated her reason was also the same.

City Attorney McCauley Nason stated there is one more item the Council would need to take action on. They could table the Agenda Item to the next meeting when there would be a Resolution of Denial prepared related to the Comprehensive Plan Amendment failure. They are two separate applications.

Motion by Piekarski Krech second by Gliva to table to the June 28, 2021 City Council Meeting, the RACHEL DEVELOPMENT – for property located at 7855 Cahill Avenue; 2. An Ordinance 1415 to change the zoning from B-3, General Business District to R-3C, Multiple Family Residential District to reflect the denial and request the Ordinance change at that time.

Ayes: 5

Nay: 0 Motion carried.

D. M/I HOMES OF MINNEAPOLIS/ST. PAUL – Consider the following for the plat of South Grove Townhomes:

- 1. A Resolution relating to a Final Plat and Final PUD Development Plan, Development Contract and eight related agreements for Phase 1 of the plat to be known as South Grove Townhomes. Resolution 2021-171**
- 2. A Resolution Establishing Parking Restrictions within the South Grove Townhomes Subdivision. Resolution 2021-172**

City Planner Hunting stated the site is the old South Grove Elementary School. Clayton Avenue/75th Street is on the north, 77th Street to the south. The request is for the final plat/final PUD for Phase 1, for the western half of the site. It consists of ten single family homes and 36 of the townhomes. Future items would be in Phase 2. Construction consists of the units, grading, stormwater improvements on the site, and constructing all the public streets with Phase 1. Plans are consistent with the preliminary plans that were approved. Engineering and Consultants have reviewed the final grading and stormwater plans and are satisfied they comply with city standards. There are development agreements as a part of this to be reviewed and approved with the project. They would include the Resolution on parking restrictions. There would be no parking on the south side of 76th and no parking on the east side of Cloman Way. Engineering asked that it be included to identify city costs involved with Developer installed improvements with Project 2021-11 that Council ordered on May 10th. He stated it looked like the city portion is \$162,000. The Planning Commission recommended approval of Phase 1. Staff recommends approval of Phase 1 Final Plat, Final PUD Plans.

Mayor Bartholomew asked if the drainage referred to was across the street. Interim Public Works Director Klay Eckles responded there is a pond on the other side of Clayton Avenue that drains to the east and links

up with the new ponding system. The new pond being created becomes interlocked with the system currently there. The system is acting as one and support each other.

Councilmember Murphy commented there were concerns about the Oaks and drainage towards the development. He asked if the pond solves the problem. City Planner Hunting responded his understanding was that those issues would be taken care of in this project. There continues to be existing stormwater issues in the open area designed outflow, unrelated to this project.

Interim Public Works Director Eckles stated the existing neighborhood has its own stormwater system. If that stormwater system did not have enough capacity, there is an emergency overflow where the water flows across the ground instead of through the pipe system. The existing development overflow is what they call less than adequate and should probably be improved, but does not relate to this development. It reduces some risk to downstream properties. Its recommended it occur whether this development stays or goes.

John Rask, M/I Homes, 5354 Parkdale Avenue, St. Louis Park, stated he has read the report, the conditions of approval, the Developer's Agreement, and other agreements. He concurs with the requirements. He stated there are drainage issues but they are not adding to those, they have provided for drainage and rate control on their site. The city project/extension of the storm sewer takes care of the existing problem and helps with some of the Oaks drainage concerns. They are all working together to improve the situation for everyone.

Mayor Bartholomew asked for a brief overview of each of the products and the vision. Mr. Rask responded:

- On the west side of the project there is a combination of single family offering one level living.
 - They will not have basements.
 - Would be 1,700 to 2,400 square feet.
 - Start at around \$400,000.
 - Have two bedrooms and a den. Laundry.
 - Geared for an empty nester who wants to live on one level.
- Townhomes on the west side are urban rural townhomes.
 - Have a rear alley way.
 - Going down Clayton Avenue would see the front of the building, not the garages.
 - Front of the units face out, garages behind.
- Townhomes on the east side are similar rural townhomes.
 - Compliment the rest of the neighborhood.
 - From 1,800 to 2,200 square feet.
 - Starting prices: \$340,000.

The price has increased due to increasing lumber prices. They are excited about the project.

Mayor Bartholomew thought it would be a good addition to the neighborhood. It's a parcel of property that has been empty for a while. He would support the project.

Motion by Dietrich second by Gliva to approve M/I HOMES OF MINNEAPOLIS/ST. PAUL – Consider the following for the plat of South Grove Townhomes:

- 1. A Resolution 2021-171 relating to a Final Plat and Final PUD Development Plan, Development Contract and eight related agreements for Phase 1 of the plat to be known as South Grove Townhomes.**

2. A Resolution 2021-172 Establishing Parking Restrictions within the South Grove Townhomes Subdivision.**Ayes: 5****Nays: 0 Motion carried.****E. Consider the Third Reading of an Ordinance Amendment to allow larger detached accessory structures on residential lots 2.5-5.0 acres in size. Ordinance 1411**

Associate Planner Botten stated there have been no substantial changes from the Second Reading that took place on May 24th, to the Third and Final Reading. The City Attorney reviewed the Ordinance and made a few minor changes for clarification. Currently the Zoning Code allows lots 2.5 to 5 acres in size one detached accessory structure up to 1,600 gross square feet. This Ordinance Amendment would allow a structure 1,600 to 2,400 gross square feet on lots that are 3.4 to 5 acres in size. The way they would determine the structure size allowed on a lot would be to take the lot size in acres and multiply that times 480. The ratio system would benefit lots that are 3.4 to 5 acres in size. All other lot sizes would remain as the Code currently allows. Staff recommends approval of the Third and Final Reading of the Ordinance Amending Sections City Code 10-15-18.C, Accessory Structures, and 10-7-2B and 10-8A-2.B.

Motion by Gliva second by Murphy to approve the Third Reading of Ordinance 1411 Amendment to allow larger detached accessory structures on residential lots 2.5-5.0 acres in size.**Ayes: 5****Nays: 0 Motion carried.**

City Attorney McCauley Nason stated this would go into effect five days after publication.

F. Consider the Second Reading of an Ordinance Amending Inver Grove Heights City Code Title 5, Chapter 4 adding section related to Temporary Harboring and Keeping of Goats for Prescribed Grazing by Permit.

Environmental Specialist Ally Sutherland presented the Second Reading Amending the City Code to add a section related to the Temporary Harboring and Keeping of Goats for Prescribed Grazing by Permit. At the May 24th City Council Meeting, Council approved the First Reading of the Ordinance. Council suggested parameters for Staff to review. Those three suggestions were:

1. Consider allowing temporary structures
2. Review the Permit duration for larger properties
3. Review methods used for protecting goats

Staff discussed this further and contacted goat rental companies for follow-up information. Staff recommendations are included in the report and are as discussed:

- For item #1: Consider allowing temporary structures:
Staff updated the Ordinance to allow the temporary structures during the duration of the Permit, subject to Staff review. It is noted that structures are not a common practice for goat rental companies. The change will allow the companies flexibility to request more uncommon uses for them, such as using them for windbreaks as needed, or shelter during winter months.
- To note for #2: Review the Permit duration for larger properties:
There would be no change to the maximum duration of the Permit. This was related to larger properties. Staff recommended waiting to determine if there is a need based on future Applications. Staff thought it might be possible for other methods to be used that would be more preferable to

the neighbor and the property owner such as increasing the number of goats used for the project instead of extending the duration of the project.

- For #3: Review methods used for protecting goats:
Staff contacted the goat rental company and was told electric fencing is the main deterrent for predators and is required by the Draft Ordinance. She was told that coyotes were not an issue at this time and have never experienced problems with coyotes. She felt this was a non-issue at this point and no additional protection would be needed.

Environmental Specialist Sutherland stated the temporary shelter changes have been incorporated. Staff recommends approval of the Second Reading.

Councilmember Murphy asked if there was a request, or if they were being proactive about goats. Environmental Specialist Sutherland responded they have received several requests over the years. Staff felt it would be beneficial to residents to provide this.

Mayor Bartholomew stated he has received one inquiry with a lot size of .5 acre.

Motion by Gliva second by Dietrich to approve the Second Reading of an Ordinance Amending Inver Grove Heights City Code Title 5, Chapter 4 adding section related to Temporary Harboring and Keeping of Goats for Prescribed Grazing by Permit.

Ayes: 5

Nays: 0 Motion carried.

7. PUBLIC COMMENT:

There was no public comment.

8. MAYOR AND COUNCIL COMMENTS:

Councilmember Dietrich stated it was wonderful seeing everyone in person.

9. EXECUTIVE SESSION:

10. ADJOURN:

Motion by Dietrich second by Murphy to adjourn the meeting at 7:14 p.m.

Ayes: 5

Nays: 0 Motion carried.

Minutes prepared by Recording Clerk Sheri Yourczek

**Request for Council Action****TITLE: Disbursements**

		Fiscal/FTE Impact	Mark all that apply
Meeting Date:	July 12, 2021	None	
Item Type:	Consent	Amount included in current budget	X
Contact:	Amy Hove	Budget amendment requested	
Prepared by:	Bill Schroepfer	FTE included in current complement	
Reviewed by:	N/A	New FTE requested - N/A	
		Other	

PURPOSE/ACTION REQUESTED:

Approve the attached resolution approving disbursements for the period of June 23, 2021 to July 6, 2021.

SUMMARY:

Shown below is a listing of the disbursements for the various funds for the period ending July 6, 2021. The detail of these disbursements is attached to this memo.

General & Special Revenue	\$147,652.23
Debt Service & Capital Projects	17,662.76
Enterprise & Internal Service	161,751.08
Escrows	5,529.00
Grand Total for All Funds	<u><u>\$332,595.07</u></u>

If you have any questions about any of the disbursements on the list, please call Amy Hove, Finance Director: 651-450-2521.

Attached to this summary for your action is a resolution approving the disbursements for the period June 23, 2021 to July 6, 2021 and the listing of disbursements requested for approval.

DAKOTA COUNTY, MINNESOTA

RESOLUTION NO. _____

**RESOLUTION APPROVING DISBURSEMENTS FOR THE
PERIOD ENDING July 6, 2021**

WHEREAS, a list of disbursements for the period ending July 6, 2021 was presented to the City Council for approval.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS: that payment of the list of disbursements of the following funds is approved:

General & Special Revenue	\$147,652.23
Debt Service & Capital Projects	17,662.76
Enterprise & Internal Service	161,751.08
Escrows	5,529.00
Grand Total for All Funds	<u><u>\$332,595.07</u></u>

Adopted by the City Council of Inver Grove Heights this 12th day of July, 2021.

Thomas Bartholomew, Mayor

ATTEST:

Rebecca Kiernan, City Clerk



City of Inver Grove Heights

Expense Approval Report

By Fund

Payment Dates 6/23/2021 - 7/6/2021

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
ADVANCED GRAPHIX, INC.	207103	07/06/2021	Black Non-reflective Locker names	101.42.4000.421.50030	12.50
ADVANCED SPORTSWEAR, INC.	424	06/29/2021	Uniforms/Clothing	101.43.5200.443.60045	249.50
APPLIED CONCEPTS, INC.	386464	07/06/2021	Cables, Kits, Mounts, Antennas, Tuning Forks	101.42.4000.421.80700	6,160.00
ASPEN MILLS	276293	06/29/2021	Uniforms/Clothing	101.42.4000.421.60045	1,613.77
ASPEN MILLS	276294	06/29/2021	Uniforms/Clothing	101.42.4000.421.60045	1,535.67
CANADA GOOSE MANAGEMENT	202104	07/06/2021	Time & Expenses for all sites	101.44.6000.451.30700	1,000.00
CENTURY LINK	06/19/2021	07/06/2021	651-455-9072 Jun - Jul 2021	101.42.4200.423.50020	45.40
CORE & MAIN LP	P052901	06/29/2021	15 CMP 16GA END SECTION F/HDPE	101.43.5200.443.60016	248.90
CSS	10194	06/29/2021	Paint	101.43.5200.443.60016	55.80
DAKOTA COMMUNICATIONS CENTER	IG2021-07	07/06/2021	July 2021	101.42.4000.421.70502	60,289.20
DAKOTA COMMUNICATIONS CENTER	IG2021-07	07/06/2021	July 2021	101.42.4200.423.70502	4,340.80
DAKOTA COUNTY TECHNICAL COLLEGE	837910	06/29/2021	Pursuit refresher	101.42.4000.421.50080	500.00
DAKOTA ELECTRIC ASSN	200001093947 06/21	06/25/2021	Electric	101.43.5400.445.40020	1,282.02
DAKOTA ELECTRIC ASSN	200002013605 06/21	06/25/2021	Electric	101.44.6000.451.40020	1,944.74
DAKOTA ELECTRIC ASSN	200002501658 06/21	06/25/2021	Electric	101.44.6000.451.40020	450.12
DAKOTA ELECTRIC ASSN	200003935632 06/21	06/25/2021	Electric	101.43.5400.445.40020	53.99
DAKOTA ELECTRIC ASSN	200003935632 06/21	06/25/2021	Electric	101.44.6000.451.40020	495.11
DAKOTA ELECTRIC ASSN	200003935632 06/21	06/25/2021	Electric	101.44.6000.451.40020	19.16
DAKOTA ELECTRIC ASSN	200010036635 06/21	06/25/2021	Electric	101.42.4200.423.40020	2,251.05
EARL F ANDERSEN INC	0126614-IN	06/29/2021	Signs	101.43.5200.443.60016	737.95
EARL F ANDERSEN INC	0126673-IN	06/29/2021	Fire lane sign	101.43.5200.443.60016	205.62
EXPERT TREE AND SERVICE AND SCIENCE	5925	06/29/2021	Remove/Dispose of 2 large cottonwood, grind	101.43.5200.443.40046	4,975.00
EYEMED	164818814	06/29/2021	June 2021 Premium	101.203.2032700	209.51
EYEMED	164818816	06/29/2021	June 2021 Premium	101.203.2032710	8.83
EYEMED	164858925	06/29/2021	July 2021 Premium	101.203.2032700	209.51
EYEMED	164858926	06/29/2021	July 2021 Premium	101.203.2032710	8.83
FIRST IMPRESSION GROUP, THE	118443	06/29/2021	Business cards	101.42.4000.421.50030	131.19
GENERAL REPAIR SERVICE	74678	07/06/2021	Parts, Labor, Environmental fee	101.44.6000.451.40040	2,324.81
GIP III ZEPHYR ACQUISITION PARTNERS, L.P.	INVRGRV-12106	06/29/2021	Solar farms	101.42.4200.423.40020	1,747.74
GIP III ZEPHYR ACQUISITION PARTNERS, L.P.	INVRGRV-12106	06/29/2021	Solar farms	101.43.5200.443.40020	134.52
GIP III ZEPHYR ACQUISITION PARTNERS, L.P.	INVRGRV-12106	06/29/2021	Solar farms	101.43.5400.445.40020	1,227.89
GIP III ZEPHYR ACQUISITION PARTNERS, L.P.	INVRGRV-12106	06/29/2021	Solar farms	101.44.6000.451.40020	1,396.29
HEALTHEAST MEDICAL TRANSPORTATION	06/17/2021	06/29/2021	Jamie Schmidt blood alcohol draw	101.42.4000.421.30700	88.40
HEALTHEAST MEDICAL TRANSPORTATION	06/21/2021	06/29/2021	Blood alcohol draw	101.42.4000.421.30700	88.40
INNOVATIVE OFFICE SOLUTIONS	SUM-062023	07/06/2021	June 2021	101.43.5100.442.60040	6.74
INNOVATIVE OFFICE SOLUTIONS	SUM-062023	07/06/2021	June 2021	101.45.3000.419.60010	41.45
INNOVATIVE OFFICE SOLUTIONS	SUM-062023	07/06/2021	June 2021	101.45.3200.419.60010	48.70
INNOVATIVE OFFICE SOLUTIONS	SUM-062023	07/06/2021	June 2021	101.45.3300.419.60010	53.82
INNOVATIVE OFFICE SOLUTIONS	SUM-062023	07/06/2021	June 2021	101.45.3300.419.60040	39.64
LAURENTINA DEJONG	05/04/2021	07/06/2021	Materials & Labor	101.44.6000.451.30700	1,015.00
LAWMAN BADGE COMPANY	5976	07/06/2021	Custom badge repair/re-finish	101.42.4000.421.60045	75.00
MADISON NATIONAL LIFE INSURANCE COMPANY	1449001	06/29/2021	July 2021	101.203.2031700	2,933.08
MADISON NATIONAL LIFE INSURANCE COMPANY	1449001	06/29/2021	July 2021	101.42.4000.421.20630	24.13
MADISON NATIONAL LIFE INSURANCE COMPANY	1449001	06/29/2021	July 2021	101.45.3300.419.20630	19.00
Michael A. Madigan	1971	07/06/2021	Lawn care services - Cemetery	101.44.6000.451.30700	625.00
Michael A. Madigan	1972	07/06/2021	lawn care services	101.44.6000.451.30700	390.00
Michael A. Madigan	2004	07/06/2021	Lawn care services for Dixie and Concord	101.45.3000.419.30700	139.26
MN LIFE INSURANCE CO	July 2021	06/29/2021	Policy #0027324	101.203.2030900	3,388.27
MN LIFE INSURANCE CO	July 2021	06/29/2021	Policy #0027324	101.42.4000.421.20620	115.18
MN LIFE INSURANCE CO	July 2021	06/29/2021	Policy #0027324	101.45.3300.419.20620	17.43
MN NCPERS LIFE INSURANCE	06/25/2021	06/29/2021	July 2021 Premium	101.203.2031600	272.00
NEWMAN SIGNS INC	TRFINV031787	06/29/2021	Signs	101.43.5200.443.60016	2,004.26
PEARSON BROTHERS, INC.	5284	06/29/2021	Tack Oil	101.43.5200.443.60016	4,000.00
RCM SPECIALTIES, INC.	8042	06/29/2021	Emulsion	101.43.5200.443.60016	891.02
RUFFRIDGE-JOHNSON	RA00802	06/29/2021	Daily rentals - Carlson Paver, Bomag Roller	101.43.5200.443.40050	2,600.00
SAFE ASSURE CONSULTANTS	2987	07/06/2021	Safety Training	101.41.1100.413.30500	7,085.81
STREICHER'S	I1510847	07/06/2021	Training supplies	101.42.4000.421.60018	671.86
TRI-STATE BOBCAT INC.	R31752	06/29/2021	Bobcat loader	101.43.5200.443.40050	440.00
UNIFIRST CORPORATION	0631431	06/29/2021	Clothing/Uniforms	101.43.5200.443.60045	30.71
UNIFIRST CORPORATION	0631431	06/29/2021	Clothing/Uniforms	101.44.6000.451.60045	14.24
VERIFIED CREDENTIALS, INC.	319852	07/06/2021	June 2021 Background Screenings	101.41.1100.413.30700	234.50
VOLUNTEER FIREFIGHTERS BENEFIT	2021 RENEWAL	07/06/2021	Volunteer Firefighters' Annual Renewal 2021	101.42.4200.423.50070	500.00
Fund: 101 - GENERAL FUND					123,718.32
RIVER HEIGHTS CHAMBER OF COMMERCE	10961	07/06/2021	July2021, office rent. CVB retirement, health c	201.44.1600.465.30700	6,127.16
STACY ANN BROOKS	352	07/06/2021	July work - editing articles for visitor guide	201.44.1600.465.50025	215.00
Fund: 201 - C.V.B. FUND					6,342.16
ADVANTAGE SIGNS & GRAPHICS, INC.	00047342	07/06/2021	Corex Signs - Food Truck Days. Step Stakes	204.44.6100.452.60009	172.50
CUSTARD, MELISSA	01/20/2021RR	07/06/2021	COVID closure, partial refund of league	204.207.2070300	4.77
CUSTARD, MELISSA	01/20/2021RR	07/06/2021	COVID closure, partial refund of league	204.44.0000.3470000	66.89
HOPKINS SPORTS CAMP LLC	17506R1	06/29/2021	Sports camps	204.44.6100.452.30700	1,808.80

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
KILB, ROBERT	06/28/2021	07/06/2021	Park shelter deposit	204.207.2070300	3.33
KILB, ROBERT	06/28/2021	07/06/2021	Park shelter deposit	204.44.0000.3471000	46.67
KINDER FIT LLC	6068	06/29/2021	Amazing athlete classes	204.44.6100.452.30700	1,170.00
KROOG, RACHAEL	06/18/2021	06/29/2021	Terrific Tuesdays performance	204.44.6100.452.30700	400.00
Fund: 204 - RECREATION FUND					3,672.96
AQUA LOGIC, INC.	51350	06/29/2021	Labor & parts for pool	205.44.6200.453.40040	4,456.12
BETHEL, GORDON	06/29/2021	07/06/2021	Member discount not applied to TRX class	205.44.0000.3493501	40.00
HUEBSCH SERVICES	20079441	06/29/2021	Mats	205.44.6200.453.40065	67.74
HUEBSCH SERVICES	20079441	06/29/2021	Mats	205.44.6200.453.40065	270.94
HUEBSCH SERVICES	20084623	06/29/2021	Mats	205.44.6200.453.40065	270.94
HUEBSCH SERVICES	20084623	06/29/2021	Mats	205.44.6200.453.40065	67.74
INNOVATIVE OFFICE SOLUTIONS	SUM-062023	07/06/2021	June 2021	205.44.6200.453.60065	205.45
NASSEFF PLUMBING & HEATING, INC.	32465	07/06/2021	VMCC AC Repair	205.44.6200.453.40040	4,009.86
RITA, CLARE	06/21/2021	06/29/2021	Employee/Refund 9 months of annual member	205.207.2070300	25.34
RITA, CLARE	06/21/2021	06/29/2021	Employee/Refund 9 months of annual member	205.44.0000.3490100	355.66
TWIN CITY HARDWARE	PSI2047738	06/29/2021	Remove locksets, put on fire exit device	205.44.6200.453.80200	3,480.00
TWIN CITY HARDWARE	PSI2048206	06/29/2021	ALU Closer, REG, PA, GR1	205.44.6200.453.80200	669.00
Fund: 205 - COMMUNITY CENTER					13,918.79
MN POLLUTION CONTROL AGENCY	10000128772	06/29/2021	Cahill trunk drainage improvements	436.73.5900.736.30700	937.50
Fund: 436 - 2016 IMPROVEMENT FUND					937.50
VALLEY-RICH CO, INC	06/14/2021R	06/29/2021	Sleepy hollow park storm sewer repair	439.73.5900.739.80300	2,271.00
Fund: 439 - 2019 IMPROVEMENT FUND					2,271.00
BARR ENGINEERING COMPANY	23190328.20-16	06/29/2021	Project reviews and studies	441.74.5900.741.30300	1,888.00
CITY OF EAGAN	01-03/2021	06/29/2021	1st QTR 2021 sewer & water	441.74.5900.741.40030	5,064.20
GIP III ZEPHYR ACQUISITION PARTNERS, L.P.	INVRGRV-12106	06/29/2021	Solar farms	441.74.5900.741.40020	762.11
Fund: 441 - STORM WATER MANAGEMENT					7,714.31
BIGGS, ANNA	07/03/2021	07/06/2021	Refund expenses for EAB tree removal from R	450.75.5900.750.40047	770.00
Fund: 450 - COMMUNITY PROJECTS FUND					770.00
KIMLEY-HORN & ASSOCIATES, INC.	19035224	07/06/2021	Total Labor and Expense	470.44.5900.770.30300	5,969.95
Fund: 470 - 2020 IMPROVEMENT FUND					5,969.95
PETTY CASH	09/19/2020	06/29/2021	JoJo Verdeja Reimb – Ice for 2020 Clean Up [	471.43.5500.446.60065	11.38
Fund: 471 - 2021 IMPROVEMENT FUND					11.38
AUTOMATIC SYSTEMS CO.	36069S	07/06/2021	Blown fuse replacement + Miles & Time of Tra	501.50.7100.512.30700	381.65
CITY OF EAGAN	01-03/2021	06/29/2021	1st QTR 2021 sewer & water	501.50.7100.512.40005	20,880.10
GIP III ZEPHYR ACQUISITION PARTNERS, L.P.	INVRGRV-12106	06/29/2021	Solar farms	501.50.7100.512.40020	20,915.03
GIP III ZEPHYR ACQUISITION PARTNERS, L.P.	INVRGRV-22106	06/29/2021	Solar farms	501.50.7100.512.40020	6,622.47
HACH COMPANY	12501346	07/06/2021	Chlorine	501.50.7100.512.60019	625.16
HACH COMPANY	12505124	07/06/2021	Fluoride & Chlorine	501.50.7100.512.60019	607.57
IDEAL SERVICE, INC.	11163	06/29/2021	Preventative maintenance, Travel	501.50.7100.512.40040	950.00
LARSON, DENNIS	06/28/2021	06/29/2021	Refund hydrant permit #2108	501.207.2070300	(5.34)
LARSON, DENNIS	06/28/2021	06/29/2021	Refund hydrant permit #2108	501.50.0000.3813000	(75.00)
MID CITY SERVICES, INC.	157669	06/29/2021	Dust mats	501.50.7100.512.40040	55.20
SHADES OF GREEN OUTDOOR SERVICES, LLC.	1414	07/06/2021	Second application	501.50.7100.512.30700	1,700.00
VESSCO INC	83705	06/29/2021	Parts, Labor and Travel	501.50.7100.512.60019	1,705.45
Fund: 501 - WATER UTILITY FUND					54,362.29
CITY OF EAGAN	01-03/2021	06/29/2021	1st QTR 2021 sewer & water	502.51.7200.514.40015	46,368.77
DAKOTA ELECTRIC ASSN	200010036635 06/21	06/25/2021	Electric	502.51.7200.514.40020	132.28
GIP III ZEPHYR ACQUISITION PARTNERS, L.P.	INVRGRV-12106	06/29/2021	Solar farms	502.51.7200.514.40020	492.55
Fund: 502 - SEWER UTILITY FUND					46,993.60
ARTISAN BEER COMPANY	3479144R	07/06/2021	Beer	503.52.8300.524.76150	551.80
ARTISAN BEER COMPANY	3480419R	07/06/2021	Beer	503.52.8300.524.76150	503.60
BREAKTHRU BEVERAGE MINNESOTA	339762898	06/24/2021	Beer/Seltzer	503.52.8300.524.76150	748.20
BREAKTHRU BEVERAGE MINNESOTA	339854538	06/24/2021	Beer/Seltzer	503.52.8300.524.76150	438.50
BREAKTHRU BEVERAGE MINNESOTA	339942098	06/24/2021	Beer	503.52.8300.524.76150	932.30
COCA COLA BOTTLING COMPANY	3607211110	06/29/2021	Beverages	503.52.8300.524.76100	1,687.75
COCA COLA BOTTLING COMPANY	3607211178	07/06/2021	Beverages	503.52.8300.524.76100	695.24
COCA COLA BOTTLING COMPANY	3607211179	06/23/2021	Empty 20lb CO2	503.52.8300.524.76100	(75.00)
COLLEGE CITY BEVERAGE	703221	06/29/2021	Beer	503.52.8300.524.76150	372.55
COLLEGE CITY BEVERAGE	705982	07/06/2021	Beer	503.52.8300.524.76150	220.05
COVERALL OF THE TWIN CITIES INC	1590009167	07/06/2021	Commercial cleaning services	503.52.8500.526.40040	1,124.81
DAKOTA ELECTRIC ASSN	200002013605 06/21	06/25/2021	Electric	503.52.8600.527.40020	261.64
DRAFT TECHNOLOGIES	06282104	07/06/2021	Beer line cleaning - 4 faucets	503.52.8300.524.40042	55.00
GIP III ZEPHYR ACQUISITION PARTNERS, L.P.	INVRGRV-12106	06/29/2021	Solar farms	503.52.8600.527.40020	85.64
HEGGIES PIZZA	1000903017	06/29/2021	Pizza	503.52.8300.524.76050	147.60
JJ TAYLOR DIST. COMPANY OF MN	3196598	07/06/2021	Beer	503.52.8300.524.76150	592.00
M. AMUNDSON LLP	322880	06/29/2021	Candy	503.52.8300.524.76050	172.16
M. AMUNDSON LLP	323274	06/29/2021	Candy	503.52.8300.524.76050	206.50
MANSFIELD OIL COMPANY	22427299	06/29/2021	Fuel	503.52.8600.527.60021	1,548.58
MN GOLF ASSOCIATION, INC.	5110960	06/29/2021	GHIN handicap service	503.52.8000.521.70250	8,600.00
MTI DISTRIBUTING CO	130515-00	06/29/2021	MDI ignition	503.52.8600.527.40042	302.22
MTI DISTRIBUTING CO	1305610-00	06/29/2021	Meter, Harness wire, Throttle control	503.52.8600.527.40042	216.13
MTI DISTRIBUTING CO	1307571-00	06/29/2021	Filters, Bumper, Muffler, Sensor, Roller, Pump	503.52.8600.527.40042	384.93

Vendor Name	Payable Number	Post Date	Description (Item)	Account Number	Amount
MTI DISTRIBUTING CO	1307571-01	06/29/2021	Pump kit, Roller	503.52.8600.527.40042	323.75
MTI DISTRIBUTING CO	1308614-00	06/29/2021	Parts	503.52.8600.527.40042	1,057.00
NAPA OF INVER GROVE HEIGHTS	259069	06/29/2021	Fuse Holder	503.52.8600.527.40042	15.30
NAPA OF INVER GROVE HEIGHTS	261642	06/29/2021	Battery	503.52.8600.527.40042	153.35
PHILLIPS WINE & SPIRITS	633585	06/07/2021	Vodka	503.52.8300.524.76150	(46.71)
PHILLIPS WINE & SPIRITS	6222968	07/06/2021	Alcohol	503.52.8300.524.76150	864.64
PING	15795412	06/29/2021	Golf Bags	503.52.8200.523.76350	129.70
SUPERIOR TURF SERVICES INC	1059	06/29/2021	Mulch, Elite landscape	503.52.8600.527.60020	451.85
US FOODSERVICE	5680549	06/29/2021	Food, Drinks, Supplies	503.52.8300.524.60065	54.81
US FOODSERVICE	5680549	06/29/2021	Food, Drinks, Supplies	503.52.8300.524.76050	1,097.88
US FOODSERVICE	5680549	06/29/2021	Food, Drinks, Supplies	503.52.8300.524.76100	201.21
US FOODSERVICE	5680555	06/29/2021	Food/Supplies	503.52.8300.524.76050	1,516.91
US FOODSERVICE	5680555	06/29/2021	Food/Drinks	503.52.8300.524.76100	35.75
US FOODSERVICE	5735357	06/29/2021	Supplies	503.52.8300.524.60065	32.14
US FOODSERVICE	5820311	07/06/2021	Food & Supplies	503.52.8300.524.60065	30.00
US FOODSERVICE	5820311	07/06/2021	Food & Supplies	503.52.8300.524.76050	1,155.25
US FOODSERVICE	5879800	07/06/2021	Mustard	503.52.8300.524.76050	25.77
WILSON SPORTING GOODS	4534715025	07/06/2021	W/S Prem Range White 24-Ball	503.52.8100.522.60060	2,940.30
WILSON SPORTING GOODS	4534715026	07/06/2021	W/S Prem Range White 24-Ball	503.52.8100.522.60060	1,633.50
Fund: 503 - INVER WOOD GOLF COURSE					31,444.60
FACTORY MOTOR PARTS COMPANY	1-Z26098	06/29/2021	CCA850 RC150	603.140.1450050	135.57
GIP III ZEPHYR ACQUISITION PARTNERS, L.P.	INVRGRV-12106	06/29/2021	Solar farms	603.00.5300.444.40020	2,171.78
INSPEC INC	214892-9	06/29/2021	Design & Construction observation	603.00.5300.444.40040	2,700.00
INSPEC INC	214893-7	06/29/2021	Design & Construction observation	603.00.5300.444.40040	2,500.00
INVER GROVE FORD	5301173	06/29/2021	Brake lining, Rotor ASY	603.140.1450050	238.12
INVER GROVE FORD	5301174	06/29/2021	Brake lining, V-Belt	603.00.5300.444.40041	89.95
LAURENTINA DEJONG	05/04/2021	07/06/2021	Materials & Labor	603.00.5300.444.30700	380.00
MACQUEEN EMERGENCY GROUP	P05248	06/29/2021	Brake pad kit, Lumabar, Freight	603.00.5300.444.40041	585.64
MANSFIELD OIL COMPANY	22445508	06/29/2021	Fuel	603.00.5300.444.60021	2,091.55
MN DEPT OF REVENUE	06/23/2021	06/23/2021	May 2021 Fuel tax	603.00.5300.444.60021	223.16
O' REILLY AUTO PARTS	1767-154488	06/29/2021	Manfld Gauge, Service item, Freight	603.00.5300.444.60012	73.74
O' REILLY AUTO PARTS	1767-154914	06/29/2021	HYD Filter	603.140.1450050	69.26
POMP'S TIRE SERVICE, INC.	980081599	06/29/2021	Flat repair	603.00.5300.444.40041	52.00
SNAP-ON INDUSTRIAL	ARV/48587301	06/29/2021	Brake caliper spreader	603.00.5300.444.60040	105.94
TRI-STATE BOBCAT INC.	P56698	06/22/2021	Util Plate	603.00.5300.444.40041	(195.00)
UNIFIRST CORPORATION	0631431	06/29/2021	Clothing/Uniforms	603.00.5300.444.40065	105.75
UNIFIRST CORPORATION	0631431	06/29/2021	Clothing/Uniforms	603.00.5300.444.60045	21.14
WORLD FUEL SERVICES	237382677561-41801	06/29/2021	Fuel	603.00.5300.444.40041	155.15
WORLD FUEL SERVICES	237385107740-41801	06/29/2021	Fuel	603.140.1450050	785.93
Fund: 603 - CENTRAL EQUIPMENT					12,289.68
INNOVATIVE OFFICE SOLUTIONS	SUM-062023	07/06/2021	June 2021	604.00.2200.416.60010	402.44
Fund: 604 - CENTRAL STORES					402.44
B & B SHEETMETAL AND ROOFING, INC.	58390	06/29/2021	Contract	605.00.7500.460.80200	11,305.00
HUEBSCH SERVICES	20084622	06/29/2021	Mats	605.00.7500.460.40050	139.59
LAURENTINA DEJONG	05/04/2021	07/06/2021	Materials & Labor	605.00.7500.460.30700	765.00
MCKINSTRY ESSENTION LLC	20048857	06/29/2021	Capital planning and BAS optimization	605.00.7500.460.30700	4,037.50
Fund: 605 - CITY FACILITIES					16,247.09
BARR ENGINEERING COMPANY	23190328.20-16	06/29/2021	Project reviews and studies	702.229.2288503	140.00
BARR ENGINEERING COMPANY	23190328.20-16	06/29/2021	Project reviews and studies	702.229.2289403	868.00
BARR ENGINEERING COMPANY	23190328.20-16	06/29/2021	Project reviews and studies	702.229.2291502	322.00
BARR ENGINEERING COMPANY	23190328.20-16	06/29/2021	Project reviews and studies	702.229.2293903	266.00
BARR ENGINEERING COMPANY	23190328.20-16	06/29/2021	Project reviews and studies	702.229.2295703	345.00
BARR ENGINEERING COMPANY	23190328.20-16	06/29/2021	Project reviews and studies	702.229.2299203	1,688.00
LARSON, DENNIS	06/28/2021	06/29/2021	Refund hydrant permit #2108	702.229.2294300	1,500.00
WASHINGTON COUNTY COURT ADMIN	121900307	07/06/2021	Alyssa Jaworski Bail	702.229.2291000	200.00
WASHINGTON COUNTY COURT ADMIN	121900852	07/06/2021	Farah Lee Finch Bail	702.229.2291000	200.00
Fund: 702 - ESCROW FUND					5,529.00
Grand Total					332,595.07



Request for Council Action

Personnel Actions

		Fiscal/FTE Impact	Mark all that apply
Meeting Date:	July 12, 2021	None	X
Item Type:	Consent Agenda	Amount included in current budget	
Contact:		Budget amendment requested	
Prepared by:	Cora Bauer, HR Coord.	FTE included in current complement	
Reviewed by:	Janet Shefchik, HR Manager	New FTE requested - N/A	
		Other	

PURPOSE/ACTION REQUESTED:

Staff requests that Council confirm and approve the personnel actions listed below.

Seasonal/Temporary Employment:

Hailey Suchy, Lifeguard

Hannah Huntley, Recreation Instructor

Voluntary Resignations, Retirements and/or Terminations:

Ben West, GIS Technician

Mike Bauer, Firefighter

**Request for Council Action****Approve Custom Grading Agreement for Lot 11, Block 2, Rolling Hills (7880 Boyd Ave)**

		Fiscal/FTE Impact	Mark all that apply
Meeting Date:	July 12, 2021	None	X
Item Type:	Consent	Amount included in current budget	
Contact:	Thomas J. Kaldunski 651-315-6336	Budget amendment requested	
Prepared by:	Thomas J. Kaldunski City Engineer	FTE included in current complement	
Reviewed by:		New FTE requested - N/A	
		Other	Engineering Escrow provided by owner

PURPOSE/ACTION REQUESTED

Approve Custom Grading Agreement for Lot 11, Block 2, Rolling Hills (7880 Boyd Ave).

SUMMARY

The owner of 7880 Boyd Ave is affected by the City Ordinance Title 9, Chapter 5, Section 9-5-5. This ordinance requires lots of record which do not have recorded contracts or agreements with the City to provide information to ensure the Development meets current City standards for grading, erosion control and storm water management.

The owner, Elizabeth J. Danner, has provided the required Grading and Erosion control plans. They have signed the Custom Grading Agreement (attached) which spells out the conditions to be met. An engineering escrow of \$1,500 has been provided to cover costs incurred by the City for review and inspection of the site grading. A building permit has been applied for and a \$10,000 LOC or cash surety has been provided.

It is recommended the City approve the Custom Grading Agreement relating to Lot 11, Block 2, Rolling Hills.

TJK/np

Attachment: Custom Grading Agreement

CUSTOM GRADING AGREEMENT
FOR
LOT 11, BLOCK 2, ROLLING HILLS,
INVER GROVE HEIGHTS,
DAKOTA COUNTY, MINNESOTA

CUSTOM GRADING AGREEMENT
FOR
LOT 11, BLOCK 2, ROLLING HILLS,
INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA

THIS CUSTOM GRADING AGREEMENT (Agreement) is made and entered into on the 12th day of July, 2021, by and between the City of Inver Grove Heights, a Minnesota municipal corporation (City), and the Owner identified herein.

RECITALS:

WHEREAS, the Owner has applied to the City for approval of the Development Plans and a building permit for construction of a home on the Property;

WHEREAS, in conjunction with the granting of these approvals, the City requires that the Property be improved with grading, drainage and erosion control facilities;

WHEREAS, the Council has agreed to approve the Development Plans on the following conditions:

1. That the Owner enter into this Custom Grading Agreement, which contract defines the work which the Owner undertakes to complete; and
2. The Owner shall provide an irrevocable letter of credit in the amount and with conditions satisfactory to the City, providing for the actual construction and installation of such Improvements within the period specified by the City.

WHEREAS, the Owner has filed four (4) complete sets of the Development Plans with the City;

WHEREAS, the Development Plans have been prepared by a registered professional engineer and have been approved by the Director of PWD.

NOW, THEREFORE, subject to the terms and conditions of this Custom Grading Agreement and in reliance upon the representations, warranties and covenants of the parties herein contained, the City and Owner agree as follows:

ARTICLE 1
DEFINITIONS

1.1 TERMS. The following terms, unless elsewhere defined specifically in the Custom Grading Agreement, shall have the following meanings as set forth below.

1.2 CITY. "City" means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 OWNER. "Owner" means Elizabeth J. Danner, a single person, and her successors and assigns.

1.4 DEVELOPMENT PLANS. "Development Plans" means all those plans, drawings, specifications and surveys identified in and attached to Appendix 1.

The Development Plans also include modifications of the above referenced Development Plans as approved from time to time by the City Engineer.

1.5 CUSTOM GRADING AGREEMENT. "Custom Grading Agreement" means this instant contract by and between the City and Owner.

1.6 COUNCIL. "Council" means the Council of the City of Inver Grove Heights.

1.7 PWD. "PWD" means the Public Works Department of the City of Inver Grove Heights.

1.8 DIRECTOR OF PWD. "Director of PWD" means the Director of the Public Works Department of the City of Inver Grove Heights and his delegates.

1.9 COUNTY. "County" means Dakota County, Minnesota.

1.10 OTHER REGULATORY AGENCIES. "Other Regulatory Agencies" means and includes the following:

- a.) Minnesota Department of Transportation
- b.) Dakota County
- c.) Water Management Organization
- d.) State of Minnesota
- e.) Minnesota Department of Natural Resources
- f.) any other regulatory or governmental agency or entity affected by, or having jurisdiction over the Improvements.

1.11 UTILITY COMPANIES. "Utility Companies" means and includes the following:

- a.) utility companies, including electric, gas and cable
- b.) pipeline companies.

1.12 PRIOR EASEMENT HOLDERS. "Prior Easement Holders" means and includes

all holders of any easements or other property interests which existed prior to the grant or dedication of any public easements transferred by the Property or transferred pursuant to this Custom Grading Agreement.

1.13 IMPROVEMENTS. "Improvements" means and includes, individually and collectively, all the improvements identified in Article 3 and on the attached Appendix 2.

1.14 OWNER DEFAULT. "Owner Default" means and includes any of the following or any combination thereof:

- a.) failure by the Owner to timely pay the City any money required to be paid under this Custom Grading Agreement;
- b.) failure by the Owner to timely construct the Improvements according to the Development Plans and the City standards and specifications;
- c.) failure by the Owner to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Custom Grading Agreement;
- d.) breach of the Owner Warranties.

1.15 FORCE MAJEURE. "Force Majeure" means acts of God, including, but not limited to floods, ice storms, blizzards, tornadoes, landslides, lightning and earthquakes (but not including reasonably anticipated weather conditions for the geographic area), riots, insurrections, war or civil disorder affecting the performance of work, blockades, power or other utility failures, and fires or explosions.

1.16 OWNER WARRANTIES. "Owner Warranties" means that the Owner hereby warrants and represents the following:

- A. **AUTHORITY.** Owner has the right, power, legal capacity and authority to enter into and perform its obligations under this Custom Grading Agreement; no approvals or consents of any persons are necessary in connection with the authority of Owner to enter into and perform its obligations under this Custom Grading Agreement.
- B. **FULL DISCLOSURE.** None of the representatives and warranties made by Owner or made in any exhibit hereto or memorandum or writing furnished or to be furnished by Owner or on its behalf contains or will contain any untrue statement of material fact or omit any material fact the omission of which would be misleading.
- C. **PLAN COMPLIANCE.** The Development Plans comply with all City, County, metropolitan, state and federal laws and regulations, including but not limited to subdivision ordinances, zoning ordinances and environmental regulations.
- D. **FEE TITLE.** The Owner owns fee title to the Property.

- E. **WARRANTY ON PROPER WORK AND MATERIALS.** The Owner warrants all work required to be performed by it under this Custom Grading Agreement against defective material and faulty workmanship for a period of two (2) years after its completion. During the warranty period the Owner shall be solely responsible for all costs of performing repair work required by the City within thirty (30) days of notification. All trees, grass, and sod shall be warranted to be alive, of good quality, and disease free for one year after planting. Any replacements shall be similarly warranted for one year from the time of planting. In addition, the warranty period for drainage and erosion control improvements shall be for two (2) years after completion; the warranty for the drainage and erosion control improvements shall also include the obligation of the Owner to repair and correct and damage to or deficiency with respect to such improvements.

1.17 **CITY WARRANTIES.** "City Warranties" means that the City hereby warrants and represents as follows:

- A. **ORGANIZATION.** City is a municipal corporation duly incorporated and validly existing in good standing under the laws of the State of Minnesota.
- B. **AUTHORITY.** City has the right, power, legal capacity and authority to enter into and perform its obligations under this Custom Grading Agreement.

1.18 **FORMAL NOTICE.** "Formal Notice" means notices given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, addressed as follows:

If to CITY: City of Inver Grove Heights
Attention: City Administrator
Inver Grove Heights City Hall
8150 Barbara Avenue
Inver Grove Heights, MN 55077

If to Owner: Elizabeth J. Danner
7880 Boyd Avenue East
Inver Grove Heights, MN 55076

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above, provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

1.19 **PROPERTY.** "Property" means the real property located in the City of Inver Grove Heights, Dakota County, Minnesota legally described on **Exhibit A** attached hereto.

ARTICLE 2

APPROVAL OF DEVELOPMENT PLANS

2.1. APPROVAL OF DEVELOPMENT PLANS. Subject to the terms and conditions of this Custom Grading Agreement, the recitals above, and all other applicable City Code provisions and subject to the conditions and requirements set forth by the City Engineer, the City hereby approves the Development Plans.

2.2 RECORDING. This Custom Grading Agreement shall be recorded with the County Recorder within thirty (30) days from the date of this Custom Grading Agreement. No building permit shall be issued unless the Owner shows evidence to the City that this Custom Grading Agreement has been recorded with the County Recorder.

ARTICLE 3

IMPROVEMENTS

3.1 IMPROVEMENTS. The Owner shall install, at their own cost, the Improvements in accord with the Development Plans. The Owner Improvements shall be completed by the dates shown on Appendix 2, except as completion dates are extended by subsequent written action of the Director of PWD. Failure of the City to promptly take action to enforce this Custom Grading Agreement after expiration of time by which the Improvements are to be completed shall not waive or release any rights of the City; the City may take action at any time thereafter, and the terms of this contract shall be deemed to be automatically extended until such time as the Improvements are completed to the City's satisfaction.

3.2 GROUND MATERIAL. The Owner shall ensure that adequate and suitable ground material shall exist in the areas of private driveways and utility improvements and shall guarantee the removal, replacement or repair of substandard or unstable material. The cost of removal, replacement or repair is the responsibility of the Owner.

3.3 GRADING/DRAINAGE PLAN. The Owner shall construct drainage facilities in accord with the Development Plans. The grading and drainage plan shall include lot and building elevations, drainage swales to be sodded, storm sewer, catch basins, erosion control structures and ponding areas necessary to conform with the overall City storm sewer plan. The grading of the Property shall be completed in conformance with the Development Plans.

3.4 BOULEVARD AND AREA RESTORATION. The Owner shall seed or lay cultured sod in all boulevards within 30 days of the completion of street related improvements and restore all other areas disturbed by the development grading operation in accordance with the approved erosion control plan. Upon request of the PWD, the Owner shall remove the silt fences after grading and construction have occurred.

3.5 STREET MAINTENANCE, ACCESS AND REPAIR. The Owner shall clear, on a daily basis, any soil, earth or debris from the streets and wetlands within or adjacent to the Property resulting from the grading or building on the land within the Property by the Owner or its agents, and

shall repair to the City's specifications any damage to bituminous surfacing resulting from the use of construction equipment.

3.6 LANDSCAPING. Site landscaping shall be in accordance with the Development Plans.

3.7 DRIVEWAY. If a driveway is proposed to be constructed, the Owner must construct the driveway per City requirements.

3.8 EROSION CONTROL. The Owner shall provide and follow a plan for erosion control and pond maintenance in accord with the Best Management Practices (BMP) as delineated in the Minnesota Pollution Control Agency handbook titled Water Quality in Urban Areas. Such plan shall be detailed on the Development Plans and shall be subject to approval of the Director of PWD. The Owner shall install and maintain such erosion control structures as appear necessary under the Development Plans or become necessary subsequent thereto. The Owner shall be responsible for all damage caused as the result of grading and excavation within the Property including, but not limited to, restoration of existing control structures and clean-up of public right-of-way, until the Property is final graded and Improvements are completed. As a portion of the erosion control plan, the Owner shall re-seed or sod any disturbed areas in accordance with the Development Plans. The City reserves the right to perform any necessary erosion control or restoration as required, if these requirements are not complied with after Formal Notice by the City as stated in Article 9. The Owner shall be financially responsible for payment for this extra work.

3.9 GRADING/DRAINAGE PLAN AND EASEMENTS. The Owner shall construct drainage facilities adequate to serve the Property in accord with the Development Plans. The Owner agrees to grant to the City all necessary easements for the preservation of the drainage system, for drainage basins, and for utility service. All such easements required by the City shall be on the Property or in writing, in recordable form, and on the standard easement form of the City, and on such other terms and conditions as the City shall determine; such easements shall be delivered to the City contemporaneously with execution of this Agreement. The grading and drainage plan shall include lot and building elevations, drainage swales to be sodded, storm sewer, catch basins, erosion control structures and ponding areas necessary to conform with the overall City storm sewer plan. The grading of the site shall be completed in conformance with the Development Plans. In the event that the Owner fails to complete the grading of the site in conformance with the Development Plans by the stipulated date, the City may declare the Owner in default pursuant to Article 9.

3.10 AS BUILT INFORMATION. The record plan "as built" drawings of the Improvements shall be provided by the Owner in accordance with City standards no later than 90 days after completion and acceptance of the Improvements by the City, unless otherwise approved in writing by the Director of Public Works. If the record plans are not provided to the City within the 90 days, the City may have this work done and pay for it with the Owner's sureties.

Final as-built information shall be submitted in an electronic format compatible with the City's Geographic Information System (GIS). All information must be on the Dakota County coordinates system. Compatible formats are emailed AUTOCAD .DWG or .DXF. As-built drawings shall also be scanned, stored and emailed as images in .TIFF or .PDF. All as-built drawings must be

the approved plans modified to reflect as-built conditions. Note: All corrected lines, grades and elevations shall have a line drawn through the original text and the new information placed nearby; the original information or text shall not be erased.

3.11 RETAINING WALL. If a retaining wall will be constructed on the Property as part of the Improvements, then prior to the City issuing a building permit for the Property, a retaining wall permit must be issued by the City. If the Property is to have a retaining wall constructed as part of the Improvements, then prior to the City granting a temporary certificate of occupancy or a final certificate of occupancy for the Property, the retaining wall permit must be complete, wall certification must be received and accepted by the Chief Building Official, grading associated with the retaining wall must be accepted by the City Engineer and the retaining wall record drawing must be received and accepted by the City.

ARTICLE 4 **OTHER PERMITS**

4.1 PERMITS. The Owner shall obtain all necessary approvals, permits and licenses from the City, the Other Regulatory Agencies, the Utility Companies, and the Prior Easement Holders. Major design requirements of any such entities shall be determined prior to completion and incorporated into the Development Plans. All costs incurred to obtain the approvals, permits and licenses, and also all fines or penalties levied by any agency due to the failure of the Owner to obtain or comply with conditions of such approvals, permits and licenses, shall be paid by the Owner. The Owner shall defend and hold the City harmless from any action initiated by the Other Regulatory Agencies, the Utility Companies and the Prior Easement Holders resulting from such failures of the Owner.

ARTICLE 5 **RESPONSIBILITY FOR COSTS**

5.1 IMPROVEMENT COSTS. The Owner shall pay for the Improvements; that is, all costs of persons doing work or furnishing skills, tools, machinery or materials, or insurance premiums or equipment or supplies and all just claims for the same; and the City shall be under no obligation to pay the contractor or any subcontractor any sum whatsoever on account thereof, whether or not the City shall have approved the contract or subcontract.

5.2 CITY MISCELLANEOUS EXPENSES. The Owner shall reimburse the City for all engineering, administrative, legal and other expenses incurred or to be incurred by the City in connection with this Custom Grading Agreement. Bills not paid within thirty (30) days shall accrue interest at the rate of eight percent per year.

5.3 ENFORCEMENT COSTS. The Owner shall pay the City for costs incurred in the enforcement of this Custom Grading Agreement, including engineering and attorneys' fees.

5.4 TIME OF PAYMENT. The Owner shall pay all bills from the City within thirty (30) days after billing. Bills not paid within thirty (30) days shall bear interest at the rate of 8% per year.

ARTICLE 6
OWNER WARRANTIES

6.1 STATEMENT OF OWNER WARRANTIES. The Owner hereby makes and states the Owner Warranties.

ARTICLE 7
CITY WARRANTIES

7.1 STATEMENT OF CITY WARRANTIES. The City hereby makes and states the City Warranties.

ARTICLE 8
INDEMNIFICATION OF CITY

8.1 INDEMNIFICATION OF CITY. Owner shall indemnify, defend and hold the City, its Council, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and attorneys' fees, that the City incurs or suffers, which arise out of, result from or relate to:

- a.) breach by the Owner of the Owner Warranties;
- b.) failure of the Owner to timely construct the Improvements according to the Development Plans and the City ordinances, standards and specifications;
- c.) failure by the Owner to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Custom Grading Agreement;
- d.) failure by the Owner to pay contractors, subcontractors, laborers, or material;
- e.) failure by the Owner to pay for materials;
- f.) approval by the City of the Development Plans;
- g.) failure to obtain the necessary permits and authorizations to construct the Improvements;
- h.) construction of the Improvements;
- i.) delays in construction of the Improvements;
- j.) all costs and liabilities arising because building permits were issued prior to the completion and acceptance of the Improvements.

ARTICLE 9
CITY REMEDIES UPON OWNER DEFAULT

9.1 CITY REMEDIES. If an Owner Default occurs, that is not caused by Force Majeure, the City shall give the Owner Formal Notice of the Owner Default and the Owner shall have ten (10) business days to cure the Owner Default. If the Owner, after Formal Notice to it by the City, does not cure the Owner Default within ten (10) business days, then the City may avail itself of any remedy afforded by law and any of the following remedies:

- a.) the City may specifically enforce this Custom Grading Agreement;
- b.) the City may collect on the irrevocable letter of credit or cash deposit pursuant to Article 13 hereof;
- c.) the City may suspend or deny building and occupancy permits for the Property;
- d.) the City may, at its sole option, perform the work or improvements to be performed by the Owner, in which case the Owner shall within thirty (30) days after written billing by the City reimburse the City for any costs and expenses incurred by the City.

9.2 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained in this Custom Grading Agreement is breached by the Owner and thereafter waived in writing by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder. All waivers by the City must be in writing.

9.3 NO REMEDY EXCLUSIVE. No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Custom Grading Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the Formal Notice.

9.4 EMERGENCY. Notwithstanding the requirement contained in Section 9.1 hereof relating to Formal Notice to the Owner in case of a Owner Default and notwithstanding the requirement contained in Section 9.1 hereof relating to giving the Owner a ten (10) business day period to cure the Owner Default, in the event of an emergency as determined by the Director of PWD, resulting from the Owner Default, the City may perform the work or improvement to be performed by the Owner without giving any notice or Formal Notice to the Owner and without giving the Owner the ten (10) day period to cure the Owner Default. In such case, the Owner shall within thirty (30) days after written billing by the City reimburse the City for any and all costs incurred by the City.

ARTICLE 10
ESCROW DEPOSIT

10.1 ESCROW REQUIREMENT. Contemporaneously herewith, the Owner shall deposit with the City an irrevocable letter of credit, or cash deposit for the amount of \$10,000.

The bank and form of the irrevocable letter of credit, or cash deposit shall be subject to approval by the City Finance Director and City Attorney and shall continue to be in full force and effect until released by the City. The irrevocable letter of credit shall be for a term ending December 31, 2023. In the alternative, the letter of credit may be for a one year term provided it is automatically renewable for successive one year periods from the present or any future expiration dates with a final expiration date of December 31, 2023, and further provided that the irrevocable letter of credit states that at least sixty (60) days prior to the expiration date the bank will notify the City that if the bank elects not to renew for an additional period. The irrevocable letter of credit shall secure compliance by the Owner with the terms of this Custom Grading Agreement. The City may draw down on the irrevocable letter of credit or cash deposit, without any further notice than that provided in Section 9.1 relating to a Owner Default, for any of the following reasons:

- a.) a Owner Default; or
- b.) upon the City receiving notice that the irrevocable letter of credit will be allowed to lapse before December 31, 2023.

The City shall use the escrow proceeds to reimburse the City for its costs and to cause the Improvements to be constructed to the extent practicable; after the Director of PWD determines that such Improvements have been constructed and after retaining 10% of the proceeds for later distribution pursuant to Section 10.2, the remaining proceeds shall be distributed to Owner.

With City approval, the irrevocable letter of credit or cash deposit may be reduced pursuant to Section 10.2 from time to time as financial obligations are paid.

10.2 ESCROW RELEASE AND ESCROW INCREASE.

Periodically, upon the Owner's written request and upon completion by the Owner and acceptance by the City of any specific Improvements, ninety percent (90%) of that portion of the irrevocable letter of credit, or cash deposit covering those specific completed improvements only shall be released. The final ten percent (10%) of that portion of the irrevocable letter of credit, or cash deposit, for those specific completed improvements shall be held until acceptance by the City and expiration of the warranty period under Section 1.16 hereof; in the alternative, the Owner may post a bond satisfactory to the City with respect to the final ten percent (10%).

10.3 ENGINEERING ESCROW AMOUNT. The Owner has deposited \$1,500 in cash with the City (hereafter "Engineering Escrow Amount") prior to execution of this Agreement.

The Engineering Escrow Amount shall be used to pay the City for engineering review and inspection expenses, attorney's fees, consultant fees, erosion and sediment control expenses, staff

review time associated with coordination, review, design, preparation and inspection of the Development Plans, the Improvements, and this Agreement and other associated City costs. Fees will be calculated at the City's standard rates charged for such tasks.

The Engineering Escrow Amount shall also be available to the City to pay for deficiencies and problems related to grading, drainage and erosion control and vegetative cover and landscaping on the Property in the event such problems and deficiencies arise. The City may also use the Engineering Escrow Amount to correct any such deficiencies or problems or to protect against further deficiencies or problems.

The City shall return to the Owner any remaining Engineering Escrow Amount when all the following events have occurred:

- a.) all of the landscaping and vegetative cover has been established to the sole satisfaction of the City.

To the extent the engineering inspection charges or the amount needed to correct the deficiencies and problems relating to grading, drainage, erosion control, or landscaping exceed the initially deposited \$1,500 Engineering Escrow Amount, the Owner is responsible for payment of such excess within thirty (30) days after billing by the City.

ARTICLE 11 **MISCELLANEOUS**

11.1 CITY'S DUTIES. The terms of this Custom Grading Agreement shall not be considered an affirmative duty upon the City to complete any Improvements.

11.2 NO THIRD PARTY RECOURSE. Third parties shall have no recourse against the City under this Custom Grading Agreement.

11.3 VALIDITY. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Custom Grading Agreement is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this Custom Grading Agreement.

11.4 RECORDING. The City shall, at Owner's cost, record this Agreement with the Dakota County Recorder.

11.5 BINDING AGREEMENT. This Agreement shall run with the Property and shall inure to the benefit of the Owner and the City and shall bind Owner and the successors and assigns of Owner and shall be binding upon the City and the successor's and assigns of the City. This Agreement shall also be binding upon any right title or interest of the parties to the Property acquired after the date of this Agreement or acquired after the date of recording of this Agreement.

11.6 ASSIGNMENT. The Owner may not assign this Custom Grading Agreement without the written permission of the Council. The Owner's obligations hereunder shall continue in full force and effect, even if the Owner sells the Property.

11.7 AMENDMENT AND WAIVER. The parties hereto may by mutual written agreement amend this Custom Grading Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Custom Grading Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Custom Grading Agreement, waive compliance by another with any of the covenants contained in this Custom Grading Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Custom Grading Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Custom Grading Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

11.8 GOVERNING LAW. This Custom Grading Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

11.9 COUNTERPARTS. This Custom Grading Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

11.10 HEADINGS. The subject headings of the paragraphs and subparagraphs of this Custom Grading Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

11.11 INCONSISTENCY. If the Development Plans are inconsistent with the words of this Custom Grading Agreement or if the obligation imposed hereunder upon the Owner are inconsistent, then that provision or term which imposes a greater and more demanding obligation on the Owner shall prevail.

11.12 ACCESS. The Owner hereby grants to 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 during the installation of Improvements.

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IN WITNESS WHEREOF, the parties have executed this Custom Grading Agreement.

CITY OF INVER GROVE HEIGHTS

By: _____
Tom Bartholomew
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this 12th day of July, 2021, before me a Notary Public within and for said County, personally appeared Tom Bartholomew and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

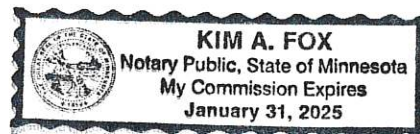
OWNER:

Elizabeth J. Danner
Elizabeth J. Danner

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

The foregoing instrument was acknowledged before me this 30th day of ~~July~~ June, 2021, by Elizabeth J. Danner, a single person.

Kim A. Fox
Notary Public



THIS INSTRUMENT DRAFTED BY:

Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
(651) 451-1831

**AFTER RECORDING, PLEASE
RETURN DOCUMENT TO:**

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Inver Grove Heights, County of Dakota, State of Minnesota legally described as follows:

Lot 11, Block 2, Rolling Hills, Dakota County, Minnesota.

APPENDIX 1
LIST OF DEVELOPMENT PLANS

<u>PLAN</u>	<u>DATE OF PLAN PREPARATION</u>	<u>PREPARED BY</u>
Site Plan	6-16-21	W. Brown Land Surveying, Inc.

The Development Plans were approved by the City Engineer on June 29, 2021.

APPENDIX 2
IMPROVEMENTS

The items checked with an "X" below are the Improvements.

<u>CHECKED</u>	<u>COMPLETION DATE</u>	<u>IMPROVEMENT</u>
<u> X </u>	Prior to obtaining building permit or 12-31-21, whichever occurs first	Grading, drainage, and sediment & erosion control
<u> X </u>	Prior to certificate of occupancy	As-built



Request for Council Action

TITLE: Approval of Master Joint Powers Agreement for Use of Criminal Justice Data Communications Network

		Fiscal/FTE Impact	Mark all that apply
Meeting Date:	July 12, 2021	None	
Item Type:	Consent	Amount included in current budget	x
Contact:	Chief Melissa Chiodo	Budget amendment requested	
Prepared by:	Chief Melissa Chiodo	FTE included in current complement	
Reviewed by:	Bridget Nason, City Attorney	New FTE requested - N/A	
		Other	

PURPOSE/ACTION REQUESTED:

The City of Inver Grove Heights has an existing Master Joint Powers Agreement with the State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension, to use systems and tools available over the State's criminal justice data communications network for which the City is eligible. The existing JPA is expiring shortly, and the City is required to execute a new JPA, along with a Court Amendment, in order for the Police Department and Prosecuting Attorney's office to continue to have access to these systems.

SUMMARY:

The Council is asked to consider approval of the attached three documents:

1. Resolution approving Joint Powers Agreement
2. Joint Powers Agreement
3. Court Amendment

RESOLUTION NO. _____

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

**RESOLUTION APPROVING STATE OF MINNESOTA JOINT POWERS
AGREEMENTS WITH THE CITY OF INVER GROVE HEIGHTS ON BEHALF OF ITS
CITY ATTORNEY AND POLICE DEPARTMENT**

WHEREAS, the City of Inver Grove Heights (City) on behalf of its Prosecuting Attorney and Police Department desires to enter into Joint Powers Agreements with the State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension to use systems and tools available over the State's criminal justice data communications network for which the City is eligible. The Joint Powers Agreements further provide the City with the ability to add, modify and delete connectivity, systems and tools over the five year life of the agreement and obligates the City to pay the costs for the network connection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Inver Grove Heights, Minnesota as follows:

1. That the State of Minnesota Joint Powers Agreements by and between the State of Minnesota acting through its Department of Public Safety, Bureau of Criminal Apprehension and the City of Inver Grove Heights on behalf of its Prosecuting Attorney and Police Department, are hereby approved.
2. That the Chief Melissa Chiodo, or her successor, is designated the Authorized Representative for the Police Department. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.
3. That the Prosecuting Attorney Bridget McCauley Nason, or her successor, is designated the Authorized Representative for the Prosecuting Attorney. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.
4. That Thomas Bartholomew, the Mayor for the City of Inver Grove Heights and Rebecca Kiernan, the City Clerk, are authorized to sign the State of Minnesota Joint Powers Agreements.

Passed and Adopted by the Council on this 12th day of July, 2021.

CITY OF INVER GROVE HEIGHTS

By: Thomas Bartholomew
Its: Mayor

ATTEST:

By: Rebecca Kiernan
Its: City Clerk



State of Minnesota Joint Powers Agreement

This Agreement is between the State of Minnesota, acting through its Department of Public Safety on behalf of the Bureau of Criminal Apprehension ("BCA"), and the City of Inver Grove Heights on behalf of its Prosecuting Attorney ("Governmental Unit"). The BCA and the Governmental Unit may be referred to jointly as "Parties."

Recitals

Under Minn. Stat. § 471.59, the BCA and the Governmental Unit are empowered to engage in agreements that are necessary to exercise their powers. Under Minn. Stat. § 299C.46, the BCA must provide a criminal justice data communications network to benefit political subdivisions as defined under Minn. Stat. § 299C.46, subd. 2 and subd. 2(a). The Governmental Unit is authorized by law to utilize the criminal justice data communications network pursuant to the terms set out in this Agreement. In addition, BCA either maintains repositories of data or has access to repositories of data that benefit authorized political subdivisions in performing their duties. The Governmental Unit wants to access data in support of its official duties.

The purpose of this Agreement is to create a method by which the Governmental Unit has access to those systems and tools for which it has eligibility, and to memorialize the requirements to obtain access and the limitations on the access.

Agreement

1 Term of Agreement

- 1.1 Effective Date.** This Agreement is effective on the date the BCA obtains all required signatures under Minn. Stat. § 16C.05, subdivision 2.
- 1.2 Expiration Date.** This Agreement expires five years from the date it is effective.

2 Agreement Between the Parties

- 2.1 General Access.** BCA agrees to provide Governmental Unit with access to the Minnesota Criminal Justice Data Communications Network (CJDN) and those systems and tools which the Governmental Unit is authorized by law to access via the CJDN for the purposes outlined in Minn. Stat. § 299C.46.
- 2.2 Methods of Access.**

The BCA offers three (3) methods of access to its systems and tools. The methods of access are:

 - A. **Direct access** occurs when individual users at the Governmental Unit use the Governmental Unit's equipment to access the BCA's systems and tools. This is generally accomplished by an individual user entering a query into one of BCA's systems or tools.
 - B. **Indirect Access** occurs when individual users at the Governmental Unit go to another Governmental Unit to obtain data and information from BCA's systems and tools. This method of access generally results in the Governmental Unit with indirect access obtaining the needed data and information in a physical format like a paper report.
 - C. **Computer-to-Computer System Interface** occurs when the Governmental Unit's computer exchanges data and information with BCA's computer systems and tools using an interface. Without limitation, interface types include: state message switch, web services, enterprise service bus and message queuing.

For purposes of this Agreement, Governmental Unit employees or contractors may use any of these methods to use BCA's systems and tools as described in this Agreement. Governmental Unit will select a

method of access and can change the methodology following the process in Clause 2.10.

- 2.3 Federal Systems Access.** In addition, pursuant to 28 CFR §20.30-38 and Minn. Stat. §299C.58, BCA may provide Governmental Unit with access to the Federal Bureau of Investigation (FBI) National Crime Information Center.
- 2.4 Governmental Unit Policies.** Both the BCA and the FBI's Criminal Justice Information Systems (FBI-CJIS) have policies, regulations and laws on access, use, audit, dissemination, hit confirmation, logging, quality assurance, screening (pre-employment), security, timeliness, training, use of the system, and validation. Governmental Unit has created its own policies to ensure that Governmental Unit's employees and contractors comply with all applicable requirements. Governmental Unit ensures this compliance through appropriate enforcement. These BCA and FBI-CJIS policies and regulations, as amended and updated from time to time, are incorporated into this Agreement by reference. The policies are available at <https://bcanextest.x.state.mn.us/launchpad/>.
- 2.5 Governmental Unit Resources.** To assist Governmental Unit in complying with the federal and state requirements on access to and use of the various systems and tools, information is available at <https://sps.x.state.mn.us/sites/bcaservicecatalog/default.aspx>. Additional information on appropriate use is found in the Minnesota Bureau of Criminal Apprehension Policy on Appropriate Use of Systems and Data available at <https://bcanextest.x.state.mn.us/launchpad/cjisdocs/docs.cgi?cmd=FS&ID=795&TYPE=DOCS>.
- 2.6 Access Granted.**
- A. Governmental Unit is granted permission to use all current and future BCA systems and tools for which Governmental Unit is eligible. Eligibility is dependent on Governmental Unit (i) satisfying all applicable federal or state statutory requirements; (ii) complying with the terms of this Agreement; and (iii) acceptance by BCA of Governmental Unit's written request for use of a specific system or tool.
 - B. To facilitate changes in systems and tools, Governmental Unit grants its Authorized Representative authority to make written requests for those systems and tools provided by BCA that the Governmental Unit needs to meet its criminal justice obligations and for which Governmental Unit is eligible.
- 2.7 Future Access.** On written request from the Governmental Unit, BCA also may provide Governmental Unit with access to those systems or tools which may become available after the signing of this Agreement, to the extent that the access is authorized by applicable state and federal law. Governmental Unit agrees to be bound by the terms and conditions contained in this Agreement that when utilizing new systems or tools provided under this Agreement.
- 2.8 Limitations on Access.** BCA agrees that it will comply with applicable state and federal laws when making information accessible. Governmental Unit agrees that it will comply with applicable state and federal laws when accessing, entering, using, disseminating, and storing data. Each party is responsible for its own compliance with the most current applicable state and federal laws.
- 2.9 Supersedes Prior Agreements.** This Agreement supersedes any and all prior agreements between the BCA and the Governmental Unit regarding access to and use of systems and tools provided by BCA.
- 2.10 Requirement to Update Information.** The parties agree that if there is a change to any of the information whether required by law or this Agreement, the party will send the new information to the other party in writing within 30 days of the change. This clause does not apply to changes in systems or tools provided under this Agreement.

This requirement to give notice additionally applies to changes in the individual or organization serving the Governmental Unit as its prosecutor. Any change in performance of the prosecutorial function must be provided to the BCA in writing by giving notice to the Service Desk, BCA.ServiceDesk@state.mn.us.

- 2.11 Transaction Record.** The BCA creates and maintains a transaction record for each exchange of data utilizing its systems and tools. In order to meet FBI-CJIS requirements and to perform the audits described in Clause 7, there must be a method of identifying which individual users at the Governmental Unit conducted a

particular transaction.

If Governmental Unit uses either direct access as described in Clause 2.2A or indirect access as described in Clause 2.2B, BCA's transaction record meets FBI-CJIS requirements.

When Governmental Unit's method of access is a computer-to-computer interface as described in Clause 2.2C, the Governmental Unit must keep a transaction record sufficient to satisfy FBI-CJIS requirements and permit the audits described in Clause 7 to occur.

If a Governmental Unit accesses data from the Driver and Vehicle Services Division in the Minnesota Department of Public Safety and keeps a copy of the data, Governmental Unit must have a transaction record of all subsequent access to the data that are kept by the Governmental Unit. The transaction record must include the individual user who requested access, and the date, time and content of the request. The transaction record must also include the date, time and content of the response along with the destination to which the data were sent. The transaction record must be maintained for a minimum of six (6) years from the date the transaction occurred and must be made available to the BCA within one (1) business day of the BCA's request.

- 2.12 Court Information Access.** Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Governmental Unit if the Governmental Unit completes the Court Data Services Subscriber Amendment, which upon execution will be incorporated into this Agreement by reference. These BCA systems and tools are identified in the written request made by the Governmental Unit under Clause 2.6 above. The Court Data Services Subscriber Amendment provides important additional terms, including but not limited to privacy (see Clause 8.2, below), fees (see Clause 3 below), and transaction records or logs, that govern Governmental Unit's access to and/or submission of the Court Records delivered through the BCA systems and tools.
- 2.13 Vendor Personnel Screening.** The BCA will conduct all vendor personnel screening on behalf of Governmental Unit as is required by the FBI CJIS Security Policy. The BCA will maintain records of the federal, fingerprint-based background check on each vendor employee as well as records of the completion of the security awareness training that may be relied on by the Governmental Unit.

3 Payment

The Governmental Unit understands there is a cost for access to the criminal justice data communications network described in Minn. Stat. § 299C.46. At the time this Agreement is signed, BCA understands that a third party will be responsible for the cost of access.

The Governmental Unit will identify the third party and provide the BCA with the contact information and its contact person for billing purposes so that billing can be established. The Governmental Unit will provide updated information to BCA's Authorized Representative within ten business days when this information changes.

If Governmental Unit chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, additional fees, if any, are addressed in that amendment.

4 Authorized Representatives

The BCA's Authorized Representative is the person below, or her successor:

Name:	Dana Gotz, Deputy Superintendent
Address:	Minnesota Department of Public Safety; Bureau of Criminal Apprehension 1430 Maryland Avenue

Saint Paul, MN 55106
Telephone: 651.793.1007
Email Address: Dana.Gotz@state.mn.us

The Governmental Unit's Authorized Representative is the person below, or his/her successor:

Name: Bridget McCauley Nason, Attorney
Address: 633 S Concord St, Suite 400
South St Paul, MN 55075
Telephone: 651.451.1831
Email Address: bnason@levander.com

5 Assignment, Amendments, Waiver, and Agreement Complete

- 5.1 Assignment.** Neither party may assign nor transfer any rights or obligations under this Agreement.
- 5.2 Amendments.** Any amendment to this Agreement, except those described in Clauses 2.6 and 2.7 above must be in writing and will not be effective until it has been signed and approved by the same parties who signed and approved the original agreement, their successors in office, or another individual duly authorized.
- 5.3 Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or the right to enforce it.
- 5.4 Agreement Complete.** This Agreement contains all negotiations and agreements between the BCA and the Governmental Unit. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

6 Liability

Each party will be responsible for its own acts and behavior and the results thereof and shall not be responsible or liable for the other party's actions and consequences of those actions. The Minnesota Torts Claims Act, Minn. Stat. § 3.736 and other applicable laws govern the BCA's liability. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws, governs the Governmental Unit's liability.

7 Audits

- 7.1** Under Minn. Stat. § 16C.05, subd. 5, the Governmental Unit's books, records, documents, internal policies and accounting procedures and practices relevant to this Agreement are subject to examination by the BCA, the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

Under Minn. Stat. § 6.551, the State Auditor may examine the books, records, documents, and accounting procedures and practices of BCA. The examination shall be limited to the books, records, documents, and accounting procedures and practices that are relevant to this Agreement.

- 7.2** Under applicable state and federal law, the Governmental Unit's records are subject to examination by the BCA to ensure compliance with laws, regulations and policies about access, use, and dissemination of data.
- 7.3** If the Governmental Unit accesses federal databases, the Governmental Unit's records are subject to examination by the FBI and BCA; the Governmental Unit will cooperate with FBI and BCA auditors and make any requested data available for review and audit.
- 7.4** If the Governmental Unit accesses state databases, the Governmental Unit's records are subject to examination by the BCA; the Governmental Unit will cooperate with the BCA auditors and make any requested data available for review and audit.

- 7.5 To facilitate the audits required by state and federal law, Governmental Unit is required to have an inventory of the equipment used to access the data covered by this Agreement and the physical location of each.

8 Government Data Practices

- 8.1 **BCA and Governmental Unit.** The Governmental Unit and BCA must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data accessible under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this Agreement. The remedies of Minn. Stat. §§ 13.08 and 13.09 apply to the release of the data referred to in this clause by either the Governmental Unit or the BCA.
- 8.2 **Court Records.** If Governmental Unit chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, the following provisions regarding data practices also apply. The Court is not subject to Minn. Stat. Ch. 13 but is subject to the *Rules of Public Access to Records of the Judicial Branch* promulgated by the Minnesota Supreme Court. All parties acknowledge and agree that Minn. Stat. § 13.03, subdivision 4(e) requires that the BCA and the Governmental Unit comply with the *Rules of Public Access* for those data received from Court under the Court Data Services Subscriber Amendment. All parties also acknowledge and agree that the use of, access to or submission of Court Records, as that term is defined in the Court Data Services Subscriber Amendment, may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law. All parties acknowledge and agree that these applicable restrictions must be followed in the appropriate circumstances.

9 Investigation of Alleged Violations; Sanctions

For purposes of this clause, "Individual User" means an employee or contractor of Governmental Unit.

- 9.1 **Investigation.** The Governmental Unit and BCA agree to cooperate in the investigation and possible prosecution of suspected violations of federal and state law referenced in this Agreement. Governmental Unit and BCA agree to cooperate in the investigation of suspected violations of the policies and procedures referenced in this Agreement. When BCA becomes aware that a violation may have occurred, BCA will inform Governmental Unit of the suspected violation, subject to any restrictions in applicable law. When Governmental Unit becomes aware that a violation has occurred, Governmental Unit will inform BCA subject to any restrictions in applicable law.
- 9.2 **Sanctions Involving Only BCA Systems and Tools.**
The following provisions apply to BCA systems and tools not covered by the Court Data Services Subscriber Amendment. None of these provisions alter the Governmental Unit internal discipline processes, including those governed by a collective bargaining agreement.
- 9.2.1 For BCA systems and tools that are not covered by the Court Data Services Subscriber Amendment, Governmental Unit must determine if and when an involved Individual User's access to systems or tools is to be temporarily or permanently eliminated. The decision to suspend or terminate access may be made as soon as alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. Governmental Unit must report the status of the Individual User's access to BCA without delay. BCA reserves the right to make a different determination concerning an Individual User's access to systems or tools than that made by Governmental Unit and BCA's determination controls.
- 9.2.2 If BCA determines that Governmental Unit has jeopardized the integrity of the systems or tools covered in this Clause 9.2, BCA may temporarily stop providing some or all the systems or tools under this Agreement until the failure is remedied to the BCA's satisfaction. If Governmental Unit's failure is continuing or repeated, Clause 11.1 does not apply and BCA may terminate this Agreement immediately.

9.3 Sanctions Involving Only Court Data Services

The following provisions apply to those systems and tools covered by the Court Data Services Subscriber Amendment, if it has been signed by Governmental Unit. As part of the agreement between the Court and the BCA for the delivery of the systems and tools that are covered by the Court Data Services Subscriber Amendment, BCA is required to suspend or terminate access to or use of the systems and tools either on its own initiative or when directed by the Court. The decision to suspend or terminate access may be made as soon as an alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. The decision to suspend or terminate may also be made based on a request from the Authorized Representative of Governmental Unit. The agreement further provides that only the Court has the authority to reinstate access and use.

9.3.1 Governmental Unit understands that if it has signed the Court Data Services Subscriber Amendment and if Governmental Unit's Individual Users violate the provisions of that Amendment, access and use will be suspended by BCA or Court. Governmental Unit also understands that reinstatement is only at the direction of the Court.

9.3.2 Governmental Unit further agrees that if Governmental Unit believes that one or more of its Individual Users have violated the terms of the Amendment, it will notify BCA and Court so that an investigation as described in Clause 9.1 may occur.

10 Venue

Venue for all legal proceedings involving this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

11 Termination

11.1 Termination. The BCA or the Governmental Unit may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party's Authorized Representative.

11.2 Termination for Insufficient Funding. Either party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to the other party's authorized representative. The Governmental Unit is not obligated to pay for any services that are provided after notice and effective date of termination. However, the BCA will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. Neither party will be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. Notice of the lack of funding must be provided within a reasonable time of the affected party receiving that notice.

12 Continuing Obligations

The following clauses survive the expiration or cancellation of this Agreement: Liability; Audits; Government Data Practices; 9. Investigation of Alleged Violations; Sanctions; and Venue.

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The Parties indicate their agreement and authority to execute this Agreement by signing below.

1. GOVERNMENTAL UNIT

Name: Thomas Bartholomew
(PRINTED)

Signed: _____

Title: Mayor
(with delegated authority)

Date: _____

Name: Rebecca Kiernan
(PRINTED)

Signed: _____

Title: City Clerk
(with delegated authority)

Date: _____

2. DEPARTMENT OF PUBLIC SAFETY, BUREAU OF CRIMINAL APPREHENSION

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

3. COMMISSIONER OF ADMINISTRATION

As delegated to the Office of State Procurement

By: _____

Date: _____

COURT DATA SERVICES SUBSCRIBER AMENDMENT TO CJDN SUBSCRIBER AGREEMENT

This Court Data Services Subscriber Amendment (“Subscriber Amendment”) is entered into by the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension, (“BCA”) and the City of Inver Grove Heights on behalf of its Prosecuting Attorney (“Agency”), and by and for the benefit of the State of Minnesota acting through its State Court Administrator’s Office (“Court”) who shall be entitled to enforce any provisions hereof through any legal action against any party.

Recitals

This Subscriber Amendment modifies and supplements the Agreement between the BCA and Agency, SWIFT Contract number 195873, of even or prior date, for Agency use of BCA systems and tools (referred to herein as “the CJDN Subscriber Agreement”). Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes this Subscriber Amendment. The Agency desires to use one or more BCA systems and tools to access and/or submit Court Records to assist the Agency in the efficient performance of its duties as required or authorized by law or court rule. Court desires to permit such access and/or submission. This Subscriber Amendment is intended to add Court as a party to the CJDN Subscriber Agreement and to create obligations by the Agency to the Court that can be enforced by the Court. It is also understood that, pursuant to the Master Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA, the BCA is authorized to sign this Subscriber Amendment on behalf of Court. Upon execution the Subscriber Amendment will be incorporated into the CJDN Subscriber Agreement by reference. The BCA, the Agency and the Court desire to amend the CJDN Subscriber Agreement as stated below.

The CJDN Subscriber Agreement is amended by the addition of the following provisions:

1. **TERM; TERMINATION; ONGOING OBLIGATIONS.** This Subscriber Amendment shall be effective on the date finally executed by all parties and shall remain in effect until expiration or termination of the CJDN Subscriber Agreement unless terminated earlier as provided in this Subscriber Amendment. Any party may terminate this Subscriber Amendment with or without cause by giving written notice to all other parties. The effective date of the termination shall be thirty days after the other party's receipt of the notice of termination, unless a later date is specified in the notice. The provisions of sections 5 through 9, 12.b., 12.c., and 15 through 24 shall survive any termination of this Subscriber Amendment as shall any other provisions which by their nature are intended or expected to survive such termination. Upon termination, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

2. **Definitions.** Unless otherwise specifically defined, each term used herein shall have the meaning assigned to such term in the CJDN Subscriber Agreement.

a. **“Authorized Court Data Services”** means Court Data Services that have been authorized for delivery to CJDN Subscribers via BCA systems and tools pursuant to an Authorization Amendment to the Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA.

b. **“Court Data Services”** means one or more of the services set forth on the Justice Agency Resource webpage of the Minnesota Judicial Branch website (for which the current address is www.courts.state.mn.us) or other location designated by the Court, as the same may be amended from time to time by the Court.

c. **“Court Records”** means all information in any form made available by the Court to Subscriber through the BCA for the purposes of carrying out this Subscriber Amendment, including:

- i. **“Court Case Information”** means any information in the Court Records that conveys information about a particular case or controversy, including without limitation Court Confidential Case Information, as defined herein.
- ii. **“Court Confidential Case Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that conveys information about a particular case or controversy.
- iii. **“Court Confidential Security and Activation Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that explains how to use or gain access to Court Data Services, including but not limited to login account names, passwords, TCP/IP addresses, Court Data Services user manuals, Court Data Services Programs, Court Data Services Databases, and other technical information.
- iv. **“Court Confidential Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access, including without limitation both i) Court Confidential Case Information; and ii) Court Confidential Security and Activation Information.

d. **“DCA”** shall mean the district courts of the state of Minnesota and their respective staff.

e. **“Policies & Notices”** means the policies and notices published by the Court in connection with each of its Court Data Services, on a website or other location designated by the Court, as the same may be amended from time to time by the Court. Policies & Notices for each Authorized Court Data Service identified in an approved request form under section 3, below, are hereby made part of this Subscriber Amendment by this reference and provide additional terms and conditions that govern Subscriber’s use of Court Records accessed through such services, including but not limited to provisions on access and use limitations.

f. **“Rules of Public Access”** means the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time, including without limitation lists or tables published from time to time by the Court entitled *Limits on Public Access to Case Records* or *Limits on Public Access to Administrative Records*, all of which by this reference are made a part of this Subscriber Amendment. It is the obligation of Subscriber to check from time to time for updated rules, lists, and tables and be familiar with the contents thereof. It is contemplated that such rules, lists, and tables will be posted on the Minnesota Judicial Branch website, for which the current address is www.courts.state.mn.us.

g. **“Court”** shall mean the State of Minnesota, State Court Administrator's Office.

h. **“Subscriber”** shall mean the Agency.

i. **“Subscriber Records”** means any information in any form made available by the Subscriber to the Court for the purposes of carrying out this Subscriber Amendment.

3. REQUESTS FOR AUTHORIZED COURT DATA SERVICES. Following execution of this Subscriber Amendment by all parties, Subscriber may submit to the BCA one or more separate requests for Authorized Court Data Services. The BCA is authorized in the Master Authorization Agreement to process, credential and approve such requests on behalf of Court and all such requests approved by the BCA are adopted and incorporated herein by this reference the same as if set forth verbatim herein.

a. **Activation.** Activation of the requested Authorized Court Data Service(s) shall occur promptly following approval.

b. **Rejection.** Requests may be rejected for any reason, at the discretion of the BCA and/or the Court.

c. **Requests for Termination of One or More Authorized Court Data Services.** The Subscriber may request the termination of an Authorized Court Data Services previously requested by submitting a notice to Court with a copy to the BCA. Promptly upon receipt of a request for termination of an Authorized Court Data Service, the BCA will deactivate the service requested. The termination of one or more Authorized Court Data Services does not terminate this Subscriber Amendment. Provisions for termination of this Subscriber Amendment are set forth in section 1. Upon termination of Authorized Court Data Services, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

4. SCOPE OF ACCESS TO COURT RECORDS LIMITED. Subscriber's access to and/or submission of the Court Records shall be limited to Authorized Court Data Services identified in an approved request form under section 3, above, and other Court Records necessary for Subscriber to use Authorized Court Data Services. Authorized Court Data Services shall only be used according to the instructions provided in corresponding Policies & Notices or other materials and only as necessary to assist Subscriber in the efficient performance of Subscriber's duties

required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body. Subscriber's access to the Court Records for personal or non-official use is prohibited. Subscriber will not use or attempt to use Authorized Court Data Services in any manner not set forth in this Subscriber Amendment, Policies & Notices, or other Authorized Court Data Services documentation, and upon any such unauthorized use or attempted use the Court may immediately terminate this Subscriber Amendment without prior notice to Subscriber.

5. GUARANTEES OF CONFIDENTIALITY. Subscriber agrees:

a. To not disclose Court Confidential Information to any third party except where necessary to carry out the Subscriber's duties as required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body.

b. To take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of Court Confidential Information and to satisfy Subscriber's obligations under this Subscriber Amendment.

c. To limit the use of and access to Court Confidential Information to Subscriber's bona fide personnel whose use or access is necessary to effect the purposes of this Subscriber Amendment, and to advise each individual who is permitted use of and/or access to any Court Confidential Information of the restrictions upon disclosure and use contained in this Subscriber Amendment, requiring each individual who is permitted use of and/or access to Court Confidential Information to acknowledge in writing that the individual has read and understands such restrictions. Subscriber shall keep such acknowledgements on file for one year following termination of the Subscriber Amendment and/or CJDN Subscriber Agreement, whichever is longer, and shall provide the Court with access to, and copies of, such acknowledgements upon request. For purposes of this Subscriber Amendment, Subscriber's bona fide personnel shall mean individuals who are employees of Subscriber or provide services to Subscriber either on a voluntary basis or as independent contractors with Subscriber.

d. That, without limiting section 1 of this Subscriber Amendment, the obligations of Subscriber and its bona fide personnel with respect to the confidentiality and security of Court Confidential Information shall survive the termination of this Subscriber Amendment and the CJDN Subscriber Agreement and the termination of their relationship with Subscriber.

e. That, notwithstanding any federal or state law applicable to the nondisclosure obligations of Subscriber and Subscriber's bona fide personnel under this Subscriber Amendment, such obligations of Subscriber and Subscriber's bona fide personnel are founded independently on the provisions of this Subscriber Amendment.

6. APPLICABILITY TO PREVIOUSLY DISCLOSED COURT RECORDS. Subscriber acknowledges and agrees that all Authorized Court Data Services and related Court Records disclosed to Subscriber prior to the effective date of this Subscriber Amendment shall be subject to the provisions of this Subscriber Amendment.

7. LICENSE AND PROTECTION OF PROPRIETARY RIGHTS. During the term of this Subscriber Amendment, subject to the terms and conditions hereof, the Court hereby grants to Subscriber a nonexclusive, nontransferable, limited license to use Court Data Services Programs and Court Data Services Databases to access or receive the Authorized Court Data Services identified in an approved request form under section 3, above, and related Court Records. Court reserves the right to make modifications to the Authorized Court Data Services, Court Data Services Programs, and Court Data Services Databases, and related materials without notice to Subscriber. These modifications shall be treated in all respects as their previous counterparts.

a. Court Data Services Programs. Court is the copyright owner and licensor of the Court Data Services Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the Court Data Services Programs, and all information contained in documentation pertaining to the Court Data Services Programs, including but not limited to manuals, user documentation, and passwords, are trade secret information of Court and its licensors.

b. Court Data Services Databases. Court is the copyright owner and licensor of the Court Data Services Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the Court Data Services Databases and their structure, sequence and organization, including without limitation data schemas such as the Court XML Schema, are trade secret information of Court and its licensors.

c. Marks. Subscriber shall neither have nor claim any right, title, or interest in or use of any trademark used in connection with Authorized Court Data Services, including but not limited to the marks "MNCIS" and "Odyssey."

d. Restrictions on Duplication, Disclosure, and Use. Trade secret information of Court and its licensors will be treated by Subscriber in the same manner as Court Confidential Information. In addition, Subscriber will not copy any part of the Court Data Services Programs or Court Data Services Databases, or reverse engineer or otherwise attempt to discern the source code of the Court Data Services Programs or Court Data Services Databases, or use any trademark of Court or its licensors, in any way or for any purpose not specifically and expressly authorized by this Subscriber Amendment. As used herein, "trade secret information of Court and its licensors" means any information possessed by Court which derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of Court and its licensors" does not, however, include information which was known to Subscriber prior to Subscriber's receipt thereof, either directly or indirectly, from Court or its licensors, information which is independently developed by Subscriber without reference to or use of information received from Court or its licensors, or information which would not qualify as a trade secret under Minnesota law. It will not be a violation of this section 7, sub-section d, for Subscriber to make up to one copy of training materials and configuration documentation, if any, for each individual authorized to access, use, or configure Authorized Court Data Services, solely for its own use in connection with this Subscriber Amendment. Subscriber will take all steps reasonably necessary to protect the copyright, trade secret, and trademark rights of Court and its licensors and Subscriber will advise its bona fide personnel who are permitted access to any of the Court Data Services Programs and Court Data Services Databases, and trade secret information of Court and its licensors, of the restrictions upon duplication, disclosure and use contained in this Subscriber Amendment.

e. Proprietary Notices. Subscriber will not remove any copyright or proprietary notices included in and/or on the Court Data Services Programs or Court Data Services Databases, related documentation, or trade secret information of Court and its licensors, or any part thereof, made available by Court directly or through the BCA, if any, and Subscriber will include in and/or on any copy of the Court Data Services Programs or Court Data Services Databases, or trade secret information of Court and its licensors and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made available to Subscriber by Court directly or through the BCA, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

f. Title; Return. The Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration material, if any, and logon account information and passwords, if any, made available by the Court to Subscriber directly or through the BCA and all copies, including partial copies, thereof are and remain the property of the respective licensor. Except as expressly provided in section 12.b., within ten days of the effective date of termination of this Subscriber Amendment or the CJDN Subscriber Agreement or within ten days of a request for termination of Authorized Court Data Service as described in section 4, Subscriber shall either: (i) uninstall and return any and all copies of the applicable Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration materials, if any, and logon account information, if any; or (2) destroy the same and certify in writing to the Court that the same have been destroyed.

8. INJUNCTIVE RELIEF. Subscriber acknowledges that the Court, Court's licensors, and DCA will be irreparably harmed if Subscriber's obligations under this Subscriber Amendment are not specifically enforced and that the Court, Court's licensors, and DCA would not have an adequate remedy at law in the event of an actual or threatened violation by Subscriber of its obligations. Therefore, Subscriber agrees that the Court, Court's licensors, and DCA shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Subscriber or its bona fide personnel without the necessity of the Court, Court's licensors, or DCA showing actual damages or that monetary damages would not afford an adequate remedy. Unless Subscriber is an office, officer, agency, department, division, or bureau of the state of Minnesota, Subscriber shall be liable to the Court, Court's licensors, and DCA for reasonable attorneys fees incurred by the Court, Court's licensors, and DCA in obtaining any relief pursuant to this Subscriber Amendment.

9. LIABILITY. Subscriber and the Court agree that, except as otherwise expressly provided herein, each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Liability shall be governed by applicable law. Without limiting the foregoing, liability of the Court and any Subscriber that is an office, officer, agency, department, division, or bureau of the state of Minnesota shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, section 3.376, and other applicable law. Without limiting the foregoing, if Subscriber is a political subdivision of the state of Minnesota, liability of the Subscriber shall be governed by the provisions of Minn. Stat. Ch. 466 (Tort Liability, Political Subdivisions) or other applicable law. Subscriber and Court further acknowledge that the liability, if any, of the BCA is governed by a separate agreement between the Court and the BCA dated December 13, 2010 with DPS-M -0958.

10. AVAILABILITY. Specific terms of availability shall be established by the Court and communicated to Subscriber by the Court and/or the BCA. The Court reserves the right to terminate this Subscriber Amendment immediately and/or temporarily suspend Subscriber's Authorized Court Data Services in the event the capacity of any host computer system or legislative appropriation of funds is determined solely by the Court to be insufficient to meet the computer needs of the courts served by the host computer system.

11. [reserved]

12. ADDITIONAL USER OBLIGATIONS. The obligations of the Subscriber set forth in this section are in addition to the other obligations of the Subscriber set forth elsewhere in this Subscriber Amendment.

a. Judicial Policy Statement. Subscriber agrees to comply with all policies identified in Policies & Notices applicable to Court Records accessed by Subscriber using Authorized Court Data Services. Upon failure of the Subscriber to comply with such policies, the Court shall have the option of immediately suspending the Subscriber's Authorized Court Data Services on a temporary basis and/or immediately terminating this Subscriber Amendment.

b. Access and Use; Log. Subscriber shall be responsible for all access to and use of Authorized Court Data Services and Court Records by Subscriber's bona fide personnel or by means of Subscriber's equipment or passwords, whether or not Subscriber has knowledge of or authorizes such access and use. Subscriber shall also maintain a log identifying all persons to whom Subscriber has disclosed its Court Confidential Security and Activation Information, such as user ID(s) and password(s), including the date of such disclosure. Subscriber shall maintain such logs for a minimum period of six years from the date of disclosure, and shall provide the Court with access to, and copies of, such logs upon request. The Court may conduct audits of Subscriber's logs and use of Authorized Court Data Services and Court Records from time to time. Upon Subscriber's failure to maintain such logs, to maintain accurate logs, or to promptly provide access by the Court to such logs, the Court may terminate this Subscriber Amendment without prior notice to Subscriber.

c. Personnel. Subscriber agrees to investigate, at the request of the Court and/or the BCA, allegations of misconduct pertaining to Subscriber's bona fide personnel having access to or use of Authorized Court Data Services, Court Confidential Information, or trade secret information of the Court and its licensors where such persons are alleged to have violated the provisions of this Subscriber Amendment, Policies & Notices, Judicial Branch policies, or other security requirements or laws regulating access to the Court Records.

d. Minnesota Data Practices Act Applicability. If Subscriber is a Minnesota Government entity that is subject to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, Subscriber acknowledges and agrees that: (1) the Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court; (2) Minn. Stat. section 13.03, subdivision 4(e) requires that Subscriber comply with the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court for access to Court Records provided via the

BCA systems and tools under this Subscriber Amendment; (3) the use of and access to Court Records may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law; and (4) these applicable restrictions must be followed in the appropriate circumstances.

13. FEES; INVOICES. Unless the Subscriber is an office, officer, department, division, agency, or bureau of the state of Minnesota, Subscriber shall pay the fees, if any, set forth in applicable Policies & Notices, together with applicable sales, use or other taxes. Applicable monthly fees commence ten (10) days after notice of approval of the request pursuant to section 3 of this Subscriber Amendment or upon the initial Subscriber transaction as defined in the Policies & Notices, whichever occurs earlier. When fees apply, the Court shall invoice Subscriber on a monthly basis for charges incurred in the preceding month and applicable taxes, if any, and payment of all amounts shall be due upon receipt of invoice. If all amounts are not paid within 30 days of the date of the invoice, the Court may immediately cancel this Subscriber Amendment without notice to Subscriber and pursue all available legal remedies. Subscriber certifies that funds have been appropriated for the payment of charges under this Subscriber Amendment for the current fiscal year, if applicable.

14. MODIFICATION OF FEES. Court may modify the fees by amending the Policies & Notices as provided herein, and the modified fees shall be effective on the date specified in the Policies & Notices, which shall not be less than thirty days from the publication of the Policies & Notices. Subscriber shall have the option of accepting such changes or terminating this Subscriber Amendment as provided in section 1 hereof.

15. WARRANTY DISCLAIMERS.

a. WARRANTY EXCLUSIONS. EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, COURT, COURT'S LICENSORS, AND DCA MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, NOR ARE ANY WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE INFORMATION, SERVICES OR COMPUTER PROGRAMS MADE AVAILABLE UNDER THIS AGREEMENT.

b. ACCURACY AND COMPLETENESS OF INFORMATION. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPH, COURT, COURT'S LICENSORS, AND DCA MAKE NO WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THE COURT RECORDS.

16. RELATIONSHIP OF THE PARTIES. Subscriber is an independent contractor and shall not be deemed for any purpose to be an employee, partner, agent or franchisee of the Court, Court's licensors, or DCA. Neither Subscriber nor the Court, Court's licensors, or DCA shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

17. NOTICE. Except as provided in section 2 regarding notices of or modifications to Authorized Court Data Services and Policies & Notices, any notice to Court or Subscriber

hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.

18. NON-WAIVER. The failure by any party at any time to enforce any of the provisions of this Subscriber Amendment or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, remedy or option or in any way affect the validity of this Subscriber Amendment. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

19. FORCE MAJEURE. Neither Subscriber nor Court shall be responsible for failure or delay in the performance of their respective obligations hereunder caused by acts beyond their reasonable control.

20. SEVERABILITY. Every provision of this Subscriber Amendment shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Subscriber Amendment so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Subscriber Amendment, and all other provisions shall remain in full force and effect.

21. ASSIGNMENT AND BINDING EFFECT. Except as otherwise expressly permitted herein, neither Subscriber nor Court may assign, delegate and/or otherwise transfer this Subscriber Amendment or any of its rights or obligations hereunder without the prior written consent of the other. This Subscriber Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, including any other legal entity into, by or with which Subscriber may be merged, acquired or consolidated.

22. GOVERNING LAW. This Subscriber Amendment shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States and of the State of Minnesota.

23. VENUE AND JURISDICTION. Any action arising out of or relating to this Subscriber Amendment, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. Subscriber hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.

24. INTEGRATION. This Subscriber Amendment contains all negotiations and agreements between the parties. No other understanding regarding this Subscriber Amendment, whether written or oral, may be used to bind either party, provided that all terms and conditions of the CJDN Subscriber Agreement and all previous amendments remain in full force and effect except as supplemented or modified by this Subscriber Amendment.

IN WITNESS WHEREOF, the Parties have, by their duly authorized officers, executed this Subscriber Amendment in duplicate, intending to be bound thereby.

1. SUBSCRIBER (AGENCY)

Subscriber must attach written verification of authority to sign on behalf of and bind the entity, such as an opinion of counsel or resolution.

Name: Thomas Bartholomew
(PRINTED)

Signed: _____

Title: Mayor
(with delegated authority)

Date: _____

Name: Rebecca Kiernan
(PRINTED)

Signed: _____

Title: City Clerk
(with delegated authority)

Date: _____

2. DEPARTMENT OF PUBLIC SAFETY, BUREAU OF CRIMINAL APPREHENSION

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

3. COMMISSIONER OF ADMINISTRATION delegated to Materials Management Division

By: _____

Date: _____

4. COURTS

Authority granted to Bureau of Criminal Apprehension

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with authorized authority)

Date: _____



Request for Council Action

TITLE: Builder Lot Group / Eagles Landing - Case No. 21-32S

		Fiscal/FTE Impact	Mark all that apply
Meeting Date:	July 12, 2021	None	X
Item Type:	Consent Agenda	Amount included in current budget	
Contact:	Heather Botten 651-450-2569	Budget amendment requested	
Prepared by:	Heather Botten	FTE included in current complement	
Reviewed by:		New FTE requested - N/A	
		Other	

PURPOSE/ACTION REQUESTED: Approve a Resolution relating to the Development Contract, Storm Water Facilities Maintenance Agreement, and related agreements for the plat of Eagles Landing.

- Requires a 3/5th's vote.

SUMMARY:

The City Council approved the final plat on June 28, 2021. The conditions of approval require the applicant to enter into the attached agreements prior to any work commencing on site. The attached agreements were not finalized when the final plat was approved.

The agreements lay out the general obligations of the developer to maintain the proposed improvements on the property.

RECOMMENDATION:

City Staff: Planning and Engineering Staff find the agreements acceptable as presented.

Attachments:

- Resolution approving agreements
- Development Contract
- Storm Water Facilities Maintenance Agreement
- Street Light Agreement
- Permanent Pedestrian Sidewalk Agreement
- Encroachment Agreement x 3
- Restrictive Use Easement x 2
- Warranty Deed conveying Outlot A to the City

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. _____

**A RESOLUTION APPROVING THE DEVELOPMENT CONTRACT, STORM WATER
FACILITIES MAINTENANCE AGREEMENT, STREET LIGHT AGREEMENT, PERMANENT
PEDISTRIAN SIDEWALK AGREEMENT, ENCROACHMENT AGREEMENTS, RESTRICTIVE
USE EASEMENTS, AND WARRANTY DEED FOR THE PLAT OF EAGLES LANDING**

**CASE NO. 21-32S
Builder Lot Group - Eagles Landing**

WHEREAS, an application has been submitted for the property located at 2655 70th Street and legally described as:

The East 295 feet of the South 810 feet of the West 60 rods of the West 1/2 of the Southeast 1/4 of Section 4, Township 27, Range 22, Dakota County, Minnesota

WHEREAS, a final plat was approved by City Council on June 28, 2021;

WHEREAS, conditions of approval require the applicant to enter into the attached agreements prior to any work commencing on site;

WHEREAS, the agreements were not completed prior to Council approving the requests on June 28, 2021 and therefore must be approved by Council on separate action;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF INVER GROVE HEIGHTS that, the Development Contract, Storm Water Facilities Maintenance Agreement, Encroachment Agreements, Street Light Agreement, Sidewalk Agreement, Restrictive Use Easements and Warranty Deed are hereby approved and the Deputy Clerk is hereby authorized and directed to record a certified copy of this Resolution at the Dakota County Recorder's Office.

Passed this 12th day of July, 2021.

AYES:

NAYS:

Thomas Bartholomew, Mayor

ATTEST:

Rebecca Kiernan, City Clerk

DEVELOPMENT CONTRACT
FOR PLAT OF
EAGLES LANDING

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**CITY OF INVER GROVE HEIGHTS
DEVELOPMENT CONTRACT
FOR PLAT OF EAGLES LANDING**

THIS DEVELOPMENT CONTRACT is made and entered into on the 12th day of July, 2021, by and between the CITY OF INVER GROVE HEIGHTS, a municipality of the State of Minnesota, (hereinafter called the CITY), and the DEVELOPER identified herein.

RECITALS:

WHEREAS, the DEVELOPER has applied to the CITY for approval of the PLAT;

WHEREAS, the DEVELOPER has applied to the CITY for approval of the DEVELOPMENT PLANS associated with the PLAT;

WHEREAS, in conjunction with the granting of these approvals, the CITY requires the installation and/or availability of streets, public utilities (sewer and water), storm sewer pipes, storm water facilities, sidewalks, tree preservation and landscaping;

WHEREAS, under authority granted to it, including Minnesota Statutes Chapters 412, 429, and 462, the COUNCIL has agreed to approve the PLAT and DEVELOPMENT PLANS on the following conditions:

1. That the DEVELOPER enter into this DEVELOPMENT CONTRACT, which contract defines the work which the DEVELOPER undertakes to complete; and
2. The DEVELOPER shall provide an irrevocable letter of credit or cash deposit, in the amount and with conditions satisfactory to the CITY, providing for the actual construction and installation of such improvements within the period specified by the CITY.

WHEREAS, the DEVELOPER has filed four (4) complete sets of the DEVELOPMENT PLANS with the CITY and provided an electronic plan set compatible with the CITY's AUTOCAD and GIS systems (See Section 8.6 (12));

WHEREAS, the DEVELOPMENT PLANS have been prepared by a registered professional engineer and have been submitted to and approved by the DIRECTOR OF PWD and COUNCIL.

NOW, THEREFORE, subject to the terms and conditions of this DEVELOPMENT CONTRACT and in reliance upon the representations, warranties and covenants of the parties herein contained, the CITY and DEVELOPER agree as follows:

ARTICLE 1
DEFINITIONS

1.1 TERMS. The following terms, unless elsewhere defined specifically in the DEVELOPMENT CONTRACT, shall have the following meanings as set forth below.

1.2 CITY. "CITY" means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 DEVELOPER. "DEVELOPER" means Builders Lot Group, LLC, a Minnesota limited liability company, and its successors and assigns.

1.4 PLAT. "PLAT" means the plat of Eagles Landing, comprising the real property located in Inver Grove Heights, Dakota County, Minnesota and legally described on the attached Exhibit A.

1.5 DEVELOPMENT PLANS. "DEVELOPMENT PLANS" means all the plans, drawings, specifications and surveys identified and checked on the attached Exhibit B, and hereby incorporated by reference and made a part of this DEVELOPMENT CONTRACT.

1.6 DEVELOPMENT CONTRACT. "DEVELOPMENT CONTRACT" means this contract by and among the CITY and DEVELOPER.

1.7 COUNCIL. "COUNCIL" means the Council of the City of Inver Grove Heights.

1.8 PWD. "PWD" means the Public Works Department of the City of Inver Grove Heights.

1.9 DIRECTOR OF PWD. "DIRECTOR OF PWD" means the Director of the Public Works Department of the City of Inver Grove Heights and his delegates.

1.10 COUNTY. "COUNTY" means Dakota County, Minnesota.

1.11 OTHER REGULATORY AGENCIES. "OTHER REGULATORY AGENCIES" means and includes, individually and collectively, the following:

- a.) Minnesota Department of Transportation
- b.) Dakota County
- c.) Dakota County Highway Department

- d.) Water Management Organization
- e.) Metropolitan Council
- f.) any other regulatory or governmental agency or entity affected by, or having jurisdiction over the DEVELOPER IMPROVEMENTS.

1.12 UTILITY COMPANIES. "UTILITY COMPANIES" means and includes, jointly and severally, the following:

- a.) utility companies, including electric, gas and cable;
- b.) pipeline companies.

1.13 PRIOR EASEMENT HOLDERS. "PRIOR EASEMENT HOLDERS" means and includes, jointly and severally, all holders of any easements or other property interests which existed prior to the grant or dedication of any public easements transferred by the PLAT or transferred pursuant to this DEVELOPMENT CONTRACT.

1.14 DEVELOPER IMPROVEMENTS. "DEVELOPER IMPROVEMENTS" means and includes, individually and collectively, all the improvements identified in Article 4 and on the attached Exhibit C.

1.15 CITY IMPROVEMENTS. "CITY IMPROVEMENTS" means and includes, individually and collectively, all the improvements identified and checked on the attached Exhibit D.

1.16 DEVELOPER PUBLIC IMPROVEMENTS. "DEVELOPER PUBLIC IMPROVEMENTS" means and includes, individually and collectively, all the improvements identified and checked on the attached Exhibit C that are further labeled "public". DEVELOPER PUBLIC IMPROVEMENTS are improvements to be constructed by the DEVELOPER within public right-of-way or public easements and which are to be approved and later accepted by the CITY. DEVELOPER PUBLIC IMPROVEMENTS are part of DEVELOPER IMPROVEMENTS.

1.17 DEVELOPER DEFAULT. "DEVELOPER DEFAULT" means and includes, jointly and severally, any of the following or any combination thereof that continue and remain uncured after DEVELOPER receives written notice of said DEVELOPER DEFAULT:

- a.) failure by the DEVELOPER to timely pay the CITY any money required to be paid under the DEVELOPMENT CONTRACT;
- b.) failure by the DEVELOPER to timely construct the DEVELOPER IMPROVEMENTS according to the DEVELOPMENT PLANS.

- c.) failure by the DEVELOPER to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this DEVELOPMENT CONTRACT;
- d.) breach of the DEVELOPER WARRANTIES.

1.18 FORCE MAJEURE. "FORCE MAJEURE" means acts of God or nature, including, but not limited to floods, ice storms, blizzards, tornadoes, landslides, lightning and earthquakes (but not including reasonably anticipated weather conditions for the geographic area); riots; insurrections; labor strikes or shortages; unavailability of materials; war or civil disorder affecting the performance of work; blockades; power or other utility failures; a local government moratorium on development or construction review; pandemic and other public health emergencies, fires or explosions and other similar events or causes beyond the reasonable control of Developer rendering the construction, installation or completion of the DEVELOPER IMPROVEMENTS during the continuance of such Force Majeure impossible or impracticable.

1.19 DEVELOPER WARRANTIES. "DEVELOPER WARRANTIES" means that the DEVELOPER hereby warrants and represents the following:

- A. **AUTHORITY.** DEVELOPER has the unconditional right, power, legal capacity and authority to enter into and perform its obligations under this DEVELOPMENT CONTRACT.
- B. **NO DEFAULT.** DEVELOPER is not in default under any lease, contract or agreement to which it is a party or by which it is bound which would affect performance under this DEVELOPMENT CONTRACT. DEVELOPER is not a party to or bound by any mortgage, lien, lease, agreement, instrument, order, judgment or decree which would prohibit the execution or performance of this DEVELOPMENT CONTRACT by DEVELOPER or prohibit any of the transactions provided for in this DEVELOPMENT CONTRACT.
- C. **PRESENT COMPLIANCE WITH LAWS.** To DEVELOPER's best knowledge, DEVELOPER has complied with and is not in violation of applicable federal, state or local statutes, laws, and regulations including, without limitation, permits and licenses, and any applicable environmental or other law, or regulation affecting the PLAT and the DEVELOPMENT PLANS and the DEVELOPER IMPROVEMENTS; and DEVELOPER is not aware of any pending or threatened claim of any such violation.
- D. **CONTINUING COMPLIANCE WITH LAWS.** DEVELOPER will comply with all applicable federal, state and local statutes, laws and regulations including, without limitation, permits and licenses and any applicable zoning, environmental or other law, ordinance or regulation affecting the PLAT and the DEVELOPMENT

PLANS and the DEVELOPER IMPROVEMENTS.

- E. NO LITIGATION.** There is no suit, action, arbitration or legal, administrative or other proceeding or governmental investigation pending, or threatened against or

affecting DEVELOPER with respect to the PLAT or the DEVELOPMENT PLANS or the DEVELOPER IMPROVEMENTS. To DEVELOPER'S best knowledge, DEVELOPER is not in default with respect to any order, writ, injunction or decree of any federal, state, local or foreign court, department, agency or instrumentality.

- F. **FULL DISCLOSURE.** To DEVELOPER'S best knowledge, none of the representations and warranties made by DEVELOPER or made in any exhibit hereto or memorandum or writing furnished or to be furnished by DEVELOPER or on its behalf contains or will contain any untrue statement of material fact or omit any material fact the omission of which would be misleading.
- G. **PLAT COMPLIANCE.** To DEVELOPER'S best knowledge, the PLAT and the DEVELOPMENT PLANS comply with all COUNTY, metropolitan, state and federal laws and regulations, including but not limited to environmental regulations. Plat compliance shall include compliance with variances that have been granted by the CITY as part of the development approval process.
- H. **WARRANTY ON DEVELOPER PUBLIC IMPROVEMENTS AND EROSION CONTROL.** The DEVELOPER warrants all DEVELOPER PUBLIC IMPROVEMENTS and erosion control required to be performed by it under this DEVELOPMENT CONTRACT against defective material and faulty workmanship for a period of two (2) years after its completion and acceptance by the CITY. With respect to matters covered by the warranty, the DEVELOPER, at its own expense, shall be solely responsible for performing repair work required by the CITY within thirty (30) days of notification or if not reasonably curable within thirty (30) days, such additional reasonable period of time to effect the cure.
- All trees, grass, and sod shall be warranted to be alive, of good quality, and disease free for one year after planting. Any replacements shall be similarly warranted for one year from the time of planting.
- The warranty period for street, water main, sanitary sewer, drainage and erosion control improvements shall be for two (2) years after completion and acceptance by the City; the warranty for the street, drainage and erosion control improvements shall also include the obligation of the DEVELOPER to repair and correct any damage to or deficiency with respect to such improvements.
- I. **OBTAINING PERMITS.** The DEVELOPER shall obtain in a timely manner and pay for all required permits, licenses and approvals, and shall meet, in a timely manner, all requirements of all applicable, local, state and federal laws and regulations which must be obtained or met before the DEVELOPER IMPROVEMENTS may be lawfully constructed.

J. FEE TITLE. DEVELOPER owns fee title to the property within the PLAT.

1.20 CITY WARRANTIES. "CITY WARRANTIES" means that the CITY hereby warrants and represents as follows:

A. ORGANIZATION. CITY is a municipal corporation duly incorporated and validly existing in good standing the laws of the State of Minnesota.

B. AUTHORITY. CITY has the right, power, legal capacity and authority to enter into and perform its obligations under this DEVELOPMENT CONTRACT.

1.21 FORMAL NOTICE. "FORMAL NOTICE" means notices given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, addressed as follows:

If to CITY:
City of Inver Grove Heights
Attention: City Administrator
Inver Grove Heights City Hall
8150 Barbara Avenue
Inver Grove Heights, MN 55077

**If to
DEVELOPER:**
Builders Lot Group, LLC
Attn: Melvin Moore or Steven Soltau
9531 West 78th Street, Suite 135
Eden Prairie, MN 55344

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above, provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

ARTICLE 2 **PLAT APPROVAL**

2.1. PLAT APPROVAL. Subject to the terms and conditions of this DEVELOPMENT CONTRACT, the CITY hereby approves the recording of the PLAT. The DEVELOPMENT PLANS are hereby approved by the CITY.

2.2 PLAT DENSITY. The parties mutually acknowledge that it is the intention to develop the entire PLAT in accord with the approved zoning.

2.3 RECORDING OF PLAT. The DEVELOPER shall record the PLAT and this

DEVELOPMENT CONTRACT with the COUNTY Recorder within thirty (30) days of release of the PLAT to the DEVELOPER for recording. No building permits shall be issued unless the

DEVELOPER shows evidence to the CITY that the PLAT and this DEVELOPMENT CONTRACT have been recorded with the COUNTY Recorder.

ARTICLE 3 **CITY IMPROVEMENTS**

3.1 CITY IMPROVEMENTS. The CITY is not undertaking any CITY IMPROVEMENTS with respect to the PLAT except as stated on Exhibit D.

ARTICLE 4 **DEVELOPER IMPROVEMENTS**

4.1 DEVELOPER IMPROVEMENTS. The DEVELOPER shall install, at its own cost, the DEVELOPER IMPROVEMENTS in accordance with the DEVELOPMENT PLANS and in accordance with the City Engineer Memo's on file with the CITY Engineer (referenced in Exhibit B of this DEVELOPMENT CONTRACT). The DEVELOPER shall be responsible for the cost of installing any gas, electric, telephone, cable, and other private utilities.

The DEVELOPER IMPROVEMENTS shall be completed by the respective dates shown on Exhibit C, except for delays due to FORCE MAJEURE and, otherwise, as completion dates are extended by subsequent written action of the DIRECTOR OF PWD. Failure of the CITY to promptly take action to enforce this DEVELOPMENT CONTRACT after expiration of time by which the DEVELOPER IMPROVEMENTS are to be completed shall not waive or release any rights of the CITY; the CITY may take action at any time thereafter, and the terms of this contract shall be deemed to be automatically extended until such time as the DEVELOPER IMPROVEMENTS are completed in accordance with the DEVELOPMENT PLANS.

4.2 GROUND MATERIAL. The DEVELOPER shall insure that adequate and suitable ground material shall exist in the areas of DEVELOPER PUBLIC IMPROVEMENTS and shall guarantee the removal, replacement or repair of substandard or unstable material in accordance with the DEVELOPMENT PLANS. The cost of said removal, replacement or repair is the responsibility of the DEVELOPER.

4.3 GRADING/DRAINAGE PLAN AND EASEMENTS. The DEVELOPER shall construct drainage facilities adequate to serve the PLAT in accordance with the DEVELOPMENT PLANS. The DEVELOPER agrees that the PLAT and DEVELOPMENT PLANS depicted all necessary easements for the preservation of the drainage system, for drainage basins and for utility service. All such easements required by the CITY shall be on the PLAT or in writing, in recordable form, and on the standard easement form of the CITY, and on such other terms and conditions as the CITY shall determine; such easements shall be delivered to the CITY contemporaneously with execution of this DEVELOPMENT CONTRACT. The grading of the site shall be completed in conformance with the DEVELOPMENT PLANS. In the event that the DEVELOPER fails to complete the grading of the site in conformance with the DEVELOPMENT PLANS by the date

stipulated in Exhibit C (subject to delays due to FORCE MAJEURE), the CITY may declare the

DEVELOPER in default pursuant to Article 13.

4.4 STREET SIGNS. The DEVELOPER shall be financially responsible, based on normal CITY rates therefor, for the installation of street identification signs (both public and private) and non-mechanical and non-electrical traffic control signs. Street signs will be in conformance with the names as indicated on the PLAT and pursuant to CITY standards. The actual number and location of signs to be installed shall be determined by the CITY and actual installation of signs in the public right-of-way and public trail/sidewalk easement shall be performed by CITY authorized personnel and signs within the private streets and private trails/sidewalks shall be performed by Developer authorized personnel.

4.5 BOULEVARD AND AREA RESTORATION. The DEVELOPER shall seed or lay cultured sod in all boulevards to the extent depicted in the DEVELOPMENT PLANS within 14 days of the completion of street related improvements and restore all other areas disturbed by the development grading operation in accordance with the approved erosion control plan, over the entire PLAT. Upon request of the PWD, the DEVELOPER shall remove the silt fences after grading and construction have occurred.

DEVELOPER shall be responsible for installing marker posts at reasonable locations to define the boundary of the outlot. The markers provide identification for future landowners to know boundaries of the outlot. The final PUD plans must show the location of the marker posts. CITY will provide and install sign panels labeled "Protected Area" at the cost of DEVELOPER, based on normal CITY rates therefor.

4.6 EROSION CONTROL. The DEVELOPER shall provide and follow a plan for erosion control and pond maintenance in accord with the Best Management Practices (BMP) as delineated in the Minnesota Pollution Control Agency handbook titled Water Quality in Urban Areas. Such plan has been detailed on the DEVELOPMENT PLANS. The DEVELOPER shall install and maintain such erosion control structures as appear necessary under the DEVELOPMENT PLANS or become necessary subsequent thereto. The DEVELOPER shall be responsible for all damage caused as the result of grading and excavation within the PLAT including, but not limited to, restoration of existing control structures and clean-up of public right-of-way, until all lots are final graded and improvements are completed. As a portion of the erosion control plan, the DEVELOPER shall re-seed or sod any disturbed areas in accordance with the DEVELOPMENT PLANS. The CITY reserves the right to perform any necessary erosion control or restoration as required, if these requirements are not complied with after FORMAL NOTICE by the CITY as stated in Article 13. The DEVELOPER shall be financially responsible for payment for this extra work, based on normal CITY rates therefor.

ARTICLE 5

PARK CONTRIBUTION REQUIREMENTS

5.1 PARK CONTRIBUTION. The DEVELOPER shall comply with the park

contribution requirements as defined in the City Code by meeting the obligation stated in Exhibit E.

ARTICLE 6 **OTHER PERMITS**

6.1 PERMITS. The DEVELOPER shall obtain all necessary approvals, permits and licenses from the CITY, the OTHER REGULATORY AGENCIES, the UTILITY COMPANIES, and the PRIOR EASEMENT HOLDERS. Major design requirements of any such entities shall be determined prior to completion and incorporated into the DEVELOPMENT PLANS. All costs incurred to obtain said approvals, permits and licenses, and also all fines or penalties levied by any agency due to the failure of the DEVELOPER to obtain or comply with conditions of such approvals, permits and licenses, shall be paid by the DEVELOPER. The DEVELOPER shall defend and hold the CITY harmless from any action initiated by the OTHER REGULATORY AGENCIES, the UTILITY COMPANIES and the PRIOR EASEMENT HOLDERS resulting from such failures of the DEVELOPER.

ARTICLE 7 **OTHER DEVELOPMENT REQUIREMENTS**

7.1 MISCELLANEOUS REQUIREMENTS. Any additional requirements to approval of the PLAT and DEVELOPMENT PLANS as specified by the COUNCIL are incorporated herein, as set forth in Exhibit E.

ARTICLE 8 **DEVELOPER PUBLIC IMPROVEMENTS**

8.1 APPROVAL OF CONTRACTORS AND ENGINEER. Any contractor or engineer preparing plans and specifications selected by the DEVELOPER to design, construct or install any DEVELOPER PUBLIC IMPROVEMENTS must be approved in writing by the DIRECTOR OF PWD, which approval shall not be unreasonably withheld, delayed or conditioned.

8.2 CONSTRUCTION. The construction, installation, materials and equipment related to DEVELOPER PUBLIC IMPROVEMENTS shall be in accord with the DEVELOPMENT PLANS. The DEVELOPER shall cause the contractors to furnish the PWD a written schedule of proposed operations, subcontractors and material suppliers, at least five (5) days prior to commencement of construction work. The DEVELOPER shall notify the CITY in writing, coordinate and hold a pre-construction conference with all affected parties at least three (3) days prior to starting construction of any DEVELOPER PUBLIC IMPROVEMENTS.

8.3 INSPECTION. The PWD or its designated representative shall periodically inspect the DEVELOPER PUBLIC IMPROVEMENTS installed by the DEVELOPER, its contractors, subcontractors or agents. The DEVELOPER shall notify the PWD two (2) working days prior to the commencement of the laying of utility lines, subgrade preparation, the laying of

gravel base for street construction or any other improvement work which shall be subsequently buried or covered to allow the CITY an opportunity to inspect such improvement work. Upon receipt of said notice, the

City shall have a reasonable time, not to be less than two (2) working days, to inspect the improvements. DEVELOPER acknowledges that, in the event that DEVELOPER shall fail to notify the CITY to allow it to inspect said work, CITY has the right, as set forth in Section 14.2 hereunder, to withhold the release of any portion of the escrow amount resulting from work being performed without the opportunity for adequate CITY inspection.

8.4 FAITHFUL PERFORMANCE OF CONSTRUCTION CONTRACTS. The DEVELOPER shall fully and faithfully comply with all terms of any and all contracts entered into by the DEVELOPER for the installation and construction of all of the DEVELOPER PUBLIC IMPROVEMENTS; and the DEVELOPER shall obtain lien waivers. Within thirty (30) days after FORMAL NOTICE, or if not reasonably curable within thirty (30) days, then within such additionally reasonable time to effect the cure, the DEVELOPER shall repair or replace, as directed by the CITY and at the DEVELOPER's sole cost and expense, any work or materials relating to DEVELOPER PUBLIC IMPROVEMENTS that within the warranty periods of Sections 1.20(H) become defective or damaged in the reasonable opinion of the CITY.

8.5 CITY ACCEPTANCE. The DEVELOPER shall give FORMAL NOTICE to the CITY within thirty (30) days once DEVELOPER PUBLIC IMPROVEMENTS have been completed in accord with this DEVELOPMENT CONTRACT and the DEVELOPMENT PLANS. The CITY shall then inspect the DEVELOPER PUBLIC IMPROVEMENTS and notify the DEVELOPER of any DEVELOPER PUBLIC IMPROVEMENTS that do not so conform. Upon compliance with this DEVELOPMENT CONTRACT and the DEVELOPMENT PLANS, the DEVELOPER PUBLIC IMPROVEMENTS shall become the property of the CITY upon FORMAL NOTICE of acceptance by the CITY. After acceptance, the DEVELOPER PUBLIC IMPROVEMENTS become the property of the CITY, and the DEVELOPER shall have no responsibility with respect to maintenance of the DEVELOPER PUBLIC IMPROVEMENTS except as provided in Sections 1.20 and 10.1 and except as provided in the following agreements:

- Stormwater Facilities Maintenance Agreement for Outlot A, Eagles Landing
- Retaining Wall Maintenance Agreement relating to Lots 1 through 11, Block 3, Eagles Landing
- Retaining Wall Maintenance Agreement and Agreement Relating to Landowner Improvements Within City Easement relating to Lot 4, Block 1, Eagles Landing
- Retaining Wall Maintenance Agreement and Agreement Relating to Landowner Improvements Within City Easement relating to Lot 5, Block 1, Eagles Landing
- Retaining Wall Maintenance Agreement and Agreement Relating to Landowner Improvements Within City Easement relating to Outlot A, Eagles Landing
- Street Light Agreement for Plat of Eagles Landing

If the DEVELOPER PUBLIC IMPROVEMENTS do not conform, FORMAL NOTICE shall be given to the DEVELOPER of the need for repair or replacement or, in its discretion, the CITY may proceed under Article 13.

8.6 ENGINEERING SUBMITTALS / AS BUILT INFORMATION.

One (1) copy (in AUTOCAD format), of the detailed record plan "as built" drawings of the DEVELOPER PUBLIC IMPROVEMENTS shall be provided by the DEVELOPER in accord with CITY standards no later than 90 days after completion and acceptance of the DEVELOPER PUBLIC IMPROVEMENTS by the CITY, unless otherwise approved in writing by the PWD. If the record plans are not provided to the CITY within the 90 days, the CITY may have the work done and pay for it with the DEVELOPER'S sureties. In addition, final quantity tabulations shall be required, which must include the following items on the record plans:

1. All as built submittals require a survey to be completed for any improved and adjusted areas within the project extent. All as built survey data collection must be within an accuracy tolerance of 0.10' horizontal and 0.05' vertical, based on the project's horizontal and vertical datum. The as built survey must be completed on current Dakota County Coordinates and NAVD88 and performed by or under the direct supervision of a Registered Land Surveyor.
2. Two ties to all curb boxes and gate valves.
3. All hydrant gate valves tied back to the hydrant.
4. All ties shall be 100 feet or less.
5. Top nut elevation of all hydrants.
6. Rim and invert elevations on all manholes and catch basins.
7. Apron invert elevations on all flared end structures and storm sewer stubs.
8. Invert elevations on all sanitary and water service stubs.
9. Two ties to all sewer and water service locations.
10. Main line stationing for all sanitary sewer wyes and water main corporations.
11. As built grading plan containing spot elevations taken throughout the development to verify the development is graded in accordance with the approved grading plan with extra shots to verify swale elevations and locations. In pond areas, enough shots must be taken on the pond bottom, side slopes and grade breaks to verify the volume of each pond. The as built must also verify emergency overflow elevations and locations. This as built plan shall be Certified (signature with current date and MN state licensure number) as to general conformance with the City Approved grading plan by a Registered Engineer or

Registered Land Surveyor and submitted in an electronic format (see item 13).

12. Copy of final plat shall be submitted in an electronic format and must be on the Dakota County coordinates system. Compatible formats are emailed AUTOCAD .DWG or .DXF. Final plat drawings shall also be scanned, stored and emailed as images in .TIFF or .PDF.
13. Final as built information shall be submitted in an electronic format and must be on the Dakota County coordinates system. Compatible formats are emailed AUTOCAD .DWG or .DXF. As built drawings shall also be scanned, stored and emailed as images in .TIFF or .PDF. All as built drawings must be the approved plans modified to reflect as built conditions Note: All corrected lines, grades and elevations shall have a line drawn through the original text and the new information placed nearby; the original information or text shall not be erased.
14. Records identifying which parcels have in home pressure reducing valves to meet MDH requirements when the static water pressure exceeds 80psi.
15. Survey Coordinates on all stormwater facilities and related appurtenances such as valves.
16. Final as built information shall be submitted in an Esri compliant Geodatabase format compatible with the City's Geographic Information System (GIS). An Esri compliant Geodatabase template will be made available by the CITY which will specify all features and critical attributes required. All features submitted must adhere to as built survey requirements (see item 1). All features and critical attributes must be complete and consistent with submitted as built plans. The as built submittal must follow the geodatabase template provided by the CITY for acceptance.

ARTICLE 9

RESPONSIBILITY FOR COSTS

9.1 DEVELOPER IMPROVEMENT COSTS. The DEVELOPER shall pay for the DEVELOPER IMPROVEMENTS; that is, all costs of persons doing work or furnishing skills, tools, machinery or materials, or insurance premiums or equipment or supplies and all just claims for the same; and the CITY shall be under no obligation to pay the contractor or any subcontractor any sum whatsoever on account thereof, whether or not the CITY shall have approved the contract or subcontract.

9.2 CITY MISCELLANEOUS EXPENSES. The DEVELOPER shall reimburse the CITY for all reasonable engineering, administrative, legal and other expenses incurred or to be incurred by the CITY in connection with this DEVELOPMENT CONTRACT, and PLAT approval

and acceptance and authorization of improvements. Such expenses shall be itemized on reasonably detailed invoices describing services, rates, time, person performing the services and the date of such expenses and shall be billed at normal CITY rates therefor. Bills not paid within thirty (30)

days shall accrue interest at the rate of eight percent per year.

9.3 ENFORCEMENT COSTS. The DEVELOPER shall pay the CITY for costs incurred in the enforcement of this DEVELOPMENT CONTRACT, including reasonable engineering and reasonable attorneys' fees.

9.4 TIME OF PAYMENT. The DEVELOPER shall pay all bills from the CITY within thirty (30) days after billing. Bills not paid within thirty (30) days shall bear interest at the rate of 8% per year.

ARTICLE 10 **DEVELOPER WARRANTIES**

10.1 STATEMENT OF DEVELOPER WARRANTIES. The DEVELOPER hereby makes and states the DEVELOPER WARRANTIES.

ARTICLE 11 **CITY WARRANTIES**

11.1 STATEMENT OF CITY WARRANTIES. The CITY hereby makes and states the CITY WARRANTIES.

ARTICLE 12 **INDEMNIFICATION OF CITY**

12.1 INDEMNIFICATION OF CITY. Provided the CITY is not in DEFAULT under the DEVELOPMENT CONTRACT with respect to the particular matter causing the claim, loss or damage, DEVELOPER shall indemnify, defend and hold the CITY, its COUNCIL, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and reasonable attorneys' fees, that the CITY incurs or suffers, which arise out of, result from or relate to:

- a.) breach by the DEVELOPER of the DEVELOPER WARRANTIES;
- b.) if commenced, failure of the DEVELOPER to timely construct the DEVELOPER PUBLIC IMPROVEMENTS according to the DEVELOPMENT PLANS;
- c.) failure by the DEVELOPER to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this DEVELOPMENT CONTRACT;

d.) failure by the DEVELOPER to pay contractors, subcontractors,

laborers, or materialmen;

- e.) failure by the DEVELOPER to pay for materials;
- f.) approval by the CITY of the PLAT;
- g.) approval by the CITY of the DEVELOPMENT PLANS;
- h.) failure to obtain the necessary permits and authorizations to construct the DEVELOPER IMPROVEMENTS, including failure to obtain the necessary permits and authorization from other REGULATORY AGENCIES, the UTILITY COMPANIES and the PRIOR EASEMENT HOLDERS;
- i.) if commenced, construction of the DEVELOPER IMPROVEMENTS;
- j.) delays in construction of the DEVELOPER PUBLIC IMPROVEMENTS;
- k.) all costs and liabilities arising because building permits were issued prior to the completion and acceptance of the DEVELOPER IMPROVEMENTS.

Notwithstanding anything contained in this Section 12.1 above, the DEVELOPER shall not be obligated to indemnify or defend the CITY from and against claims based on any negligence or willful misconduct by the CITY, its employees, agents or contractors, or the failure of the CITY to act in accordance with CITY ordinances and other applicable laws.

12.2 NOTICE. Within a reasonable period of time after the CITY's receipt of actual notice of any matter giving rise to a right of payment against the CITY pursuant to Section 12.1, the CITY shall give the FORMAL NOTICE in reasonable detail to the DEVELOPER. The DEVELOPER shall not be obligated to make any payment to the CITY for any such claim until the passage of thirty (30) days from the date of its receipt of FORMAL NOTICE from the CITY, during which time the DEVELOPER shall have the right to cure or remedy the event leading to such claim, or if not reasonably curable within thirty (30) days, such additional reasonable period of time to effect the cure.

12.3 DEFENSE OF CLAIM. Provided the CITY is not in DEFAULT under the DEVELOPMENT CONTRACT with respect to the particular matter causing the claim or demand, with respect to claims or demands asserted against the CITY by a third party of the nature covered by Sections 12.1 and 12.2 above (and subject to the exclusions set forth in the last paragraph of Section 12.1 above), and provided that the CITY gives FORMAL NOTICE thereof, the

DEVELOPER will, at its sole expense, provide for the defense thereof with counsel of its own

selection but approved by the CITY in its reasonable discretion; the DEVELOPER will pay all costs and expenses including reasonable attorneys' fees incurred in so defending against such claims, provided that the CITY shall at all times also have the right to fully participate in the defense at the CITY's expense. If the DEVELOPER fails to defend, the CITY shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter, for the account of and at the risk of the DEVELOPER.

ARTICLE 13

CITY REMEDIES UPON DEVELOPER DEFAULT

13.1 CITY REMEDIES. If a DEVELOPER DEFAULT occurs, that is not caused by FORCE MAJEURE, the CITY shall give the DEVELOPER FORMAL NOTICE of the DEVELOPER DEFAULT and the DEVELOPER shall have thirty (30) days to cure the DEVELOPER DEFAULT or if not reasonably curable within thirty (30) days, such additional reasonable period of time to effect the cure. If the DEVELOPER, after FORMAL NOTICE to it by the CITY, does not cure the DEVELOPER DEFAULT within thirty (30) days, or such other reasonable time, then the CITY may avail itself of any remedy afforded by law and any of the following remedies:

- a.) the CITY may specifically enforce this DEVELOPMENT CONTRACT;
- b.) the CITY may suspend any work, improvement or obligation to be performed by the CITY to the extent reasonably related to the DEVELOPER DEFAULT;
- c.) the CITY may, after providing an additional five (5) days FORMAL NOTICE to DEVELOPER of its intent to do so, collect on the irrevocable letter of credit or cash deposit pursuant to Article 14 or Article 15 hereof to the extent reasonably necessary to cure the DEVELOPER DEFAULT;
- d.) the CITY may suspend or deny building and occupancy permits for buildings within the PLAT to the extent reasonably related to the DEVELOPER DEFAULT;
- e.) the CITY may, at its sole option, perform the work or improvements to be performed by the DEVELOPER, in which case the DEVELOPER shall within thirty (30) days after written billing by the CITY reimburse the CITY for any reasonable costs and expenses incurred by the CITY. In the alternative, the CITY may in whole or in part, specially assess any of the costs and expenses incurred by the CITY; and the DEVELOPER hereby waives any and all procedural

and substantive objections to the installation and construction of the

work and improvements and the special assessment resulting therefrom; including, but not limited to, notice and hearing requirement and any claim that the special assessments exceed benefit to the PLAT. The DEVELOPER hereby waives any appeal rights otherwise available pursuant to Minn. Stat. § 429.081.

13.2 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained in this DEVELOPMENT CONTRACT is breached by the DEVELOPER and thereafter waived in writing by the CITY, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder. All waivers by the CITY must be in writing.

13.3 NO REMEDY EXCLUSIVE. No remedy herein conferred upon or reserved to the CITY shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the DEVELOPMENT CONTRACT or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the CITY to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the FORMAL NOTICE.

13.4 EMERGENCY. Notwithstanding the requirement contained in Section 13.1 hereof relating to FORMAL NOTICE to the DEVELOPER in case of a DEVELOPER DEFAULT and notwithstanding the requirement contained in Section 13.1 hereof relating to giving the DEVELOPER a thirty (30) day period to cure the DEVELOPER DEFAULT, in the event of an emergency resulting from a DEVELOPER DEFAULT presenting an immediate threat to health or safety or presenting an immediate threat that will likely result in property damage unless immediately addressed as reasonably determined by the DWP, the CITY may perform the work or improvement to be performed by the DEVELOPER without giving any notice or FORMAL NOTICE to the DEVELOPER and without giving the DEVELOPER the thirty (30) day period to cure the DEVELOPER DEFAULT. In such case, the DEVELOPER shall within thirty (30) days after written billing by the CITY reimburse the CITY for any and all costs incurred by the CITY. In the alternative, the CITY may, in whole or in part, specially assess the costs and expenses incurred by the CITY; and the DEVELOPER hereby waives any and all procedural and substantive objections to the installation and construction of the work and improvements and the special assessments resulting therefrom; including, but not limited to, notice and hearing requirements and any claim that the special assessments exceed benefit to the PLAT. The DEVELOPER hereby waives any appeal rights otherwise available pursuant to Minn. Stat. § 429.081.

ARTICLE 14

ESCROW DEPOSIT

14.1 ESCROW REQUIREMENT. Prior to the CITY allowing the PLAT to be

recorded and prior to the DEVELOPER beginning construction of the DEVELOPER IMPROVEMENTS and prior to obtaining any building permits, the DEVELOPER shall deposit with the City an irrevocable letter of credit, cash deposit or other security acceptable to the City for the amount stated in **Exhibit F**.

All cost estimates shall be acceptable to the DIRECTOR OF PWD. The total escrow amount was calculated as shown on the attached **Exhibit F**. The bank and form of the irrevocable letter of credit, or cash deposit shall be subject to approval by the City Finance Director and City Attorney and shall continue to be in full force and effect until released by the CITY. The irrevocable letter of credit shall be for a term ending December 31, 2023. In the alternative, the letter of credit may be for a one year term provided it is automatically renewable for successive one year periods from the present or any future expiration dates with a final expiration date of not earlier than December 31, 2023, and further provided that the irrevocable letter of credit states that at least sixty (60) days prior to the expiration date the bank will notify the CITY if the bank elects not to renew for an additional period. The irrevocable letter of credit shall secure compliance by the DEVELOPER with the terms of this Agreement. The CITY may draw down on the irrevocable letter of credit or cash deposit, without any further notice than that provided in Section 13.1 relating to a DEVELOPER DEFAULT, for any of the following reasons:

- a.) a DEVELOPER DEFAULT; or
- b.) upon the CITY receiving notice that the irrevocable letter of credit will be allowed to lapse without renewal or replacement before December 31, 2023.

The CITY shall use the letter of credit proceeds or cash deposit proceeds to reimburse the CITY for its costs and to cause the DEVELOPER IMPROVEMENTS listed on Exhibit C to be constructed to the extent practicable; if the DIRECTOR OF PWD determines that such DEVELOPER IMPROVEMENTS listed on **Exhibit C** have been constructed and after retaining 10% of the proceeds for later distribution pursuant to Section 14.2, the remaining proceeds shall be distributed to the DEVELOPER.

With CITY approval, the irrevocable letter of credit or cash deposit may be reduced pursuant to Section 14.2 from time to time as financial obligations are paid.

14.2 ESCROW RELEASE AND ESCROW INCREASE; DEVELOPER IMPROVEMENTS. Subject to the paragraph below addressing individual lot turf establishment, periodically, upon the DEVELOPER'S written request and upon completion by the DEVELOPER and acceptance by the CITY of any specific DEVELOPER IMPROVEMENTS, ninety percent (90%) of that portion of the irrevocable letter of credit, or cash deposit covering those specific completed improvements only shall be released. The final ten percent (10%) of that portion of the irrevocable letter of credit, or cash deposit, for those specific completed improvements shall be held until acceptance by the CITY and expiration of the warranty period under Section 1.19(H) hereof;

in the alternative, subject to the City Engineer approval and all lots receiving a certificate of occupancy

and meeting turf establishment requirements, the DEVELOPER may post a bond satisfactory to the CITY with respect to the final ten percent (10%).

If it is determined by the CITY that the DEVELOPMENT PLANS were not strictly adhered to, or that work was done without CITY inspection, the CITY may require, as a condition of acceptance, that the DEVELOPER post an irrevocable letter of credit, or cash deposit equal to 125% of the estimated amount necessary to correct the deficiency or to protect against deficiencies arising therefrom which letter of credit or cash deposit may be issued either in the name of the DEVELOPER or its general contractor. The additional irrevocable letter of credit, or cash deposit, shall remain in force for such time as the CITY deems necessary, not to exceed five (5) years. In the event that work, which is concealed, was done without permitting CITY inspection, then the CITY may, in the alternative, require the concealed condition to be exposed for inspection purposes.

With respect to Individual Lot Turf Establishment, \$_____ of the irrevocable letter of credit, or cash deposit shall be retained by the CITY (hereafter referred to as Lot Turf Retainage) and this Lot Turf Retainage shall be available to the CITY to pay for the cost of any corrections for deficiencies or problems related to DEVELOPER IMPROVEMENTS listed on Exhibit F related to Individual Lot Turf Establishment and to pay to protect against further deficiencies or problems. The CITY shall return to the DEVELOPER any remaining Lot Turf Retainage of the original \$_____, at a reduction of \$1,250 per lot, when all the following events have occurred:

- a.) The DEVELOPER'S written request indicates which lots by address of the PLAT meet the conditions for certificate of occupancy and established lawn or vegetative cover; and
- b.) The requested lots in the PLAT have been issued a certificate of occupancy; and
- c.) All of the lawn or vegetative cover has been established to the sole satisfaction of the CITY on each of the individual requested lots in the PLAT.

ARTICLE 15

MISCELLANEOUS

15.1 CITY'S DUTIES. The terms of this DEVELOPMENT CONTRACT shall not be considered an affirmative duty upon the CITY to complete any DEVELOPER IMPROVEMENTS, if the DEVELOPER fails to complete the DEVELOPER IMPROVEMENTS.

15.2 ADDITIONAL IMPROVEMENTS. If the DEVELOPER requests the CITY to construct the DEVELOPER PUBLIC IMPROVEMENTS, the CITY at its option, may install and construct the DEVELOPER PUBLIC IMPROVEMENTS. In such case, the CITY, at its option, may specially assess the cost wholly or in part therefore under Minnesota Statutes Chapter 429, or, so long as the CITY shall have given DEVELOPER at least ten (10) days written notice thereof, may draw the irrevocable letter of credit or cash deposit. If the CITY specially assesses the cost of any portion thereof and if the amount assessed is in an amount no more than agreed to in writing by

the DEVELOPER prior to commencement of the DEVELOPER PUBLIC IMPROVEMENTS, then the DEVELOPER hereby waives any and all procedural and substantive objections to the

installation of the improvements and the special assessments, including, but not limited to, notice and hearing requirements and any claim that the special assessments exceed the benefit to the PLAT. The DEVELOPER waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The DEVELOPER acknowledges that the benefit from the improvements equal or exceed the amount of the special assessments.

15.3 NO THIRD PARTY RECOURSE. Third parties shall have no recourse against the CITY or DEVELOPER under this DEVELOPMENT CONTRACT.

15.4 VALIDITY. If any portion, section, subsection, sentence, clause, section or phrase of this DEVELOPMENT CONTRACT is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this DEVELOPMENT CONTRACT.

15.5 RECORDING. The DEVELOPMENT CONTRACT and PLAT shall be recorded with the COUNTY Recorder and the DEVELOPER shall provide and execute any and all documents necessary to implement the recording.

15.6 BINDING AGREEMENT. The parties mutually recognize and agree that all terms and conditions of this recordable DEVELOPMENT CONTRACT shall run with the land in the PLAT and shall be binding upon the successors and assigns of the DEVELOPER. This DEVELOPMENT CONTRACT shall also run with and be binding upon any after acquired interest of the DEVELOPER in the land made the subject of the PLAT.

15.7 CONTRACT ASSIGNMENT. The DEVELOPER may not assign this DEVELOPMENT CONTRACT without the written permission of the COUNCIL. The DEVELOPER's obligations hereunder shall continue in full force and effect, even if the DEVELOPER sells one or more lots, the entire PLAT, or any part of it.

15.8 AMENDMENT AND WAIVER. The parties hereto may by mutual written agreement amend this DEVELOPMENT CONTRACT in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this DEVELOPMENT CONTRACT or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this DEVELOPMENT CONTRACT, waive compliance by another with any of the covenants contained in this DEVELOPMENT CONTRACT, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this DEVELOPMENT CONTRACT. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this DEVELOPMENT CONTRACT shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

15.9 GOVERNING LAW. This DEVELOPMENT CONTRACT shall be governed by and construed in accordance with the laws of the State of Minnesota.

15.10 COUNTERPARTS. This DEVELOPMENT CONTRACT may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

15.11 HEADINGS. The subject headings of the sections and subsections of this DEVELOPMENT CONTRACT are included for purposes of convenience only, and shall not affect the construction of interpretation of any of its provisions.

15.12 INCONSISTENCY. If the DEVELOPMENT PLANS are inconsistent with the words of this DEVELOPMENT CONTRACT, then the DEVELOPMENT PLANS shall prevail.

15.13 ACCESS. The DEVELOPER hereby grants to the CITY, its agents, employees, officers, and contractors a license to enter the PLAT to perform all inspections deemed appropriate by the CITY during the installation of DEVELOPER IMPROVEMENTS. The DEVELOPER hereby grants to the CITY, its agents, employees, officers, and contractors a license to enter the PLAT to complete DEVELOPER PUBLIC IMPROVEMENTS if the DEVELOPER fails to cure the DEVELOPER DEFAULT as required by this DEVELOPMENT CONTRACT.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this DEVELOPMENT CONTRACT.

CITY OF INVER GROVE HEIGHTS

By: _____
Tom Bartholomew
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 12th day of July, 2021, before me a Notary Public within and for said County, personally appeared Tom Bartholomew and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**DEVELOPER:
BUILDERS LOT GROUP, LLC**

By: _____
Melvin L. Moore
Its: Chief Executive Officer and Co-Chief Manager

By: _____
Steven Soltau
Its: Chief Financial Officer and Co-Chief Manager

STATE OF MINNESOTA)
)
COUNTY OF _____) ss.

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin L. Moore and Steven Soltau, to me personally known, who being by me duly sworn, each did say that they are respectively the Chief Executive Officer and Co-Chief Manager and Chief Financial Officer and Co-Chief Manager of Builders Lot Group, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed by Melvin L. Moore and Steven Soltau on behalf of Builders Lot Group, LLC by authority of the Board of Governors of Builders Lot Group, LLC.

Notary Public

This Instrument Was Drafted By:
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

**After Recording, Please Return This
Instrument To:**
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION
OF PLAT OF EAGLES LANDING

Real property situated in the City of Inver Grove Heights, County of Dakota, State of Minnesota,
legally described as:

Lots 1 through 6, Block 1, Eagles Landing, Dakota County, Minnesota;
Lots 1 through 5, Block 2, Eagles Landing, Dakota County, Minnesota;
Outlot A, Eagles Landing, Dakota County, Minnesota.

EXHIBIT B
LIST OF DEVELOPMENT PLANS

DEVELOPMENT PLANS means that certain set of plans titled “_____” dated _____, 2021 prepared by Sambatek. The Sheet Index for the Development Plans is shown below.

The above-listed Development Plans were approved by the City Engineer on _____, 2021.

The Development Plans also include compliance by the Developer with those conditions set forth in the following correspondences relating to the plat of Eagles Landing at Inver Grove Heights (the “City Engineer Memos”):

1. Memo from City Engineering Department dated October 29, 2020;
2. Letter from Dakota County Surveyor dated February 22, 2021;
3. Memo from City Engineering Department dated May 12, 2021;
4. Memo from Barr Engineering dated May 24, 2021;
5. Memo from City Engineering Department dated June 24, 2021;
6. Memo from Barr Engineering dated June 28, 2021.
7. Memo from City Engineering Department dated June 29, 2021.

The City Engineer Memos are on file with the City.

The Development Plans also include modifications of the above referenced Development Plans as approved from time to time by the City Engineer.

EXHIBIT C
DEVELOPER IMPROVEMENTS

The items checked with an "X" below are the DEVELOPER IMPROVEMENTS. The items checked with "PUBLIC" below are those DEVELOPER IMPROVEMENTS that are DEVELOPER-PUBLIC IMPROVEMENTS.

<u>CHECKED</u>	<u>COMPLETION DATE</u>	<u>IMPROVEMENT</u>
X	prior to obtaining a building permit or December 31, 2021, whichever occurs first	general site grading, drainage and erosion control
X PUBLIC	prior to obtaining a building permit or December 31, 2021, whichever occurs first	utilities (sanitary sewer and water lateral lines)
X	prior to obtaining a building permit or December 31, 2021, whichever occurs first	sanitary sewer and water service lines
X PUBLIC	prior to obtaining a building permit or December 31, 2021, whichever occurs first	gravel base and base course bituminous for streets
X PUBLIC	prior to obtaining a building permit or December 31, 2021, whichever occurs first	intersection improvements at 70 th Street East and Bovey Court
X	prior to obtaining a building permit or December 31, 2021, whichever occurs first	storm water facilities (including storm water vegetation) functional to level approved by City Engineer
X PUBLIC	prior to obtaining a building permit or December 31, 2021, whichever occurs first	tree preservation requirements and landscaping

X	December 31, 2021 or prior to issuance of certificate of occupancy	final completion of storm water facilities as approved by City Engineer
X	December 31, 2021 or prior to issuance of certificate of occupancy	retaining walls complete
X	prior to issuing certificate of occupancy for the individual subject lot	lot landscaping
X PUBLIC	See Section 4.4	street signage
X PUBLIC	December 31, 2021	public sidewalk on east side of cul-de-sac
X PUBLIC	December 31, 2021	paved entrance driveway to North Valley Park
X PUBLIC	December 31, 2022	final wear course of bituminous for street and street lights

If the DEVELOPER intends to construct model homes on certain lots within the PLAT, then the lots must first be approved by the City Planner, the Chief Building Official and the Public Works Department. Before use of the model homes by the public, the DEVELOPER shall install a gravel drive for access to the lots and the gravel drive shall be inspected and approved by the CITY Fire Marshall. The model homes shall not be occupied for residential use and shall only be used as display models until the other requirements of this DEVELOPMENT CONTRACT relating to certificate of occupancy are fulfilled.

EXHIBIT D
CITY IMPROVEMENTS

The CITY is not required to construct any CITY IMPROVEMENTS.

EXHIBIT E
MISCELLANEOUS REQUIREMENTS AND CONDITIONS
IMPOSED BY THE CITY

- 1.) **CONDITIONS TO BE SATISFIED BEFORE CITY RELEASES PLAT TO BE RECORDED.** Before the CITY releases the PLAT for recording with Dakota County, all of the following conditions must be satisfied:
- a.) DEVELOPER must execute this DEVELOPMENT CONTRACT and the documents listed in paragraph 20 of this Exhibit E.
 - b.) DEVELOPER must provide cash deposit for the Engineering Escrow Amount stated in Exhibit F of this DEVELOPMENT CONTRACT.
 - c.) DEVELOPER must provide the irrevocable letter of credit or cash deposit for the amount stated in Exhibit F of this DEVELOPMENT CONTRACT.
 - d.) DEVELOPER must provide to the CITY the sealcoating payment of \$4,000 with regard to the streets in the DEVELOPER IMPROVEMENTS as required under paragraph 14 of Exhibit E.
 - e.) DEVELOPER must fully pay the CITY for all planning, engineering review and legal fees that have been incurred up to the date of this DEVELOPMENT CONTRACT. DEVELOPER must further escrow with the CITY an amount reasonably determined by the CITY for future planning and engineering review fees and for reasonable legal fees, all at normal CITY rates therefore, except for such fees as may already otherwise be taken into account in the calculations or engineering inspection escrow made a part of Exhibit F.
 - f.) DEVELOPER must provide title evidence in the form of a title insurance policy that shows that the DEVELOPER owns the property within the PLAT.
 - g.) DEVELOPER must execute and deliver the documents listed in paragraph 14 of this Exhibit E. The form of the documents shall be subject to the approval of the City Attorney.
 - h.) DEVELOPER must pay the park dedication fee referenced in paragraph 6 of this Exhibit E.
- 2.) **CONDITIONS TO BE SATISFIED PRIOR TO DECEMBER 31, 2021 OR PRIOR TO ISSUANCE OF A BUILDING PERMIT.** Prior to December 31, 2021, or prior to issuance of a building permit, whichever occurs first, (subject to extension for any period of FORCE MAJEURE), the following conditions must be met in accordance with the DEVELOPMENT PLANS; however, the CITY pursuant to paragraph 15 of this Exhibit E, may issue a building permit for construction of model homes within the PLAT if the

CITY determines that satisfactory progress is being made with respect to the conditions stated below:

- a.) All the conditions in paragraph 1 of this Exhibit E have been met.
 - b.) The PLAT is recorded with the Dakota County Recorder.
 - c.) The DEVELOPMENT CONTRACT and all of the documents listed in paragraph 14 of this Exhibit E have been recorded and the DEVELOPER has provided evidence to the CITY of such recording.
 - d.) All sanitary sewer and water lateral lines have been installed; and all sanitary sewer and water trunk lines and sanitary sewer force mains have been installed and are operational.
 - e.) Sanitary sewer and water service have been installed.
 - f.) All grading, drainage and erosion control must be completed or, in the judgment of the Director of PWD, the grading, drainage and erosion control have been completed to the point that the commencement of building will not cause adverse effects with respect to storm water runoff or storm water detention.
 - g.) All storm water facilities, including any storm sewer pipes, infiltration basins, water quality pre-treatment facilities and appurtenances must be functional to a level reasonably approved by the City Engineer.
 - h.) The gravel sub-base for the street within the PLAT has been installed and the base course of bituminous for the street must be installed.
 - i.) DEVELOPER must have obtained any required access permits from Dakota County.
 - j.) The tree preservation requirements and landscaping requirements have been met.
 - k.) The intersection improvements at 70th Street East and Bovey Court are completed.
- 3.) **CONDITIONS TO BE SATISFIED PRIOR TO DECEMBER 31, 2021 OR PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY.** Prior to the issuance of any certificate of occupancy for any lot in the PLAT, and in any event, **no later than December 31, 2021**, the following conditions must be satisfied in accordance with the DEVELOPMENT PLANS:
- a.) All the conditions listed in paragraphs 1 and 2 of this Exhibit E must be satisfied.
 - b.) Lot landscaping must be completed for the individual lot affected by the landscaping; provided, however, if the request for the certificate of occupancy is made in the months of October through May and if all other requirements for the

certificate of occupancy, except landscaping, have been met, then the CITY shall issue the temporary certificate of occupancy and the DEVELOPER is then required to complete the landscaping no later than the following June 30th.

- c.) The paved entrance driveway to North Valley Park is constructed.
- d.) Prior to the CITY issuing a building permit for any individual lot in the PLAT, all retaining wall permits must be issued by the CITY. Prior to the CITY granting a temporary certificate of occupancy or a final certificate of occupancy for any individual lot in the PLAT that is to have a retaining wall, the retaining wall permit must be complete, wall certification must be received and accepted by the Chief Building Official, grading associated with the retaining wall must be accepted by the City Engineer and the retaining wall record drawing must be received and accepted by the CITY.
- e.) By December 31, 2021, the public sidewalk shall be installed.
- f.) By December 31, 2022, the final wear course bituminous for the street must be installed and the street lights must be installed.

4.) **OWNERSHIP AND MAINTENANCE OBLIGATIONS RELATING TO OUTLOT A, EAGLES LANDING.** Outlot A, Eagles Landing shall have the following ownership and maintenance responsibilities:

- OWNER shall convey Outlot A, Eagles Landing to the CITY by Warranty Deed.
- DEVELOPER shall construct a storm water filtration basin and related storm water appurtenances (including inlet and outlet storm sewer pipes) on Outlot A, Eagles Landing as part of the DEVELOPER IMPROVEMENTS.
- The storm water filtration basin shall be maintained by the Eagles Landing Homeowners Association.
- The CITY will maintain the area outside of the storm water filtration basin as depicted and shown on the Storm Water Facilities Responsibility Map attached to the Storm Water Facilities Maintenance Agreement for Outlot A, Eagles Landing between the City and OWNER.
- The CITY will maintain the inlet and outlet storm sewer pipes which convey storm water from Bovey Avenue to the storm water filtration basin and then from the storm water filtration basin to the City owned park property adjoining Outlot A, Eagles Landing.
- The retaining wall to be constructed on Outlot A, Eagles Landing by the DEVELOPER as part of the DEVELOPER IMPROVEMENTS shall be maintained by the Eagles Landing Homeowners Association per the Retaining Wall Maintenance Agreement for Outlot A, Eagles Landing between the OWNER and CITY.

5.) **CLEAN UP OF CONSTRUCTION DEBRIS ON STREETS AND ADJOINING**

PROPERTY. The escrow amount stated on Exhibit F includes an appropriate amount as

determined by the Director of Public Works to assure that the DEVELOPER removes any construction debris from streets adjoining the PLAT and from private properties that adjoin the PLAT. During the construction and other improvements within the PLAT, the DEVELOPER is responsible for removing any construction debris (including roofing materials, paper wrappings, construction material and other waste products resulting from construction) that may be blown from the construction site into adjoining private properties or into CITY streets or that may fall from delivery trucks onto adjoining private properties or CITY streets. Further, during construction, the DEVELOPER must clear the CITY streets of any dirt or other earthen material that may fall onto the CITY streets from the delivery trucks that are being used in the excavation and grading of the site.

- 6.) **PARK CONTRIBUTION FEE.** The park contribution fee is based on a per unit amount of \$2,850, multiplied by the number of lots. There are 10 developable lots and as a result, the park contribution is \$28,500 (10 lots multiplied by \$2,850 per unit). The park contribution fee of \$28,500 must be paid before the CITY releases the PLAT.
- 7.) **EXISTING HOME ON LOT 1, BLOCK 1, EAGLES LANDING.** There is an existing residential home on Lot 1, Block 1, Eagles Landing. After the PLAT is filed and recorded with the COUNTY, OWNER intends to convey Lot 1, Block 1, Eagles Landing back to the current fee owner of the property that will be platted as Lot 1, Block 1, Eagles Landing. The current fee owner of the property that will be platted as Lot 1, Block 1, Eagles Landing intends to retain the existing home for occupation as a single family dwelling.
- 8.) **PICKLE BALL COURT AT NORTH VALLEY PARK.** DEVELOPER shall include language in the Eagles Landing Homeowners Association governance and declaration documents that discloses the noise issue relating to the public pickle balls courts located adjacent to the PLAT at North Valley Park. The disclosure in the recorded declaration shall be subject to the approval of the CITY Planner.
- 9.) **PAYMENT FOR SEALCOATING.** The CITY agrees to sealcoat the bituminous pavement within the PLAT to protect and enhance the lifespan of the streets. The sealcoating will be completed by the CITY approximately three (3) years after the installation of the final wear course of bituminous pavement. The CITY will perform the work associated with the sealcoating. The DEVELOPER shall pay the CITY the amount of \$4,000 for the work.

The amount of \$4,000 is due and payable by the DEVELOPER to the CITY at the time the PLAT is executed by the CITY. The CITY will complete the work associated with the sealcoating approximately three (3) years after the installation of the final wear course of bituminous pavement. The DEVELOPER agrees that the sealcoating benefits the PLAT.
- 10.) **TREE PRESERVATION.** DEVELOPER must meet the tree preservation requirements in connection with the PLAT and the conditions imposed by the CITY COUNCIL as part of plat approval must be met by the DEVELOPER.
- 11.) **STREET LIGHTING.** DEVELOPER at its own expense shall install street lights at the

locations shown on the approved street plan. The location and number of street lights will be determined by the local electric company. DEVELOPER shall enter into a Street Light Agreement for the PLAT. DEVELOPER shall cover the cost of streetlight electricity by providing \$4/Quarter/Unit for the first 3 years, then single-family lot owners will pay through standard City utility billing.

- 12.) **LOT EROSION CONTROL REQUIREMENTS.** Any construction of residences on the lots within the PLAT shall follow the erosion control requirements set forth in the attached Exhibit G. The DEVELOPER must make the builder aware of the erosion control requirements and must provide a copy to the builder of such requirements.

- 13.) **CONVEYANCE OF OUTLOT.** At the time the PLAT is recorded, the DEVELOPER shall convey to the CITY Outlot A, Eagles Landing.

Conveyance of the Outlot shall be by Warranty Deed. The Warranty Deed shall be recorded with the PLAT.

- 14.) **AGREEMENTS.** The DEVELOPER must comply with the following requirements and execute the agreements set forth below:

- a. DEVELOPER must execute this DEVELOPMENT CONTRACT for the PLAT.

The above-listed agreement must be executed at the time the PLAT is recorded and must be recorded with the PLAT.

- b. By Warranty Deed, DEVELOPER must convey Outlot A, Eagles Landing to the CITY at the time the PLAT is recorded.

- c. DEVELOPER must execute a Storm Water Facilities Maintenance Agreement for Outlot A, Eagles Landing.

The above-listed agreement must be executed at the time the PLAT is recorded and must be recorded with the PLAT.

- d. DEVELOPER must execute a Restrictive Use Easement Agreement for the following lots within the PLAT:

- Lot 5, Block 2, Eagles Landing
- Lot 1, Block 1, Eagles Landing

The above-listed agreements must be executed at the time the PLAT is recorded and must be recorded with the PLAT.

- e. DEVELOPER must execute a separate Retaining Wall Maintenance Agreement and Agreement Relating to Landowner Improvements Within City Easement for

the following lots within the PLAT:

- Lot 4, Block 1, Eagles Landing
- Lot 5, Block 2, Eagles Landing

The above-listed agreements must be executed at the time the PLAT is recorded and must be recorded with the PLAT.

- f. DEVELOPER must execute a Retaining Wall Maintenance Agreement for Outlot A, Eagles Landing.

The above-listed agreement must be executed at the time the PLAT is recorded and must be recorded with the PLAT.

- g. DEVELOPER must execute a Street Light Agreement for the PLAT.

The above-listed agreement must be executed at the time the PLAT is recorded and must be recorded with the PLAT.

- h. DEVELOPER must obtain approval from the CITY and must record the Homeowners Association documents for the PLAT.

- i.) DEVELOPER must execute a Permanent Pedestrian Sidewalk Easement for the PLAT.

The above-listed agreement must be executed at the time the PLAT is recorded and must be recorded with the PLAT.

The agreements and easements listed in this paragraph 14 must be recorded prior to any mortgage relating to any lots in the PLAT.

- 15.) **MODEL HOMES / SALES HOMES.** With respect to construction of model homes, the lots must first be approved by the City Planner, the Chief Building Official and the Public Works Department. Before use of the model homes by the public, the DEVELOPER shall install gravel drives for access to the lots and the gravel drives shall be inspected and approved by the CITY Fire Marshal. The model homes shall not be occupied for residential use and shall only be used as display models until the other requirements of this DEVELOPMENT CONTRACT relating to certificate of occupancy are fulfilled.
- 16.) **OUTLOT MARKER POSTS.** DEVELOPER shall be responsible for installing marker posts at reasonable locations to define the boundary of the outlots. The markers provide identification for future landowners to know boundaries of the outlots. The final PUD plans must show the location of the marker posts. CITY will provide and install sign panels

labeled “Protected Area” at the cost of DEVELOPER.

- 17.) **CONSENT REQUIREMENTS.** DEVELOPER agrees that the following elements of the Planned Unit Development within the PLAT shall not be altered, changed or removed from the DEVELOPMENT PLANS without first obtaining the following consents:

Site Plan Element	Consent Required By
Building Location	City Council
Driveways	Planning Department
Landscaping	Planning Department
Location of Utilities	Engineering Department

- 18.) **MONUMENT AT ENTRYWAY.** If DEVELOPER constructs a monument and associated landscaping at the entryway to the PLAT, the CITY shall grant a permit to the DEVELOPER with the responsibilities for maintenance outlined in the permit. The DEVELOPER shall maintain the monument and associated landscaping. If the DEVELOPER fails to maintain the monument and associated landscaping per the terms of the permit issued by the CITY, then the CITY may revoke the permit and the DEVELOPER at its cost shall remove the monument and associated landscaping as directed by the CITY. The monument and associated landscaping shall not adversely impact the sight triangles. DEVELOPER shall follow the CITY height restrictions.
- 19.) **RETAINING WALL REQUIRMENTS.** Prior to the CITY issuing a building permit for any individual lot in the PLAT, any retaining wall permit for that lot must be issued by the CITY. Prior to the CITY granting a temporary certificate of occupancy or a final certificate of occupancy for any individual lot in the PLAT that is to have a retaining wall, the retaining wall permit must be complete, wall certification must be received and accepted by the Chief Building Official, grading associated with the retaining wall must be accepted by the City Engineer and the retaining wall record drawing must be received and accepted by the CITY. The Retaining Wall Maintenance Agreement shall contain the same requirement.
- 20.) **NATURAL AREA/OPEN SPACE.** There will be dedicated natural area/open space in Outlot A, Eagles Landing per the approved DEVELOPMENT PLANS. Because the CITY will own Outlot A, the CITY is not requiring a Natural Area/Open Space Easement Agreement for the PLAT.
- 21.) **PAYMENT FOR UTILITY AND STREET EXTENSIONS.** This paragraph 31 of Exhibit E only applies if the DEVELOPMENT PLANS show that the DEVELOPER is leaving unbuilt a portion of the utilities and street adjoining the abutting parcels.

There are public streets in the PLAT that abut property not owned or controlled by the DEVELOPER. The DEVELOPER has to leave unbuilt a portion of the utilities and street adjoining the abutting parcels. The CITY wants to assure that the following portions are either built or that the CITY has funds available to build these segments if and when the

adjoining land is platted and developed:

- Covey Trail East

Therefore, at the time the PLAT is signed, DEVELOPER shall pay in escrow to the CITY the sum of \$_____ to compensate the CITY for utility and street extension with respect to the segments of the utilities and streets within the PLAT that will not be extended until a future date when the abutting property adjacent to the PLAT is developed.

With regard to the escrowed sum, no interest shall be paid on the escrowed amount. If the utilities and street are extended to the boundaries of the PLAT at the time the utilities and street are installed, then after completion of the utility and street extension and acceptance of the improvements by the CITY, the escrowed sum relating to the utility and street extension that is completed shall be paid to the DEVELOPER. On the other hand, if the utility and street extensions are not made, the CITY shall keep the escrowed sum and the CITY will then at a later date complete the utility and street extensions. The DEVELOPER has no claim to the escrowed sum that is kept by the CITY in accordance with the terms hereof.

- 22.) **SINGLE STORY HOMES.** Lots ____, ____ and ____, Block ____, Eagles Landing shall only be developed with a single story residence; no building permit shall be issued for any residence other than a single story residence.

EXHIBIT F
ESCROW CALCULATION FOR DEVELOPER IMPROVEMENTS

1.) Site Grading, Drainage , Erosion Control	\$
2.) Sanitary Sewer	\$
3.) Watermain	\$
4.) Storm Water Facilities	\$
5.) Street and Sidewalk	\$
6.) Retaining Walls	\$
7.) Tree Preservation & Landscaping (Planning)	\$
8.) Construction debris clean up	\$
9.) Certified As-Builts	\$
SUBTOTAL	\$
Multiplied by	<u>1.25</u>
SUBTOTAL ESCROW:	\$
10.) Individual Lot Turf Establishment (\$1,250 per lot x 10 lots)	+\$
TOTAL ESCROW:	\$

EXHIBIT F
ESCROW CALCULATION (Continued)

In addition to the Escrow Amount for Developer Improvements set forth above, the Developer shall also deposit the following amounts in cash with the City (hereafter “**Engineering Escrow Amount**”) contemporaneously with execution of this Development Contract:

- \$21,000 City inspection and engineering consultant fees (10 lots x \$2,100 per lot)
- **\$21,000 TOTAL**

The Engineering Escrow Amount shall be used to pay the City for engineering inspection, engineering consultant fees, attorney’s expenses, staff review time, assurance for sediment/erosion control compliance, turf establishment, and maintenance requirements at the City’s standard rates charged for such tasks. The City reserves the right to charge additional consultant fees as needed.

Subject to the paragraphs below dealing with Escrow Retainage Amount and native vegetative maintenance, upon satisfactory completion of the Developer Improvements, the City shall return to the Developer any remaining portion of the Engineering Escrow Amount.

Twenty five percent (25%) of this Engineering Escrow Amount shall be retained by the City (hereafter referred to as Escrow Retainage) and this Escrow Retainage shall be available to the City to pay for deficiencies and problems related to grading, drainage and erosion control, turf establishment, vegetative establishment, and plat landscaping within the PLAT. The City may use the Escrow Retainage to correct any such deficiencies or problems or to protect against further deficiencies or problems.

The City shall return to the Developer any remaining Escrow Retainage Amount when all of the following have occurred:

- a.) All the Developer Public Improvements have been accepted by the City; and
- b.) Certificates of Occupancy have been issued for all lots in the plat; and
- c.) All lots in the plat meet the Individual Lot Turf Establishment requirements; and
- d.) Vegetative cover has been completed to the reasonable satisfaction of the City with respect to the infiltration basins and storm water facilities located within the PLAT; and.
- e.) Native vegetation, with respect to infiltration basins and storm water facilities, has been fully established and maintained for three growing years to the reasonable satisfaction of the City.

The Engineering Escrow Amount shall maintain a minimum amount of \$_____ per acre (\$4,500 per acre for three years) for a total of \$_____ for native vegetative maintenance for three growing years past installation. The City’s current Native Vegetation Operation and Maintenance Plan for policy and enforcement procedures applies. The Developer agrees to comply with said Plan.

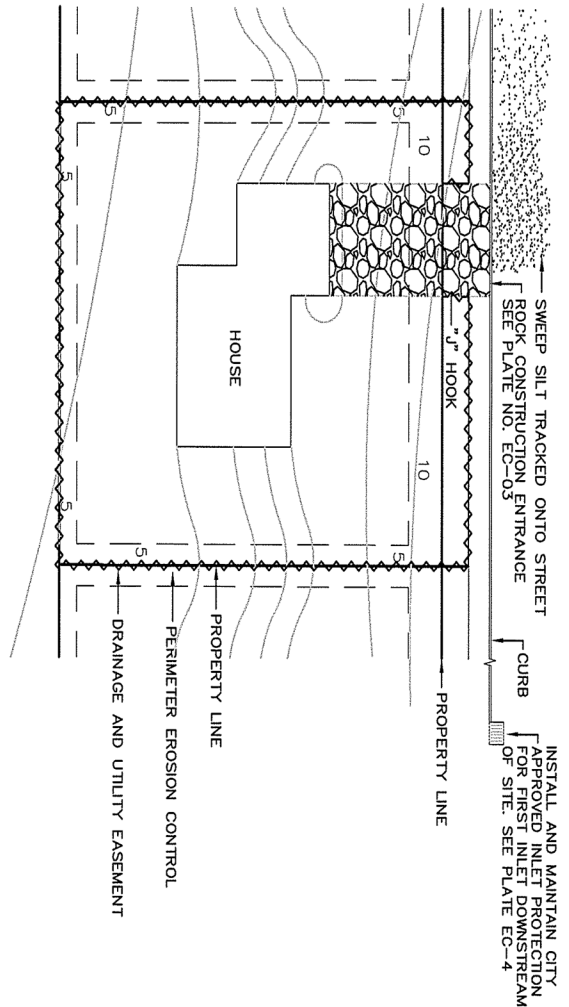
See section 14.2 ESCROW RELEASE AND ESCROW INCREASE; DEVELOPER IMPROVEMENTS for Individual Lot Turf Establishment requirements and letter of credit reduction process.

To the extent the engineering inspection charges or the amount needed to correct the deficiencies and problems relating to grading, drainage, erosion control, vegetative cover, turf establishment or native vegetation establishment exceed the amount on deposit, the Developer is responsible for payment of such excess within thirty (30) days after billing by the City. The City is not required to pay any interest on the Engineering Escrow Amount.

Review fees associated with the Development Plans in the amount of \$4,000 were received by the City from the Developer which covered the following costs:

- \$4,000: Stormwater Management Plan Review

EXHIBIT G **LOT EROSION CONTROL REQUIREMENTS**



- NOTES:
1. PERIMETER EROSION CONTROL IS REQUIRED. SOME ACCEPTABLE TYPES ARE SILT FENCE, TOPSOIL, BERMS, VEGETATED BUFFER STRIPS, FIBER LOGS, COMPOST BERMS, COMPOST LOGS, SHREDED WOOD MULCH BERMS, AND ROCK BERMS.
 2. APPROVED INLET PROTECTION SHALL BE INSTALLED AND MAINTAINED AT THE FIRST CATCHBASIN DOWNSTREAM FROM CONSTRUCTION SITE. (SEE CITY STANDARD PLATE EC-04)
 3. FOR CUSTOM GRADED LOTS, EROSION CONTROL MEASURES SHALL BE INSTALLED PRIOR TO ISSUANCE OF THE BUILDING PERMIT.
 4. FOR NON-CUSTOM GRADED LOTS, EROSION CONTROL MEASURES SHALL BE INSTALLED BY NO LATER THAN THE SAME DAY THE HOUSE FOUNDATION IS BACKFILLED.
 5. EROSION CONTROL MEASURES SHALL BE MAINTAINED UNTIL ALL TURF IS ESTABLISHED.
 6. SILT FENCE SHALL BE "J" HOOKED AT DRIVEWAY FOR A MINIMUM OF 4'.
 7. SILT TRACKED ONTO THE STREET SHALL BE SWEEP THE SAME DAY BY A WATER-BASED SWEEPER.
 8. ACCEPTED TEMPORARY EROSION CONTROL MEASURES FOR SOIL STABILIZATION ARE: MULCH (STRAW, SHREDED WOOD, OR COMPOST), SPRAYED MULCH, HYDROMULCH, TACKIFIER, AND EROSION CONTROL BLANKET. TEMPORARY OR PERMANENT SEEDING MIXTURES CAN BE APPLIED WITH THE LISTED SOIL STABILIZATION MEASURES.
 9. IF APPLICABLE, THE CONTRACTOR SHALL FOLLOW THE NPDES TIMELINES FOR EROSION CONTROL.
 10. SLOPES 3:1 OR STEEPER SHALL HAVE TEMPORARY EROSION CONTROL MEASURES, SEEDING, OR SOD INSTALLED WITHIN 7 CALENDAR DAYS.
 11. FAILURE TO INSTALL OR MAINTAIN EROSION CONTROL WILL RESULT IN ISSUANCE OF AN "EROSION CONTROL CORRECTION NOTICE". FAILURE TO COMPLY WITH THE CORRECTION NOTICE MAY RESULT IN THE ISSUANCE OF A "STOP WORK ORDER".

		
EROSION CONTROL FOR RESIDENTIAL LOTS		
CITY OF INVER GROVE HEIGHTS ENGINEERING DEPARTMENT	4/11	PLATE NO. EC-01

**STORM WATER FACILITIES MAINTENANCE AGREEMENT RELATING TO THE
PLAT OF EAGLES LANDING
DAKOTA COUNTY, MINNESOTA**

THIS STORM WATER FACILITIES MAINTENANCE AGREEMENT RELATING TO THE PLAT OF EAGLES LANDING (Agreement) is made, entered into and effective this 12th day of July, 2021, by and between the City of Inver Grove Heights, a Minnesota municipal corporation (hereafter referred to as City) and Builders Lot Group, LLC, a Minnesota limited liability company (hereafter referred to as Landowner and Responsible Owner) and Eagles Landing Homeowners Association, a Minnesota non-profit corporation (hereafter referred to as Association). Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 Terms. The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

1.2 City. City means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 Landowner. Landowner means Builders Lot Group, LLC, a Minnesota limited liability company, and its successors and assigns.

1.4 Association. Association means Eagles Landing Homeowners Association, a Minnesota non-profit corporation and its successors and assigns.

1.5 Storm Water Facilities. Storm Water Facilities means each and all of the following, individually and collectively located now or in the future in the plat of Eagles Landing:

Any existing or future storm water filtration basins and associated vegetation, sediment basins, dry basins, water quality (environmental) structures, overflow control structures, inlets, catch basins, pipes, culverts, drain tile, conduits, aprons, drainage areas, ditches, swales, emergency over flows and berms lying within the plat of Eagles Landing.

1.6 Responsible Party. Responsible Party means the following:

- a. From the date hereof through December 31, 2021, the Responsible Party is Landowner and its successors and assigns.
- b. From and after January 1, 2022, the Responsible Party is the Association and its successors and assigns.

1.7 Residential Lots. Residential Lots means individually and collectively all of the lots described on the attached **Exhibit A**.

1.8 Residential Owners. Residential Owners means the fee title owners of the Residential Lots.

1.9 Stormwater Facility Plan. “Stormwater Facility Plan” means collectively the following:

- The _____ prepared by Sambatek dated June __, 2021 and approved by the City Engineer on July __, 2021.
- The Operations and Maintenance Plan attached as Exhibit B approved by the City Engineer and any amendments relating thereto approved by the City.

The Storm Water Facility Plan also includes the Storm Water Facilities Responsibility Map prepared by Sambatek dated July __, 2021 and approved by the City Engineer and attached hereto as Exhibit D.

The Storm Water Facility Plan also includes modifications of the Stormwater Facility Plan as approved from time to time by the City Engineer.

1.12 NWA Stormwater Manual. “NWA Stormwater Manual” means the Inver Grove Heights Northwest Area Stormwater Manual prepared by Emmons & Olivier Resources dated July 2006, and as adopted by the City of Inver Grove Heights and codified in Section 10-13J-5 (H) of the Inver Grove Heights City Code, as amended from time to time by amendment of general applicability.

1.13 Development Contract. “Development Contract” means that certain contract between Landowner and City dated July 12, 2021.

ARTICLE 2 **RECITALS**

Recital No. 1. Landowner owns the Residential Lots, except for Outlot A, Eagles Landing. The City will own Outlot A, Eagles Landing.

Recital No. 2. The Storm Water Facilities benefit and will serve the Residential Lots.

Recital No. 3. Landowner will be conveying or cause to be conveyed Outlot A, Eagles Landing to the City.

Recital No. 4. The City is willing to allow the plat of Eagles Landing to be recorded if Landowner complies with the requirements contained in Exhibit E of the Development Contract, of even date herewith between the City and Landowner, and if Landowner and the Association execute this Storm Water Facilities Maintenance Agreement.

Recital No. 5. The Residential Owners will be members of the Association.

Recital No. 6. By this Agreement the parties seek to:

- a.) impose upon the Responsible Party the responsibility of maintaining the Storm Water Facilities, notwithstanding the fact that the Storm Water Facilities may exist within easements dedicated or granted to the City and the public; and
- b.) provide a mechanism where the City may charge-back to the Residential Lots any maintenance work that the City performs with respect to the Storm Water Facilities in the event the Responsible Party fails to perform its obligations to maintain the Storm Water Facilities.

Recital No. 7. Because Landowner currently owns all the Residential Lots, Landowner is currently the only Residential Owner.

ARTICLE 3 **RESPONSIBILITY FOR MAINTENANCE**

3.1 Construction of Stormwater Facilities. Landowner agrees that the Stormwater Facilities shall be constructed and installed in accordance with the Stormwater Facility Plan at the sole expense of Landowner at a location and in a configuration as approved by the City pursuant to the Development Contract.

3.2 Operation and Maintenance of Stormwater Facilities. Responsible Party is obligated at its expense to perpetually operate and maintain the Stormwater Facilities in accordance with the Standard of Maintenance set forth in Section 3.4 hereof. The Responsible Party shall not modify, alter, remove, eliminate or obstruct the Stormwater Facilities for as long as the Stormwater Facilities exist. The Responsible Party shall not modify, alter, remove, eliminate or obstruct the Stormwater Facilities without the advance written consent of the City. The Responsible Party shall also ensure that the Stormwater Facilities always remain in compliance with the Stormwater Facility Plan. The responsibility of the Responsible Party for maintaining the Stormwater Facilities exists even though the event or omission which caused the need for maintenance of the Stormwater Facilities may arise on property outside of the plat of Eagles Landing.

3.3 Maintenance by City. Responsible Party is not obligated to maintain the following storm water facilities within the plat of Eagles Landing:

- a. The area outside of the filtration basin as shown on the Storm Water Facilities Responsibility Map attached hereto as Exhibit D.
- b. The inlet and outlet storm sewer pipes which convey stormwater from Bovey Court to the filtration basin and then from the filtration basin to the North Valley Park property which adjoins the plat of Eagles Landing.
- c. RCP storm sewer pipes, manholes and outlet structures shown on the Storm Water Facilities Responsibility Map attached hereto as Exhibit D.

The City, not the Responsible Owner, is obligated to maintain the storm water facilities identified above in this Section 3.3 and shown as City responsibility on the attached Exhibit D.

3.4 Standard of Maintenance. The Responsible Party must meet the Standard of Maintenance set forth in this Section 3.4.

The Standard of Maintenance shall comply with all of the following:

- a.) The Standard of Maintenance shall comply with the standards contained in Title 9, Chapter 5 of the Inver Grove Heights City Code (as amended from time to time, by amendment of general applicability);
- b.) The Standard of Maintenance shall comply with the stormwater maintenance standards and bio-retention standards and requirements as set forth in the **NWA Stormwater Manual** (as amended from time to time, by amendment of general applicability). The NWA Stormwater Manual is on file with the City's Director of Public Works;
- c.) The Standard of Maintenance shall comply with the City approved Operations & Maintenance Plan hereafter referenced;
- d.) The Standard of Maintenance shall comply with the Watershed Management Plan of the Watershed Management Organization for the Watershed District within which the plat of South Grove Townhomes is located.
- e.) The Standard of Maintenance shall include but not be limited to each of the following:
 - i. The Responsible Party shall monitor the Stormwater Facilities and shall as soon as possible correct any malfunction or deficiency in the operation of such structure so as to ensure that the structure operates in conformance with the design parameters.
 - ii. Responsible Party must comply with Section IV of the NWA Stormwater Manual which outlines the requirements for the operations and maintenance of Long Term Best Management Practices (BMP's) for stormwater facilities. The Landowner has prepared an Operations & Maintenance Plan to show how the Responsible

Party must operate and maintain Long Term Best Management Practices for the Storm Water Facilities attached hereto as **Exhibit B**. The Operations & Maintenance Plan attached hereto as Exhibit B has been approved by the City. The Responsible Party and the successors and assigns thereof shall be responsible for following the Operations & Maintenance Plan. The Operations & Maintenance Plan shall be on file with the City's Director of Public Works.

- iii. The Operations & Maintenance Plan shall contain the following information:
 - a. Detailed inspection requirements;
 - b. Inspection and maintenance schedules;
 - c. Contact information for the Responsible Party;
 - d. As built plans of the Stormwater Facilities;
 - e. A letter of compliance from the designer after construction of the Stormwater Facilities is completed;
 - f. The requirement for an annual report to the City to demonstrate that post construction maintenance is being accomplished per the Operations & Maintenance Plan;
 - g. The GPS coordinates for the Stormwater Facilities shall be provided to the City after construction is completed. Stormwater Facilities smaller than 200 square feet can be located with one GPS coordinate. Stormwater Facilities larger than 200 square feet shall have outlet coordinates and the corners of the Stormwater Facilities located by GPS. The GPS readings shall be provided to the City before the Stormwater Facilities are covered.

If the Stormwater Facility Plan is inconsistent with the Standard of Maintenance or if components within the Standard of Maintenance are inconsistent with other components within the Standard of Maintenance, then that provision, term or component which imposes a greater and more demanding obligation shall prevail.

On December 31 of each year, the Responsible Party shall submit to the City an annual report that identifies all of the tests, inspections, corrective measures and other activities conducted by the Responsible Party under the Operations & Maintenance Plan for the preceding year. The annual report shall also identify any conditions of non-compliance with the Standard of Maintenance during the preceding year and the annual report shall address how the conditions of non-compliance were cured. The annual report shall also include the information shown on the form attached hereto as **Exhibit C**.

3.5 Notice of Non-Compliance with Section 3.2 and 3.4; Cure Period. If the City's Director of Public Works ("DPW") determines, at his reasonable discretion, that the Responsible Party has not complied with the Standard of Maintenance, the DPW shall provide written notice to the Responsible Party of such failure to comply with the Standard of Maintenance. This notice shall specify that the Responsible Party will have thirty (30) days to

comply with the Standard of Maintenance, unless thirty (30) days is not practicable for the Responsible Party to cure the default, in which case the Responsible Party shall be given a reasonable time, as reasonably determined by the DPW, to cure the default provided the Responsible Party has commenced a suitable cure within the initial thirty (30) days. Notwithstanding the requirement contained in this Section relating to written notice and opportunity of the Responsible Party to comply with the Standard of Maintenance, in the event of an emergency as reasonably determined by the DPW, the City may perform the work to be performed by the Responsible Party without giving any notice to the Responsible Party Maintenance. If the City performs emergency service work, the Responsible Party and the City shall follow those procedures set forth in Sections 3.6 and 3.7 with respect to the billing, collection and/or tax certification of such costs.

3.6 Payment of Costs Incurred by City. If the Responsible Party fails to comply with the Standard of Maintenance within thirty (30) days after delivery of the written notice, or in the case of an emergency situation as reasonably determined by the DPW, the City may perform those tasks necessary for compliance and the City shall have the right of access to the areas where the Stormwater Facilities are located to perform such work. The City shall charge all costs incurred by the City to perform the tasks necessary for compliance to the Responsible Party.

The amount of costs charged by the City to the Responsible Party shall be the usual and customary amounts charged by the City given the task, work, or improvement performed by the City to ensure compliance with the Standard of Maintenance. The Responsible Party shall make payment directly to the City within thirty (30) days after invoicing (“Due Date”) by the City. Bills not paid by the Due Date shall incur the standard penalty and interest established by the City for utility billings within the City.

3.7 Certification of Costs Payable With Taxes; Special Assessments. If payment is not made under Section 3.6 by the Responsible Party, the City may certify to Dakota County the amounts due as payable to the Residential Lots in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The amount due shall be allocated equally among the Residential Lots. The Responsible Party and the Residential Owners waive any and all procedural and substantive objections to the imposition of such usual and customary charges on the Residential Lots.

Further, as an alternate means of collection, if the written billing is not paid by the Responsible Party, the City, without notice and without hearing, may specially assess the Residential Lots for the costs and expenses incurred by the City. The Responsible Party and the Residential Owners hereby waive any and all procedural and substantive objections to special assessments for the maintenance costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Residential Lots. The Responsible Party and Residential Owners waive any appeal rights otherwise available pursuant to Minnesota Statutes § 429.081. The Responsible Party and Residential Owners acknowledge that the benefit from the performance of maintenance tasks by the City to ensure compliance with the Standard of Maintenance equals or exceeds the amount of the charges and assessments for the maintenance costs that are being imposed hereunder upon the Residential Lots.

3.8 Obligation For Maintenance Notwithstanding Public Easement. The Responsible Party agrees that its obligations relating to maintenance of the Stormwater Facilities exist notwithstanding the fact that the Stormwater Facilities may be located in whole or in part within public easements.

The City hereby grants to the Responsible Party a right and license to enter public easements and public road rights-of-way for the purpose of performing the maintenance obligations relating to the Stormwater Facilities for the duration of the performance of the maintenance.

Landowner and Association hereby grant to the City a right and license to access and enter the lands on which the Storm Water Facilities exist for the purpose of performing maintenance of the Storm Water Facilities for the duration of the performance of the maintenance.

The City hereby grants to the Association a right and license to access and enter Outlot A, South Grove Townhomes for the purpose of performing maintenance of the Storm Water Facilities for the duration of the performance of the maintenance.

3.9 Indemnification of City. Responsible Party shall indemnify, defend and hold the City, its council, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and attorneys' fees, that the City incurs or suffers, which arise out of, result from or relate to:

- a.) failure by the Responsible Party to observe or perform any covenant, conditions, obligation or agreement on their part to be observed or performed under this Agreement and failure to cure the same within any applicable cure period;
- b.) failure by the Responsible Party to pay contractors, subcontractors, laborers, or material men;
- c.) failure by the Responsible Party to pay for any materials that may be used by the Responsible Party to maintain the Stormwater Facilities; and
- d.) any act or negligence of the Responsible Party, its agents, employees or contractors in connection with construction of the Stormwater Facilities.

3.10 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the notice, if any, required by this Agreement.

ARTICLE 4
CITY'S COVENANTS

4.1 Approval of Development Plans. The City agrees that if Landowner and Association execute this Stormwater Facilities Maintenance Agreement and if the other conditions set forth in the Development Contract between Landowner and City are met, the City will approve the Development Plans as defined in the Development Contract for the plat of Eagles Landing.

ARTICLE 5
MISCELLANEOUS

5.1 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Residential Lots and shall be binding upon the parties and the successors and assigns of the parties to this Agreement. This Agreement shall also be binding on and apply to any title, right and interest of Landowner in the Residential Lots acquired by Landowner after the execution date of this Agreement or after the recording date of this Agreement.

5.2 Amendment and Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

5.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

5.5 Consent. Landowner, City and Association consent to the recording of this Agreement.

5.6 Notice. Notice shall means notices given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, addressed as follows:

If to City: City of Inver Grove Heights
Attention: City Administrator
8150 Barbara Avenue
Inver Grove Heights, MN 55077

If to Landowner: Builders Lot Group, LLC
9531 West 78th Street, Suite 135
Eden Prairie, MN 55344

If to Association: Eagles Landing Homeowners Association
Attention: Melvin Moore, President
9531 West 78th Street, Suite 135
Eden Prairie, MN 55344

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above, provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF Landowner, Association and City have entered into this Stormwater Facilities Maintenance Agreement on the day and year first stated above.

CITY OF INVER GROVE HEIGHTS

By: _____
Tom Bartholomew
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this 12th day of July, 2021, before me a Notary Public within and for said County, personally appeared Tom Bartholomew and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was sealed on behalf of said municipality by authority of its City Council and said City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**LANDOWNER:
BUILDERS LOT GROUP, LLC**

By: _____
Melvin L. Moore
Its: Chief Executive Officer and Co-Chief Manager

By: _____
Steven Soltau
Its: Chief Financial Officer and Co-Chief Manager

STATE OF MINNESOTA)
)
COUNTY OF _____) ss.

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin L. Moore and Steven Soltau, to me personally known, who being by me duly sworn, each did say that they are respectively the Chief Executive Officer and Co-Chief Manager and Chief Financial Officer and Co-Chief Manager of Builders Lot Group, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed by Melvin L. Moore and Steven Soltau on behalf of Builders Lot Group, LLC by authority of the Board of Governors of Builders Lot Group, LLC.

Notary Public

**ASSOCIATION:
EAGLES LANDING HOMEOWNERS ASSOCIATION**

By: _____
Melvin Moore
Its President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin Moore, to me personally known, who being by me duly sworn, did say that he is the President of Eagles Landing Homeowners Association, a Minnesota non-profit corporation, and that the foregoing instrument was executed on behalf of Eagles Landing Homeowners Association by authority of the Board of Directors of said non-profit corporation and said Melvin Moore acknowledged said instrument to be the free act and deed of Eagles Landing Homeowners Association.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

**AFTER RECORDING PLEASE
RETURN TO:**

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF RESIDENTIAL LOTS

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, legally described as follows:

Lots 2 through 6, Block 1, Eagles Landing, Dakota County, Minnesota

Lots 1 through 5, Block 2, Eagles Landing, Dakota County, Minnesota

according to the plat thereof on file and of record in the office of the Dakota County Recorder, State of Minnesota.

EXHIBIT B
OPERATIONS & MAINTENANCE PLAN

EXHIBIT C ANNUAL INSPECTION FORM

CITY OF INVER GROVE HEIGHTS NPDES INSPECTION PROGRAM					
STRUCTURE ID:		INSPECTION DATE/TIME:		INSPECTOR(S):	
LOCATION:				POND ID:	
EASEMENT					
ACCESSIBLE	Y	N			
STRUCTURES IN ESMT.	Y	N	DESCRIPTION		
TREES IN ESMT.	Y	N	LARGEST DIAMETER (INCHES)		
STRUCTURE	FES	PIPE	CB	SPCD	OTHER
ATTRIBUTES	TRASH GUARD		WEIR	SURGE BASIN	OTHER NONE
CONDITION*	ACCEPTABLE		MINOR MAINTENANCE	MAJOR MAINTENANCE	INACCESSIBLE
END SECTION EROSION	Y	N			
FLOW CONDITION	FLOW PRESENT		NO FLOW	SUBMERGED	
COMMENTS					
VEGETATION/DEBRIS	WEEDS, ETC.		BRUSH, TREES, ETC.	GARBAGE/DEBRIS	NONE
RESTRICTING FLOW	Y	N			
COMMENTS					
SEDIMENT					
CONDITION**	NONE		MINOR MAINTENANCE	MAJOR MAINTENANCE	
COMMENTS					
RIP RAP	PRESENT:		Y	N	
CONDITION**	OK		MINOR MAINTENANCE	MAJOR MAINTENANCE	
COMMENTS					
ILLICIT DISCHARGE	DATE OF LAST RAINFALL EVENT:				
ODOR	Y	N	COMMENTS:		
COLOR	Y	N	COMMENTS:		
FLOATABLES IN DISCHARGES	Y	N	COMMENTS:		
STAINS/DEPOSITS IN STRUCT.	Y	N	COMMENTS:		
MAINTENANCE PERFORMED:					
SIGNED:				DATE:	

* Minor Maintenance: i.e. regROUT joint, repair trash guard; Major Maintenance: structure separating(ed) from pipe

** Minor Maintenance: repair can be done by City crews, Major Maintenance: heavy equip. is needed

EXHIBIT D
STORM WATER FACILITIES RESPONSIBILITY MAP

RESIDENTIAL STREET LIGHT AGREEMENT FOR
PLAT OF EAGLES LANDING,
DAKOTA COUNTY, MINNESOTA

THIS RESIDENTIAL STREET LIGHT AGREEMENT FOR PLAT OF EAGLES LANDING (Agreement) is made this 12th day of July, 2021, by and between Builders Lot Group, LLC, a Minnesota limited liability company, hereinafter referred to as “Landowner” and the City of Inver Grove Heights, a municipal corporation organized under the laws of the State of Minnesota, hereinafter referred to as the “City”. Based on the recitals, covenants, agreements, warranties and representations hereafter made and for and in good and valuable consideration received by the parties, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby declare, state and agree:

ARTICLE 1
TERMS

1.1 Terms. The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

1.2 City. “City” means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 Landowner. “Landowner” means Builders Lot Group, LLC, a Minnesota limited liability company, the current fee title owner of the Residential Lots, and its successors and assigns.

1.4 Residential Lots. “Residential Lots” means the lots described on the attached **Exhibit A**. The Residential Lots are located in the City of Inver Grove Heights, Dakota County, Minnesota within the recorded plat of Eagles Landing.

1.5 Residential Owners. Residential Owners means the fee title owners of the Residential Lots.

1.6 Street Lights. Street Lights means all the existing and future street lights installed on the public right-of-way adjoining and serving the plat of Eagles Landing and installed within the plat of Eagles Landing.

ARTICLE 2 **RESIDENTIAL OWNER OBLIGATIONS**

2.1 Street Light Plan Must Be Approved. Landowner agrees that a Street Light Plan shall be approved by the Director of Public Works before the installation of any Street Lights. The current Street Light Plan shall show the design, type, size and location of all Street Lights to be located within and along the public right-of-way in the plat of Eagles Landing.

2.2 Installation of Street Lights. Landowner, at its own expense, shall install the Street Lights as provided in the Street Light Plan for Eagles Landing. The Street Lights for Eagles Landing shall be installed no later than the time that the public streets within the plat of Eagles Landing are constructed.

2.3 Payment of Energy Costs for First Three Years. Before recording of the plat of South Grove Townhomes, Landowner shall prepay the City for the energy costs of the Street Lights for the three (3) calendar years of 2022, 2023 and 2024 by paying the City the amount of \$1,056 (2 Street Lights x 11 lots in the plat of Eagles Landing x \$4/quarter x 12 quarters = \$1,056).

2.4 Responsibility of Residential Owners. Beginning with calendar year 2025, and continuing thereafter, the Residential Owners shall be responsible for payment of the maintenance, repair, replacement and energy costs of the Street Lights.

The City will invoice such Residential Owners on a quarterly basis; such invoice will be shown as part of the utility billing that is sent quarterly to the Residential Owners. The total cost for maintenance, repair, replacement and energy expenses for the Street Lights shall be evenly allocated among the Residential Lots.

The Residential Owners shall make payment directly to the City within thirty (30) days after the sending of the invoice. If payment is not made, the City may certify to Dakota County the amounts due as payable with real estate taxes in the next calendar year for the Residential Lot owned by the Residential Owner who has not paid the City; the parties agree that such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills.

The Residential Owners and their successors and assigns thereof waive any and all procedural and substantive objections to the imposition of such charges on the respective Residential Lots. Further, the Residential Owners and their successors and assigns thereof hereby waive any and all procedural and substantive objections to special assessments for the costs of the Street Lights including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Residential Lots. The

Residential Owners and their successors and assigns waive any appeal rights otherwise available pursuant to Minnesota Statutes § 429.081. The Residential Owners and their successors and assigns acknowledge that the benefit from the Street Lights equal or exceed the amount of the charges and assessments for the maintenance, repair, replacement and energy costs that are being imposed under this Agreement.

The Residential Owners agree that the standard of maintenance shall conform to the same standards that the City's Director of Public Works utilizes for other street lights that the City maintains, as those standards are from time to time amended.

The Residential Owners agree that the obligation to pay for the maintenance of the Street Lights exists notwithstanding the fact that the Street Lights may lie within the public road right-of-way in the plat of Canvas at Inver Grove Heights.

2.5 Warranty of Ownership. Landowner currently owns all the Residential Lots.

ARTICLE 3 **CITY'S COVENANTS**

3.1 Allowing Plat To Be Recorded. The City agrees that if the conditions set forth in the Development Contract between the parties of even date herewith are met, the City will allow the plat of Eagles Landing to be recorded with the Dakota County Recorder. One requirement in the Development Contract is that the Landowner enter into this Residential Street Light Agreement. By execution of this Agreement, that condition has been met.

ARTICLE 4 **MISCELLANEOUS**

4.1 No Third Party Recourse. Third parties shall have no recourse against the City under this Agreement.

4.2 Recording. Landowner shall record this Agreement with the Dakota County Recorder after the plat of Eagles Landing is recorded, and Landowner shall present evidence to the City that this Agreement has been recorded.

4.3 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Residential Lots and shall be binding upon the parties and the heirs, successors, administrators and assigns of the parties. This Agreement shall also be binding on and apply to any title, right and interest of Landowner in the Residential Lots acquired by Landowner after the execution date of this Agreement or after the recording date of this Agreement.

4.4 Amendment And Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another

contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement and performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement.

Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

4.5 Governing Law. This Agreement shall be governed by and construed in accord with the laws of the State of Minnesota.

4.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

4.7 Headings. The subject headings of the sections in this Agreement are included for purposes of convenience only and shall not affect the construction of interpretation of any of its provisions.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, Landowner and City have executed this Residential Street Light Agreement as of the day and year aforementioned.

CITY OF INVER GROVE HEIGHTS

By: _____
Tom Bartholomew
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 12th day of July, 2021, before me a Notary Public within and for said County, personally appeared Tom Bartholomew and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was sealed on behalf of said municipality by authority of its City Council and said City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

LANDOWNER:
BUILDERS LOT GROUP, LLC

By: _____
Melvin L. Moore
Its: Chief Executive Officer and Co-Chief Manager

By: _____
Steven Soltau
Its: Chief Financial Officer and Co-Chief Manager

STATE OF MINNESOTA)
)
COUNTY OF _____) ss.

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin L. Moore and Steven Soltau, to me personally known, who being by me duly sworn, each did say that they are respectively the Chief Executive Officer and Co-Chief Manager and Chief Financial Officer and Co-Chief Manager of Builders Lot Group, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed by Melvin L. Moore and Steven Soltau on behalf of Builders Lot Group, LLC by authority of the Board of Governors of Builders Lot Group, LLC.

Notary Public

This instrument was drafted by:
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, Minnesota 55075
(651)451-1831

After recording, please return to:
Timothy J. Kuntz
LeVander, Gillen & Miller
633 South Concord Street, Suite 400
South St. Paul, Minnesota 55075
(651)451-1831

EXHIBIT A
LEGAL DESCRIPTION OF RESIDENTIAL LOTS

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota,
legally described as follows:

Lots 1 through 6, Block 1, Eagles Landing, Dakota County, Minnesota.

Lots 1 through 5, Block 2, Eagles Landing, Dakota County, Minnesota.

PERMANENT PEDESTRIAN SIDEWALK EASEMENT
FOR LOTS 2 THROUGH 5, BLOCK 2, EAGLES LANDING,
DAKOTA COUNTY, MINNESOTA

THIS **PERMANENT PEDESTRIAN SIDEWALK EASEMENT FOR LOTS 2 THROUGH 5, BLOCK 2, EAGLES LANDING** (“Easement”) is made, granted and conveyed this 12th day of July, 2021, between Builders Lot Group, LLC, a Minnesota limited liability company, hereinafter referred to as the “Landowner” and the City of Inver Grove Heights, a municipal corporation organized under the laws of the State of Minnesota, hereinafter referred to as the “City”.

The Landowner, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey unto the City, its successors and assigns, forever a **permanent easement and right-of-way for a sidewalk (including, without limitation, the construction, maintenance, repair and use of a sidewalk)** over, under, across, through and upon the following described and depicted premises (the “Easement Area”) situated within Dakota County, Minnesota, to-wit:

See the attached **Exhibit A**, incorporated herein by reference.

The Easement Area shall be for use as a pedestrian and non-motorized recreational sidewalk shall include such activities as walking, running, biking, skiing, in-line skating, roller skating, skateboarding, the walking of household pets and other forms of similar non-motorized pedestrian use. In addition, public emergency motorized vehicles, electric personal assistive devices, vehicles that may be required by the Americans with Disabilities Act and motorized vehicles used by the City for maintenance, law enforcement or other public uses may be used in the Easement Area. The Easement Area will not be used by other motorized vehicles, or by all-terrain vehicles, or by snowmobiles, and the Easement Area will not be used for horseback riding. No structures, obstructions or fences shall be allowed in the Easement Area unless written approval is granted by the City.

The easement rights herein granted to the City include the rights of the City, its contractors, agents, and servants to enter upon the Easement Area at all reasonable times to construct, reconstruct, inspect, repair and maintain the sidewalk and related improvements, over, under, across, through and upon the Easement Area together with the right to remove from the Easement Area trees, brush, herbage, undergrowth and other obstructions, as well as the right to deposit earthen material in and upon the permanent Easement Area.

EXEMPT FROM STATE DEED TAX

The City shall not be responsible for any costs, expenses, damages, demands, obligations, penalties, attorney's fees, and losses resulting from any claims, actions, suits, or proceedings based upon a release or threat of release of any hazardous substances, petroleum, pollutants, or contaminants which may have existed on, or which relate to, the Easement Area or property prior to the date hereof.

Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by Landowner, its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided in Minnesota Statute, Chapter 466.

Landowner, for itself and its successors and assigns, does warrant to and covenant with the City, its successors and assigns, that it is well seized in fee of the lands and premises aforesaid and has good right to grant and convey the easement herein to the City.

[the remainder of this page has been intentionally left blank]

IN TESTIMONY WHEREOF, the Landowner and City have caused this Easement to be executed as of the day and year set forth above.

CITY OF INVER GROVE HEIGHTS

By: _____
Tom Bartholomew
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
)
COUNTY OF DAKOTA) ss.

On this 12th day of July, 2021, before me a Notary Public within and for said County, personally appeared Tom Bartholomew and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**LANDOWNER:
BUILDERS LOT GROUP, LLC**

By: _____
Melvin L. Moore
Its: Chief Executive Officer and Co-Chief Manager

By: _____
Steven Soltau
Its: Chief Financial Officer and Co-Chief Manager

STATE OF MINNESOTA)
)
COUNTY OF _____) ss.

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin L. Moore and Steven Soltau, to me personally known, who being by me duly sworn, each did say that they are respectively the Chief Executive Officer and Co-Chief Manager and Chief Financial Officer and Co-Chief Manager of Builders Lot Group, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed by Melvin L. Moore and Steven Soltau on behalf of Builders Lot Group, LLC by authority of the Board of Governors of Builders Lot Group, LLC.

Notary Public

This instrument was drafted by:
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, Minnesota 55075
(651)451-1831

After recording, please return to:
Timothy J. Kuntz
LeVander, Gillen & Miller
633 South Concord Street, Suite 400
South St. Paul, Minnesota 55075
(651)451-1831

EXHIBIT A
LEGAL DESCRIPTION OF EASEMENT AREA

A permanent easement and right-of-way for sidewalk purposes (including, without limitation, the construction, maintenance, repair and use of a sidewalk) over, under, across, through and upon the following:

EXHIBIT A (CONTINUED)
DEPICTION OF EASEMENT AREA

RETAINING WALL MAINTENANCE AGREEMENT RELATING TO
LOT 4, BLOCK 1, EAGLES LANDING,
DAKOTA COUNTY, MINNESOTA

THIS RETAINING WALL MAINTENANCE AGREEMENT RELATING TO LOT 4, BLOCK 1, EAGLES LANDING (hereafter referred to as “Agreement”) is made, entered into and effective this 12th day of July, 2021, by and between the City of Inver Grove Heights, a Minnesota municipal corporation (hereafter referred to as “City”) and Builders Lot Group, LLC, a Minnesota limited liability company (hereafter referred to as “Landowner”). Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Terms. The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

1.2 City. “City” means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 Landowner. “Landowner” means Builders Lot Group, LLC, a Minnesota limited liability company, and its successors and assigns.

1.4 Retaining Wall Facilities. “Retaining Wall Facilities” means each and all of the following, individually and collectively, to the extent located within the Retaining Wall Lots:

The retaining wall structure, retaining wall foundation, retaining wall anchors, retaining wall fencing and retaining wall drainage collection appurtenances lying within the Retaining Wall Lot.

1.5 Retaining Wall Construction Plan. “Retaining Wall Construction Plan” means the Grading Plan dated _____, 2021, prepared by Sambatek and approved by the City Engineer. The Retaining Wall Construction Plan is on file with the City and attached hereto as **Exhibit C**.

1.6 Responsible Party. “Responsible Party” means the fee owner of the Landowner Property, and its successors and assigns.

1.7 Landowner Property. Landowner Property means the real property legally described on the attached **Exhibit A**.

1.8 Residential Owner. Residential Owner means the fee title owner of the Landowner Property.

1.9 Retaining Wall Lot. Retaining Wall Lot means the lot identified on **Exhibit B** attached hereto.

1.10 Retaining Wall Lot Owner. Retaining Wall Lot Owner means the fee title owners of the Retaining Wall Lot.

1.11 Maintenance Standards. “Maintenance Standards” means the Standards of Maintenance as defined in Article 3, Section 3.3 of this Agreement.

1.12 DPW. “DPW” means the City’s Director of Public Works.

ARTICLE 2 **RECITALS**

Recital No. 1. Landowner will construct the Retaining Wall Facilities on the Retaining Wall Lot pursuant to the Retaining Wall Construction Plan.

Recital No. 2. Landowner owns the Landowner Property. Landowner owns the Retaining Wall Lot.

Recital No. 3. The Landowner is benefitted and served by the Retaining Wall Facilities.

Recital No. 4. The City is willing to allow the plat of Eagles Landing to be recorded if Landowner complies with the requirements contained in Exhibit E of the Development Contract, of even date herewith between the City and Landowner, and if Landowner (as a Residential Owner and a Responsible Party under this Agreement) executes this Agreement.

Recital No. 5. By this Agreement the parties seek to:

- a.) impose upon the Responsible Party the responsibility of maintaining the Retaining Wall Facilities consistent with the Maintenance Standards, notwithstanding the fact that the Retaining Wall Facilities may exist within easements dedicated or granted to the City and the public; and
- b.) provide a mechanism where the City may charge-back to the Responsible Party any maintenance work that the City performs with respect to the Retaining Wall Facilities in the event the Responsible Party fails to perform its obligations to maintain the Retaining Wall Facilities consistent with the Maintenance Standards.

ARTICLE 3

RESPONSIBILITY FOR MAINTENANCE

3.1 Construction of Retaining Wall Facilities. Landowner agrees that by December 31, 2021, or by a date reasonably set by the City's Director of Public Works, the Retaining Wall Facilities shall be constructed and installed in accordance with the Retaining Wall Construction Plan at the sole expense of Landowner, subject to delays due to force majeure.

3.2 Maintenance of Retaining Wall Facilities. The Responsible Party is obligated at its expense to perpetually maintain the Retaining Wall Facilities in accordance with the Standard of Maintenance set forth in Section 3.3 hereof. The Standard of Maintenance shall also apply to any modification, alternation or relocation of the Retaining Wall Facilities. The Responsible Party shall also ensure that the Retaining Wall Facilities always remain fit for the use intended, structurally sound and otherwise in compliance with the professional engineering retaining wall designs as reflected in the Retaining Wall Construction Plan and in industry standards (as amended from time to time). The responsibility of the Responsible Party for maintaining the Retaining Wall Facilities on the Retaining Wall Lot exists even though the event or omission which caused the need for maintenance of the Retaining Wall Facilities may arise on property outside of the Retaining Wall Lot.

3.3 Standard of Maintenance. The Standard of Maintenance for the Retaining Wall Facilities shall comply with the minimum standards of the Minnesota State Building Code and any applicable provisions of the Inver Grove Heights City Code (as amended from time to time, by amendment of general applicability). In addition, the Standard of Maintenance shall keep the Retaining Wall Facilities in reasonable conformance with the original professional engineering retaining wall designs reflected in the Retaining Wall Construction Plan and in industry standards (as amended from time to time), and the Standard of Maintenance shall include the same standards that the City's Director of Public Works utilizes for similar retaining wall systems that the City maintains, as those standards are from time to time amended. The Retaining Wall Construction Plan is on file with the City.

3.4 Notice of Non-Compliance with Section 3.1; Cure Period. If the City's Director of Public Works ("DPW") determines, at his reasonable discretion, that the Responsible Party has not complied with Sections 3.2 and 3.3 hereof, the DPW shall provide written notice to the Responsible Party of such failure to comply with Sections 3.2 and 3.3. This notice shall specify that the Responsible Party will have thirty (30) days to comply with Sections 3.2 and 3.3, unless thirty (30) days is not practicable for the Responsible Party to cure the default, in which case the Responsible Party shall be given a reasonable time, as reasonably determined by the DPW, to cure the default provided the Responsible Party has commenced construction of the Retaining Wall Facilities within the initial thirty (30) days. Notwithstanding the requirement contained in this Section relating to written notice and opportunity of the Responsible Party to comply with Sections 3.2 and 3.3, in the event of an emergency as reasonably determined by the DPW, the City may perform the work to be performed by the Responsible Party without giving any notice to the Responsible Party and without giving the Responsible Party thirty (30) days to comply with Sections 3.2 and 3.3. If the City performs emergency construction work, the Responsible Party shall be obligated to repay the City the costs incurred to perform the emergency construction work, and the City shall follow those procedures set forth in Sections 3.5 and 3.6 with respect to the billing, collection and/or tax certification of such costs.

3.5 Payment of Costs Incurred by City. If the Responsible Party fails to comply with Sections 3.2 and 3.3 within thirty (30) days after delivery of the written notice, or in the case of an emergency situation as reasonably determined by the DPW, the City may perform those tasks necessary for compliance with Sections 3.2 and 3.3 and the City shall have the right of access to the areas where the Retaining Wall Facilities are to be located to perform such construction work. The City shall charge all costs incurred by the City to perform the tasks necessary for compliance with Sections 3.2 and 3.3 to the Responsible Party.

The amount of costs charged by the City to the Responsible Party shall be the usual and customary amounts charged by the City given the task, work, construction or improvement performed by the City to ensure compliance with Sections 3.2 and 3.3. The Responsible Party shall make payment directly to the City within thirty (30) days after invoicing (“Due Date”) by the City. Bills not paid by the Due Date shall incur the standard penalty and interest established by the City for utility billings within the City.

3.6 Certification of Costs Payable With Taxes; Special Assessments. If payment is not made under Section 3.5 by the Responsible Party, the City may certify to Dakota County the amounts due as payable with the real estate taxes for the Landowner Property in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The amount due shall be allocated equally among the Landowner Property. The Responsible Party waives any and all procedural and substantive objections to the imposition of such usual and customary charges on the Landowner Property.

Further, as an alternate means of collection, if the written billing is not paid by the Responsible Party, the City, without notice and without hearing, may specially assess the Landowner Property for the costs and expenses incurred by the City. The Responsible Party hereby waives any and all procedural and substantive objections to special assessments for such costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Landowner Property. The Responsible Party waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The Responsible Party acknowledges that the benefit from the performance of the tasks by the City to ensure compliance with Sections 3.2 and 3.3 equals or exceeds the amount of the charges and assessments for compliance with Sections 3.2 and 3.3 that are being imposed hereunder upon the Landowner Property .

3.7 Obligation For Maintenance Notwithstanding Public Easement. The Responsible Party agrees that its obligations relating to maintenance of the Retaining Wall Facilities exist notwithstanding the fact that the Retaining Wall Facilities may be located in whole or in part within public easements that are owned by the City.

3.8 Indemnification of City. Responsible Party shall indemnify, defend and hold the City, its council, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and reasonable attorneys' fees, that the City incurs or suffers, which arise out of, result from or relate to:

- a.) failure by the Responsible Party to observe or perform any covenant, conditions, obligation or agreement on their part to be observed or performed under this Agreement and failure to cure the same within the applicable cure period;
- b.) failure by the Responsible Party to pay contractors, subcontractors, laborers, or materialmen;
- c.) failure by the Responsible Party to pay for any materials that may be used by the Responsible Party to maintain the Retaining Wall Facilities;
- d.) any act or negligence by the Responsible Party, its agents, employees or contractors in connection with construction of the Retaining Wall Facilities.

3.9 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the notice, if any, required by this Agreement.

ARTICLE 4 **CITY'S COVENANTS**

4.1 Compliance with Development Contract. The City agrees that if Landowner executes this Retaining Wall Maintenance Agreement and if Landowner complies with the other conditions contained in the Development Contract between the City and Landowner of even date herewith, then the City will allow Landowner to begin the Developer Improvements identified in the Development Contract for the plat of Eagles Landing.

ARTICLE 5 **MISCELLANEOUS**

5.1 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Retaining Wall Lot and shall run with the Landowner Property and shall be binding upon the parties and the successors and assigns of the parties. This Agreement shall also be binding on and apply to any title, right and interest of the Landowner in the Landowner Property acquired by Landowner after the execution date of this Agreement or after the recording date of this Agreement.

5.2 Amendment and Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement, waive performance of any obligations by the other or waive the

fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

5.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

5.5 Notice. Notice shall mean notices given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, addressed as follows:

If to City: City of Inver Grove Heights
Attention: City Administrator
8150 Barbara Avenue
Inver Grove Heights, MN 55077

If to Landowner: Builders Lot Group, LLC
9531 West 78th Street, Suite 135
Eden Prairie, MN 55344

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above, provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

ARTICLE 6
ENCROACHMENT OF RETAINING WALL FACILITIES
WITHIN CITY EASEMENT

6.1 Definitions. For purposes of this Article 6, the following terms shall have the following meanings:

- a. **City Easement.** “City Easement” means the following easement located on the Subject Land:

The permanent drainage and utility easements located on Lot 4, Block 1, Eagles Landing, dedicated to the City on the recorded plat of Eagles Landing, Dakota County, Minnesota.

- b. **City Easement Improvements.** “City Easement Improvements” means all existing

and future street, boulevard and sidewalk improvements and all existing and future sanitary sewer, municipal water and storm water pipes, conduits, culverts, ditches, ponds, catch basins, water collection mechanisms, drainage facilities, maintenance access routes and other utility appurtenances lying within the City Easement now or in the future.

- c. **City Right-of-Way Costs.** “City Right-of-Way Costs” means all costs incurred by the City, (whether performed by the City or its agents or contractors), for the inspection of and access to and repair, maintenance, replacement, and expansion of the City’s Easement Improvements located in the City Easements and the placement of additional City Easement Improvements in the City Easements. City Right-of-Way Costs, include, without limitation: excavation costs, labor costs, costs of removing fill, costs of re-burying the City Easement Improvements, re-compacting the soils over the City Easement Improvements, restoring the City Easements, and all engineering and attorneys’ fees incurred in connection therewith. City Right-of-Way Costs also include the costs of temporarily removing the Retaining Wall Facilities and subsequently replacing the Retaining Wall Facilities in the City Easements, if such costs have not already been paid by the Responsible Party.
- d. **Pre-Encroachment Costs.** “Pre-Encroachment Costs” means a reasonable estimate by the City of the costs the City would have incurred for City Right-of-Way Costs if the Retaining Wall Facilities did not exist.
- e. **Cost Differential.** “Cost Differential” means the difference between the Pre-Encroachment Costs and the City Right-of-Way Costs caused by the Retaining Wall Facilities. The City’s reasonable determination of the amount of the Cost Differential shall be binding on the Responsible Party. The City’s reasonable determination shall be appropriately supported by cost estimates obtained from independent contractors or engineers.

6.2 Recitals.

- i. The City Easement is on the Retaining Wall Lot. The City owns the City Easement. The City Easement Improvements are within the City Easement and future City Easement Improvements may be located within the City Easement.
- ii. Responsible Party has requested permission from the City to construct the Retaining Wall Facilities within the City Easement.
- iii. The Retaining Wall Facilities benefit and serve the Residential Owner and the Landowner Property.
- iv. Subject to the terms of this Agreement, the City is willing to allow the Retaining Wall Facilities to be constructed within the City Easement if the following conditions are met:
 - a.) The Responsible Party agrees to pay the City any Cost Differential relating to inspections, access, repair, maintenance and replacement of the

existing City Easement Improvements and the placement of any future City Easement Improvements in the City Easement.

- b.) The City has the right to temporarily remove the Retaining Wall Facilities from the City Easement in the event the City has need to access the area where the Retaining Wall Facilities exist in order for the City to inspect, repair, maintain, and replace the existing City Easement Improvements or construct future City Easement Improvements in the City Easement.
- c.) The City has the right to modify the Retaining Wall Facilities if the Retaining Wall Facilities materially interfere with the City Easement Improvements.

6.3 City Not Responsible for Retaining Wall Facilities. Nothing contained herein shall be deemed an assumption by the City of any responsibility for construction, maintenance, replacement or repair of the Retaining Wall Facilities.

6.4 Continuing Right to City Easements. Nothing contained herein shall be deemed a waiver or abandonment or transfer of the right, title and interest that the City holds to the City Easements.

6.5 Subordinate Position of Retaining Wall Facilities. The Retaining Wall Facilities in the City Easements are subordinate to the rights of the City in the City Easements and in the City Easement Improvements.

6.6 Risk of Loss. The Responsible Party understands and agrees that the Retaining Wall Facilities within the City Easements may be adversely affected by use of the City Easements. The parties agree that the City is not responsible for such events; the City shall have no liability to the Responsible Party for such events. The Responsible Party assumes the risk of installing the Retaining Wall Facilities in the City Easements.

6.7 Cost of Relocating Retaining Wall Facilities.

Upon thirty (30) days advance written notice from the City to the Responsible Party, the Responsible Party, within thirty (30) days after such notice, shall temporarily remove and subsequently replace the Retaining Wall Facilities in the City Easement in order for the City to gain access to the City Easement Improvements for the purpose of inspecting, repairing, maintaining, or replacing the City Easement Improvements or adding future City Easement Improvements.

If the Responsible Party does not perform such work within such 30 day period, the City may temporarily remove and subsequently replace the Retaining Wall Facilities in the City Easement in order for the City to gain access to the City Easement Improvements for the purpose of inspecting, repairing, maintaining, or replacing the City Easement Improvements or adding future City Easement Improvements.

Once the City's costs and expenses for such tasks have been determined by the City, the City shall send an invoice for such costs and expenses to the Responsible Party. The

Responsible Party must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged the City by third parties such as contractors as well as the costs for City personnel that may have performed the work. Bills not paid shall incur the standard penalty and interest established by the City for utility billings within the City. The amount of costs charged by the City shall be the usual and customary amounts charged by the City for such tasks.

6.8 Cost Differential. If a Cost Differential occurs relating to the access to or inspection, maintenance, repair or replacement of the City Easement Improvements or relating to construction of new City Easement Improvements in the future, then the Landowner shall pay the Cost Differential to the City. The Responsible Party must make payment for the Cost Differential within 30 days after the City has sent a written invoice for the Cost Differential to the Responsible Party.

6.9 Modifications to Retaining Wall Facilities. If in the future the City reasonably determines that the Retaining Wall Facilities interfere with access for inspection or with repair, maintenance, reconstruction, or replacement of City Easement Improvements, then upon thirty (30) days advance written notice by the City to the Responsible Party, the Responsible Party shall, within thirty (30) days after such notice, make such modifications to the Retaining Wall Facilities. Such modifications may include, but are not limited to, reconfiguration, removal and relocation of the Retaining Wall Facilities.

If the Responsible Party does not perform such work within such 30 day period and if the City reasonably determines that the Retaining Wall Facilities interfere with access for inspection or with repair, maintenance, reconstruction, or replacement of City Easement Improvements, then the City may make such modifications to the Retaining Wall Facilities. Such modifications may include, but are not limited to, reconfiguration, removal and relocation of the Retaining Wall Facilities.

Once the City's costs and expenses have been determined by the City for such modification tasks, the City shall send an invoice for such costs and expenses to the Responsible Party. The Responsible Party must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged the City by third parties such as contractors as well as the costs for City personnel that may have performed the work relating to the modifications. The amount of costs charged by the City shall be the usual and customary amounts charged by the City for such tasks.

6.10 Remedies. If the Responsible Party fails to perform its obligations under Article 6 of this Agreement, then the City may avail itself of any remedy afforded by law or in equity and any of the following non-exclusive remedies:

- a.) The City may specifically enforce this Agreement.
- b.) If the Responsible Party fails to make payments under Section 6.7, 6.8 and 6.9, then the City may certify to Dakota County the amounts due as payable with the real estate taxes for the Landowner Property in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The amount due shall be allocated

equally among the Landowner Property. The Residential Owner waives any and all procedural and substantive objections to the imposition of such usual and customary charges on the Landowner Property.

Further, as an alternate means of collection, if the written billing is not paid by the Responsible Party, the City, without notice and without hearing, may specially assess the Landowner Property for the costs and expenses incurred by the City. The Residential Owner hereby waives any and all procedural and substantive objections to special assessments for the costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Landowner Property. The Residential Owner waives any appeal rights otherwise available pursuant to Minnesota Statutes § 429.081. The Residential Owner acknowledges that the benefit from the performance of tasks by the City equals or exceeds the amount of the charges and assessments for the costs that are being imposed hereunder upon the Landowner Property.

No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

6.11 City Duties. Nothing contained in this Article 6 of this Agreement shall be considered an affirmative duty upon the City to perform the Responsible Party obligations contained in Article 6 if the Responsible Party does not perform such obligations.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF Landowner and the City have entered into this Retaining Wall Maintenance Agreement on the day and year first stated above.

CITY OF INVER GROVE HEIGHTS

By: _____
Tom Bartholomew
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 12th day of July, 2021, before me a Notary Public within and for said County, personally appeared Tom Bartholomew and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**LANDOWNER:
BUILDERS LOT GROUP, LLC**

By: _____
Melvin L. Moore
Its: Chief Executive Officer and Co-Chief Manager

By: _____
Steven Soltau
Its: Chief Financial Officer and Co-Chief Manager

STATE OF MINNESOTA)
)
COUNTY OF _____) ss.

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin L. Moore and Steven Soltau, to me personally known, who being by me duly sworn, each did say that they are respectively the Chief Executive Officer and Co-Chief Manager and Chief Financial Officer and Co-Chief Manager of Builders Lot Group, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed by Melvin L. Moore and Steven Soltau on behalf of Builders Lot Group, LLC by authority of the Board of Governors of Builders Lot Group, LLC.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

**AFTER RECORDING PLEASE
RETURN TO:**

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF RESIDENTIAL LOTS

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, legally described as follows:

Lot 4, Block 1, Eagles Landing , Dakota County, Minnesota.

EXHIBIT B
RETAINING WALL LOT

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, legally described as follows:

Lot 4, Block 1, Eagles Landing, Dakota County, Minnesota.

EXHIBIT C
RETAINING WALL CONSTRUCTION PLAN

RETAINING WALL MAINTENANCE AGREEMENT RELATING TO
LOT 5, BLOCK 1, EAGLES LANDING,
DAKOTA COUNTY, MINNESOTA

THIS RETAINING WALL MAINTENANCE AGREEMENT RELATING TO LOT 5, BLOCK 1, EAGLES LANDING (hereafter referred to as “Agreement”) is made, entered into and effective this 12th day of July, 2021, by and between the City of Inver Grove Heights, a Minnesota municipal corporation (hereafter referred to as “City”) and Builders Lot Group, LLC, a Minnesota limited liability company (hereafter referred to as “Landowner”). Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Terms. The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

1.2 City. “City” means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 Landowner. “Landowner” means Builders Lot Group, LLC, a Minnesota limited liability company, and its successors and assigns.

1.4 Retaining Wall Facilities. “Retaining Wall Facilities” means each and all of the following, individually and collectively, to the extent located within the Retaining Wall Lots:

The retaining wall structure, retaining wall foundation, retaining wall anchors, retaining wall fencing and retaining wall drainage collection appurtenances lying within the Retaining Wall Lot.

1.5 Retaining Wall Construction Plan. “Retaining Wall Construction Plan” means the Grading Plan dated _____, 2021, prepared by Sambatek and approved by the City Engineer. The Retaining Wall Construction Plan is on file with the City and attached hereto as **Exhibit C**.

1.6 Responsible Party. “Responsible Party” means the fee owner of the Landowner Property, and its successors and assigns.

1.7 Landowner Property. Landowner Property means the real property legally described on the attached **Exhibit A**.

1.8 Residential Owner. Residential Owner means the fee title owner of the Landowner Property.

1.9 Retaining Wall Lot. Retaining Wall Lot means the lot identified on **Exhibit B** attached hereto.

1.10 Retaining Wall Lot Owner. Retaining Wall Lot Owner means the fee title owners of the Retaining Wall Lot.

1.11 Maintenance Standards. “Maintenance Standards” means the Standards of Maintenance as defined in Article 3, Section 3.3 of this Agreement.

1.12 DPW. “DPW” means the City’s Director of Public Works.

ARTICLE 2 **RECITALS**

Recital No. 1. Landowner will construct the Retaining Wall Facilities on the Retaining Wall Lot pursuant to the Retaining Wall Construction Plan.

Recital No. 2. Landowner owns the Landowner Property. Landowner owns the Retaining Wall Lot.

Recital No. 3. The Landowner is benefitted and served by the Retaining Wall Facilities.

Recital No. 4. The City is willing to allow the plat of Eagles Landing to be recorded if Landowner complies with the requirements contained in Exhibit E of the Development Contract, of even date herewith between the City and Landowner, and if Landowner (as a Residential Owner and a Responsible Party under this Agreement) executes this Agreement.

Recital No. 5. By this Agreement the parties seek to:

- a.) impose upon the Responsible Party the responsibility of maintaining the Retaining Wall Facilities consistent with the Maintenance Standards, notwithstanding the fact that the Retaining Wall Facilities may exist within easements dedicated or granted to the City and the public; and
- b.) provide a mechanism where the City may charge-back to the Responsible Party any maintenance work that the City performs with respect to the Retaining Wall Facilities in the event the Responsible Party fails to perform its obligations to maintain the Retaining Wall Facilities consistent with the Maintenance Standards.

ARTICLE 3

RESPONSIBILITY FOR MAINTENANCE

3.1 Construction of Retaining Wall Facilities. Landowner agrees that by December 31, 2021, or by a date reasonably set by the City's Director of Public Works, the Retaining Wall Facilities shall be constructed and installed in accordance with the Retaining Wall Construction Plan at the sole expense of Landowner, subject to delays due to force majeure.

3.2 Maintenance of Retaining Wall Facilities. The Responsible Party is obligated at its expense to perpetually maintain the Retaining Wall Facilities in accordance with the Standard of Maintenance set forth in Section 3.3 hereof. The Standard of Maintenance shall also apply to any modification, alternation or relocation of the Retaining Wall Facilities. The Responsible Party shall also ensure that the Retaining Wall Facilities always remain fit for the use intended, structurally sound and otherwise in compliance with the professional engineering retaining wall designs as reflected in the Retaining Wall Construction Plan and in industry standards (as amended from time to time). The responsibility of the Responsible Party for maintaining the Retaining Wall Facilities on the Retaining Wall Lot exists even though the event or omission which caused the need for maintenance of the Retaining Wall Facilities may arise on property outside of the Retaining Wall Lot.

3.3 Standard of Maintenance. The Standard of Maintenance for the Retaining Wall Facilities shall comply with the minimum standards of the Minnesota State Building Code and any applicable provisions of the Inver Grove Heights City Code (as amended from time to time, by amendment of general applicability). In addition, the Standard of Maintenance shall keep the Retaining Wall Facilities in reasonable conformance with the original professional engineering retaining wall designs reflected in the Retaining Wall Construction Plan and in industry standards (as amended from time to time), and the Standard of Maintenance shall include the same standards that the City's Director of Public Works utilizes for similar retaining wall systems that the City maintains, as those standards are from time to time amended. The Retaining Wall Construction Plan is on file with the City.

3.4 Notice of Non-Compliance with Section 3.1; Cure Period. If the City's Director of Public Works ("DPW") determines, at his reasonable discretion, that the Responsible Party has not complied with Sections 3.2 and 3.3 hereof, the DPW shall provide written notice to the Responsible Party of such failure to comply with Sections 3.2 and 3.3. This notice shall specify that the Responsible Party will have thirty (30) days to comply with Sections 3.2 and 3.3, unless thirty (30) days is not practicable for the Responsible Party to cure the default, in which case the Responsible Party shall be given a reasonable time, as reasonably determined by the DPW, to cure the default provided the Responsible Party has commenced construction of the Retaining Wall Facilities within the initial thirty (30) days. Notwithstanding the requirement contained in this Section relating to written notice and opportunity of the Responsible Party to comply with Sections 3.2 and 3.3, in the event of an emergency as reasonably determined by the DPW, the City may perform the work to be performed by the Responsible Party without giving any notice to the Responsible Party and without giving the Responsible Party thirty (30) days to comply with Sections 3.2 and 3.3. If the City performs emergency construction work, the Responsible Party shall be obligated to repay the City the costs incurred to perform the emergency construction work, and the City shall follow those procedures set forth in Sections 3.5 and 3.6 with respect to the billing, collection and/or tax certification of such costs.

3.5 Payment of Costs Incurred by City. If the Responsible Party fails to comply with Sections 3.2 and 3.3 within thirty (30) days after delivery of the written notice, or in the case of an emergency situation as reasonably determined by the DPW, the City may perform those tasks necessary for compliance with Sections 3.2 and 3.3 and the City shall have the right of access to the areas where the Retaining Wall Facilities are to be located to perform such construction work. The City shall charge all costs incurred by the City to perform the tasks necessary for compliance with Sections 3.2 and 3.3 to the Responsible Party.

The amount of costs charged by the City to the Responsible Party shall be the usual and customary amounts charged by the City given the task, work, construction or improvement performed by the City to ensure compliance with Sections 3.2 and 3.3. The Responsible Party shall make payment directly to the City within thirty (30) days after invoicing (“Due Date”) by the City. Bills not paid by the Due Date shall incur the standard penalty and interest established by the City for utility billings within the City.

3.6 Certification of Costs Payable With Taxes; Special Assessments. If payment is not made under Section 3.5 by the Responsible Party, the City may certify to Dakota County the amounts due as payable with the real estate taxes for the Landowner Property in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The amount due shall be allocated equally among the Landowner Property. The Responsible Party waives any and all procedural and substantive objections to the imposition of such usual and customary charges on the Landowner Property.

Further, as an alternate means of collection, if the written billing is not paid by the Responsible Party, the City, without notice and without hearing, may specially assess the Landowner Property for the costs and expenses incurred by the City. The Responsible Party hereby waives any and all procedural and substantive objections to special assessments for such costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Landowner Property. The Responsible Party waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The Responsible Party acknowledges that the benefit from the performance of the tasks by the City to ensure compliance with Sections 3.2 and 3.3 equals or exceeds the amount of the charges and assessments for compliance with Sections 3.2 and 3.3 that are being imposed hereunder upon the Landowner Property .

3.7 Obligation For Maintenance Notwithstanding Public Easement. The Responsible Party agrees that its obligations relating to maintenance of the Retaining Wall Facilities exist notwithstanding the fact that the Retaining Wall Facilities may be located in whole or in part within public easements that are owned by the City.

3.8 Indemnification of City. Responsible Party shall indemnify, defend and hold the City, its council, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and reasonable attorneys' fees, that the City incurs or suffers, which arise out of, result from or relate to:

- a.) failure by the Responsible Party to observe or perform any covenant, conditions, obligation or agreement on their part to be observed or performed under this Agreement and failure to cure the same within the applicable cure period;
- b.) failure by the Responsible Party to pay contractors, subcontractors, laborers, or materialmen;
- c.) failure by the Responsible Party to pay for any materials that may be used by the Responsible Party to maintain the Retaining Wall Facilities;
- d.) any act or negligence by the Responsible Party, its agents, employees or contractors in connection with construction of the Retaining Wall Facilities.

3.9 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the notice, if any, required by this Agreement.

ARTICLE 4 **CITY'S COVENANTS**

4.1 Compliance with Development Contract. The City agrees that if Landowner executes this Retaining Wall Maintenance Agreement and if Landowner complies with the other conditions contained in the Development Contract between the City and Landowner of even date herewith, then the City will allow Landowner to begin the Developer Improvements identified in the Development Contract for the plat of Eagles Landing.

ARTICLE 5 **MISCELLANEOUS**

5.1 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Retaining Wall Lot and shall run with the Landowner Property and shall be binding upon the parties and the successors and assigns of the parties. This Agreement shall also be binding on and apply to any title, right and interest of the Landowner in the Landowner Property acquired by Landowner after the execution date of this Agreement or after the recording date of this Agreement.

5.2 Amendment and Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement, waive performance of any obligations by the other or waive the

fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

5.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

5.5 Notice. Notice shall mean notices given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, addressed as follows:

If to City: City of Inver Grove Heights
Attention: City Administrator
8150 Barbara Avenue
Inver Grove Heights, MN 55077

If to Landowner: Builders Lot Group, LLC
9531 West 78th Street, Suite 135
Eden Prairie, MN 55344

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above, provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

ARTICLE 6 **ENCROACHMENT OF RETAINING WALL FACILITIES** **WITHIN CITY EASEMENT**

6.1 Definitions. For purposes of this Article 6, the following terms shall have the following meanings:

- a. **City Easement.** “City Easement” means the following easement located on the Subject Land:

The permanent drainage and utility easements located on Lot 5, Block 1, Eagles Landing, dedicated to the City on the recorded plat of Eagles Landing, Dakota County, Minnesota.

- b. **City Easement Improvements.** “City Easement Improvements” means all existing

and future street, boulevard and sidewalk improvements and all existing and future sanitary sewer, municipal water and storm water pipes, conduits, culverts, ditches, ponds, catch basins, water collection mechanisms, drainage facilities, maintenance access routes and other utility appurtenances lying within the City Easement now or in the future.

- c. **City Right-of-Way Costs.** “City Right-of-Way Costs” means all costs incurred by the City, (whether performed by the City or its agents or contractors), for the inspection of and access to and repair, maintenance, replacement, and expansion of the City’s Easement Improvements located in the City Easements and the placement of additional City Easement Improvements in the City Easements. City Right-of-Way Costs, include, without limitation: excavation costs, labor costs, costs of removing fill, costs of re-burying the City Easement Improvements, re-compacting the soils over the City Easement Improvements, restoring the City Easements, and all engineering and attorneys’ fees incurred in connection therewith. City Right-of-Way Costs also include the costs of temporarily removing the Retaining Wall Facilities and subsequently replacing the Retaining Wall Facilities in the City Easements, if such costs have not already been paid by the Responsible Party.
- d. **Pre-Encroachment Costs.** “Pre-Encroachment Costs” means a reasonable estimate by the City of the costs the City would have incurred for City Right-of-Way Costs if the Retaining Wall Facilities did not exist.
- e. **Cost Differential.** “Cost Differential” means the difference between the Pre-Encroachment Costs and the City Right-of-Way Costs caused by the Retaining Wall Facilities. The City’s reasonable determination of the amount of the Cost Differential shall be binding on the Responsible Party. The City’s reasonable determination shall be appropriately supported by cost estimates obtained from independent contractors or engineers.

6.2 Recitals.

- i. The City Easement is on the Retaining Wall Lot. The City owns the City Easement. The City Easement Improvements are within the City Easement and future City Easement Improvements may be located within the City Easement.
- ii. Responsible Party has requested permission from the City to construct the Retaining Wall Facilities within the City Easement.
- iii. The Retaining Wall Facilities benefit and serve the Residential Owner and the Landowner Property.
- iv. Subject to the terms of this Agreement, the City is willing to allow the Retaining Wall Facilities to be constructed within the City Easement if the following conditions are met:
 - a.) The Responsible Party agrees to pay the City any Cost Differential relating to inspections, access, repair, maintenance and replacement of the

existing City Easement Improvements and the placement of any future City Easement Improvements in the City Easement.

- b.) The City has the right to temporarily remove the Retaining Wall Facilities from the City Easement in the event the City has need to access the area where the Retaining Wall Facilities exist in order for the City to inspect, repair, maintain, and replace the existing City Easement Improvements or construct future City Easement Improvements in the City Easement.
- c.) The City has the right to modify the Retaining Wall Facilities if the Retaining Wall Facilities materially interfere with the City Easement Improvements.

6.3 City Not Responsible for Retaining Wall Facilities. Nothing contained herein shall be deemed an assumption by the City of any responsibility for construction, maintenance, replacement or repair of the Retaining Wall Facilities.

6.4 Continuing Right to City Easements. Nothing contained herein shall be deemed a waiver or abandonment or transfer of the right, title and interest that the City holds to the City Easements.

6.5 Subordinate Position of Retaining Wall Facilities. The Retaining Wall Facilities in the City Easements are subordinate to the rights of the City in the City Easements and in the City Easement Improvements.

6.6 Risk of Loss. The Responsible Party understands and agrees that the Retaining Wall Facilities within the City Easements may be adversely affected by use of the City Easements. The parties agree that the City is not responsible for such events; the City shall have no liability to the Responsible Party for such events. The Responsible Party assumes the risk of installing the Retaining Wall Facilities in the City Easements.

6.7 Cost of Relocating Retaining Wall Facilities.

Upon thirty (30) days advance written notice from the City to the Responsible Party, the Responsible Party, within thirty (30) days after such notice, shall temporarily remove and subsequently replace the Retaining Wall Facilities in the City Easement in order for the City to gain access to the City Easement Improvements for the purpose of inspecting, repairing, maintaining, or replacing the City Easement Improvements or adding future City Easement Improvements.

If the Responsible Party does not perform such work within such 30 day period, the City may temporarily remove and subsequently replace the Retaining Wall Facilities in the City Easement in order for the City to gain access to the City Easement Improvements for the purpose of inspecting, repairing, maintaining, or replacing the City Easement Improvements or adding future City Easement Improvements.

Once the City's costs and expenses for such tasks have been determined by the City, the City shall send an invoice for such costs and expenses to the Responsible Party. The

Responsible Party must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged the City by third parties such as contractors as well as the costs for City personnel that may have performed the work. Bills not paid shall incur the standard penalty and interest established by the City for utility billings within the City. The amount of costs charged by the City shall be the usual and customary amounts charged by the City for such tasks.

6.8 Cost Differential. If a Cost Differential occurs relating to the access to or inspection, maintenance, repair or replacement of the City Easement Improvements or relating to construction of new City Easement Improvements in the future, then the Landowner shall pay the Cost Differential to the City. The Responsible Party must make payment for the Cost Differential within 30 days after the City has sent a written invoice for the Cost Differential to the Responsible Party.

6.9 Modifications to Retaining Wall Facilities. If in the future the City reasonably determines that the Retaining Wall Facilities interfere with access for inspection or with repair, maintenance, reconstruction, or replacement of City Easement Improvements, then upon thirty (30) days advance written notice by the City to the Responsible Party, the Responsible Party shall, within thirty (30) days after such notice, make such modifications to the Retaining Wall Facilities. Such modifications may include, but are not limited to, reconfiguration, removal and relocation of the Retaining Wall Facilities.

If the Responsible Party does not perform such work within such 30 day period and if the City reasonably determines that the Retaining Wall Facilities interfere with access for inspection or with repair, maintenance, reconstruction, or replacement of City Easement Improvements, then the City may make such modifications to the Retaining Wall Facilities. Such modifications may include, but are not limited to, reconfiguration, removal and relocation of the Retaining Wall Facilities.

Once the City's costs and expenses have been determined by the City for such modification tasks, the City shall send an invoice for such costs and expenses to the Responsible Party. The Responsible Party must pay the invoice within thirty (30) days after the date of the invoice. Such costs and expenses include, but are not limited to, costs charged the City by third parties such as contractors as well as the costs for City personnel that may have performed the work relating to the modifications. The amount of costs charged by the City shall be the usual and customary amounts charged by the City for such tasks.

6.10 Remedies. If the Responsible Party fails to perform its obligations under Article 6 of this Agreement, then the City may avail itself of any remedy afforded by law or in equity and any of the following non-exclusive remedies:

- a.) The City may specifically enforce this Agreement.
- b.) If the Responsible Party fails to make payments under Section 6.7, 6.8 and 6.9, then the City may certify to Dakota County the amounts due as payable with the real estate taxes for the Landowner Property in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The amount due shall be allocated

equally among the Landowner Property. The Residential Owner waives any and all procedural and substantive objections to the imposition of such usual and customary charges on the Landowner Property.

Further, as an alternate means of collection, if the written billing is not paid by the Responsible Party, the City, without notice and without hearing, may specially assess the Landowner Property for the costs and expenses incurred by the City. The Residential Owner hereby waives any and all procedural and substantive objections to special assessments for the costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Landowner Property. The Residential Owner waives any appeal rights otherwise available pursuant to Minnesota Statutes § 429.081. The Residential Owner acknowledges that the benefit from the performance of tasks by the City equals or exceeds the amount of the charges and assessments for the costs that are being imposed hereunder upon the Landowner Property.

No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

6.11 City Duties. Nothing contained in this Article 6 of this Agreement shall be considered an affirmative duty upon the City to perform the Responsible Party obligations contained in Article 6 if the Responsible Party does not perform such obligations.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF Landowner and the City have entered into this Retaining Wall Maintenance Agreement on the day and year first stated above.

CITY OF INVER GROVE HEIGHTS

By: _____
Tom Bartholomew
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 12th day of July, 2021, before me a Notary Public within and for said County, personally appeared Tom Bartholomew and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was sealed on behalf of said municipality by authority of its City Council and said Mayor and City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**LANDOWNER:
BUILDERS LOT GROUP, LLC**

By: _____
Melvin L. Moore
Its: Chief Executive Officer and Co-Chief Manager

By: _____
Steven Soltau
Its: Chief Financial Officer and Co-Chief Manager

STATE OF MINNESOTA)
)
COUNTY OF _____) ss.

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin L. Moore and Steven Soltau, to me personally known, who being by me duly sworn, each did say that they are respectively the Chief Executive Officer and Co-Chief Manager and Chief Financial Officer and Co-Chief Manager of Builders Lot Group, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed by Melvin L. Moore and Steven Soltau on behalf of Builders Lot Group, LLC by authority of the Board of Governors of Builders Lot Group, LLC.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

**AFTER RECORDING PLEASE
RETURN TO:**

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF RESIDENTIAL LOTS

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, legally described as follows:

Lot 5, Block 1, Eagles Landing , Dakota County, Minnesota.

EXHIBIT B
RETAINING WALL LOT

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, legally described as follows:

Lot 5, Block 1, Eagles Landing, Dakota County, Minnesota.

EXHIBIT C
RETAINING WALL CONSTRUCTION PLAN

RETAINING WALL MAINTENANCE AGREEMENT RELATING TO
OUTLOT A, EAGLES LANDING,
DAKOTA COUNTY, MINNESOTA

THIS RETAINING WALL MAINTENANCE AGREEMENT RELATING TO OUTLOT A, EAGLES LANDING (hereafter referred to as “Agreement”) is made, entered into and effective this 12th day of July, 2021, by and between the City of Inver Grove Heights, a Minnesota municipal corporation (hereafter referred to as “City”) and Eagles Landing Homeowners Association, a Minnesota non-profit corporation (hereafter referred to as “Association”) and Builders Lot Group, LLC, a Minnesota limited liability company (hereafter referred to as “Developer”). Subject to the terms and conditions hereafter stated and based on the representations, warranties, covenants, agreements and recitals of the parties herein contained, the parties do hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Terms. The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

1.2 City. “City” means the City of Inver Grove Heights, a Minnesota municipal corporation.

1.3 Association. “Association” means Eagles Landing Homeowners Association, a Minnesota non-profit corporation and its successors and assigns.

1.4 Developer. “Developer” means Builders Lot Group, LLC, a Minnesota limited liability company.

1.5 Retaining Wall Facilities. “Retaining Wall Facilities” means each and all of the following, individually and collectively, to the extent located within the Retaining Wall Lot:

The retaining wall structure, retaining wall foundation, retaining wall anchors, retaining wall fencing and retaining wall drainage collection appurtenances lying within the Retaining Wall Lot.

1.6 Retaining Wall Construction Plan. “Retaining Wall Construction Plan” means the _____ Plan dated _____, 2021 and approved by the City Engineer and attached hereto as **Exhibit C**. The Retaining Wall Construction Plan is on file with the City.

1.7 Responsible Party. Responsible Party means the following:

- a. For the time period from the date of this Agreement to December 31, 2021, the Responsible Owner means Developer and its successors and assigns;

AND

- b. For the time period from and after January 1, 2022, the Responsible Owner means the Association and its successors and assigns.

1.8 Residential Lots. Residential Lots means each and all of the following, individually and collectively:

All of the lots legally described and listed on the attached **Exhibit A**.

1.9 Residential Owners. Residential Owners means the fee title owners of the Residential Lots.

1.10 Retaining Wall Lot. Retaining Wall Lot means the lot identified on **Exhibit B** attached hereto.

1.11 Maintenance Standards. “Maintenance Standards” means the Standards of Maintenance as defined in Article 3, Section 3.3 of this Agreement.

1.12 DPW. “DPW” means the City’s Director of Public Works.

ARTICLE 2 **RECITALS**

Recital No. 1. Developer will construct the Retaining Wall Facilities on the Retaining Wall Lot pursuant to the Retaining Wall Construction Plan.

Recital No. 2. Developer will convey the Retaining Wall Lot to the City.

Recital No. 3. The Association will maintain the Retaining Wall Facilities on the Retaining Wall Lot. The Residential Owners will be members of the Association.

Recital No. 4. The Association and the Residential Owners are benefitted and served by the Retaining Wall Facilities.

Recital No. 5. The City is willing to allow the plat of Eagles Landing to be recorded if Developer complies with the requirements contained in Exhibit E of the Development Contract, of even date herewith between the City and Developer and if Developer (as a Responsible Party under this Agreement) and the Association execute this Agreement.

Recital No. 5. By this Agreement the parties seek to:

- a.) impose upon the Responsible Party the responsibility of maintaining the Retaining Wall Facilities consistent with the Maintenance Standards, notwithstanding the fact that the Retaining Wall Facilities may exist within easements dedicated or granted to the City and the public or may exist within the Retaining Wall Lot that is going to be conveyed to the City; and
- b.) provide a mechanism where the City may charge-back to the Responsible Party any maintenance work that the City performs with respect to the Retaining Wall Facilities in the event the Responsible Party fails to perform its obligations to maintain the Retaining Wall Facilities consistent with the Maintenance Standards.

ARTICLE 3 **RESPONSIBILITY FOR MAINTENANCE**

3.1 Construction of Retaining Wall Facilities. Developer agrees that by a date reasonably set by the City's Director of Public Works the Retaining Wall Facilities shall be constructed and installed in accordance with the Retaining Wall Construction Plan at the sole expense of Developer, subject to delays due to force majeure.

3.2 Maintenance of Retaining Wall Facilities. The Responsible Party is obligated at its expense to perpetually maintain the Retaining Wall Facilities in accordance with the Standard of Maintenance set forth in Section 3.3 hereof. The Standard of Maintenance shall also apply to any modification, alternation or relocation of the Retaining Wall Facilities. The Responsible Party shall also ensure that the Retaining Wall Facilities always remain fit for the use intended, structurally sound and otherwise in compliance with the professional engineering retaining wall designs as reflected in the Retaining Wall Construction Plan and in industry standards (as amended from time to time). The responsibility of the Responsible Party for maintaining the Retaining Wall Facilities on the Retaining Wall Lot exists even though the event or omission which caused the need for maintenance of the Retaining Wall Facilities may arise on property outside of the Retaining Wall Lot and even though the Retaining Wall Lot is owned by the City.

3.3 Standard of Maintenance. The Standard of Maintenance for the Retaining Wall Facilities shall comply with the minimum standards of the Minnesota State Building Code and any applicable provisions of the Inver Grove Heights City Code (as amended from time to time, by amendment of general applicability). In addition, the Standard of Maintenance shall keep the Retaining Wall Facilities in reasonable conformance with the original professional engineering retaining wall designs reflected in the Retaining Wall Construction Plan and in industry standards (as amended from time to time), and the Standard of Maintenance shall include the same standards that the City's Director of Public Works utilizes for similar retaining wall systems that the City maintains, as those standards are from time to time amended. The Retaining Wall Construction Plan is on file with the City.

3.4 Notice of Non-Compliance with Section 3.1; Cure Period. If the City's Director of Public Works ("DPW") determines, at his reasonable discretion, that the Responsible

Party has not complied with Sections 3.2 and 3.3 hereof, the DPW shall provide written notice to the Responsible Party of such failure to comply with Sections 3.2 and 3.3. This notice shall specify that the Responsible Party will have thirty (30) days to comply with Sections 3.2 and 3.3, unless thirty (30) days is not practicable for the Responsible Party to cure the default, in which case the Responsible Party shall be given a reasonable time, as reasonably determined by the DPW, to cure the default provided the Responsible Party has commenced construction of the Retaining Wall Facilities within the initial thirty (30) days. Notwithstanding the requirement contained in this Section relating to written notice and opportunity of the Responsible Party to comply with Sections 3.2 and 3.3, in the event of an emergency as reasonably determined by the DPW, the City may perform the work to be performed by the Responsible Party without giving any notice to the Responsible Party and without giving the Responsible Party thirty (30) days to comply with Sections 3.2 and 3.3. If the City performs emergency construction work, the Responsible Party shall be obligated to repay the City the costs incurred to perform the emergency construction work, and the City shall follow those procedures set forth in Sections 3.5 and 3.6 with respect to the billing, collection and/or tax certification of such costs.

3.5 Payment of Costs Incurred by City. If the Responsible Party fails to comply with Sections 3.2 and 3.3 within thirty (30) days after delivery of the written notice, or in the case of an emergency situation as reasonably determined by the DPW, the City may perform those tasks necessary for compliance with Sections 3.2 and 3.3 and the City shall have the right of access to the areas where the Retaining Wall Facilities are to be located to perform such construction work. The City shall charge all costs incurred by the City to perform the tasks necessary for compliance with Sections 3.2 and 3.3 to the Responsible Party.

The amount of costs charged by the City to the Responsible Party shall be the usual and customary amounts charged by the City given the task, work, construction or improvement performed by the City to ensure compliance with Sections 3.2 and 3.3. The Responsible Party shall make payment directly to the City within thirty (30) days after invoicing (“Due Date”) by the City. Bills not paid by the Due Date shall incur the standard penalty and interest established by the City for utility billings within the City.

3.6 Certification of Costs Payable With Taxes; Special Assessments. If payment is not made under Section 3.5 by the Responsible Party, the City may certify to Dakota County the amounts due as payable with the real estate taxes for the Residential Lots in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills. The amount due shall be allocated equally among the Residential Lots. The Responsible Party waives any and all procedural and substantive objections to the imposition of such usual and customary charges on the Residential Lots.

Further, as an alternate means of collection, if the written billing is not paid by the Responsible Party, the City, without notice and without hearing, may specially assess the Residential Lots for the costs and expenses incurred by the City. The Responsible Party hereby waives any and all procedural and substantive objections to special assessments for such costs including, but not limited to, notice and hearing requirements and any claims that the charges or special assessments exceed the benefit to the Residential Lots. The Responsible Party waives any appeal rights otherwise available pursuant to Minnesota Statute § 429.081. The Responsible Party acknowledges that the benefit from the performance of the tasks by the City to ensure compliance with Sections 3.2 and 3.3 equals or exceeds the amount of the charges and

assessments for compliance with Sections 3.2 and 3.3 that are being imposed hereunder upon the Residential Lots.

3.7 Obligation For Maintenance Notwithstanding Public Easement and Notwithstanding City Ownership. The Responsible Party agrees that its obligations relating to maintenance of the Retaining Wall Facilities exist notwithstanding the fact that the Retaining Wall Facilities may be located in whole or in part within public easements and notwithstanding the fact that the Retaining Wall Facilities are being constructed on the Retaining Wall Lot that is owned by the City.

The City hereby grants to the Responsible Party a right and license to enter the Retaining Wall Lot that is owned by the City and to enter public easements and public road rights-of-way for the purpose of performing the maintenance obligations relating to the Retaining Wall Facilities for the duration of the performance of the maintenance.

3.8 Indemnification of City. Responsible Party shall indemnify, defend and hold the City, its council, agents, employees, attorneys and representatives harmless against and in respect of any and all claims, demands, actions, suits, proceedings, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties and reasonable attorneys' fees, that the City incurs or suffers, which arise out of, result from or relate to:

- a.) failure by the Responsible Party to observe or perform any covenant, conditions, obligation or agreement on their part to be observed or performed under this Agreement and failure to cure the same within the applicable cure period;
- b.) failure by the Responsible Party to pay contractors, subcontractors, laborers, or materialmen;
- c.) failure by the Responsible Party to pay for any materials that may be used by the Responsible Party to maintain the Retaining Wall Facilities;
- d.) any act or negligence by the Responsible Party, its agents, employees or contractors in connection with construction of the Retaining Wall Facilities.

3.9 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the notice, if any, required by this Agreement.

ARTICLE 4
CITY'S COVENANTS

4.1 Compliance with Development Contract. The City agrees that if Developer and Association execute this Retaining Wall Maintenance Agreement and if Developer complies with the other conditions contained in the Development Contract between the City and Developer of even date herewith, then the City will allow Developer to begin the Developer Improvements identified in the Development Contract for the plat of Eagles Landing.

ARTICLE 5
MISCELLANEOUS

5.1 Binding Agreement. The parties mutually recognize and agree that all terms and conditions of this recordable Agreement shall run with the Retaining Wall Lot and shall run with the Residential Lots and shall be binding upon the parties and the successors and assigns of the parties.

5.2 Amendment and Waiver. The parties hereto may by mutual written agreement amend this Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Agreement, waive compliance by another with any of the covenants contained in this Agreement, waive performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

5.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

5.5 Notice. Notice shall means notices given by one party to the other if in writing and if and when delivered or tendered either in person or by depositing it in the United States mail in a sealed envelope, by certified mail, return receipt requested, with postage and postal charges prepaid, addressed as follows:

If to City: City of Inver Grove Heights
Attention: City Administrator
8150 Barbara Avenue
Inver Grove Heights, MN 55077

If to Developer: Builders Lot Group, LLC
9531 West 78th Street, Suite 135
Eden Prairie, MN 55344

If to Association:

Eagles Landing Homeowners Association
9531 West 78th Street, Suite 135
Eden Prairie, MN 55344

or to such other address as the party addressed shall have previously designated by notice given in accordance with this Section. Notices shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing if mailed as provided above, provided, that a notice not given as above shall, if it is in writing, be deemed given if and when actually received by a party.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF Developer, Association and the City have entered into this Retaining Wall Maintenance Agreement on the day and year first stated above.

CITY OF INVER GROVE HEIGHTS

By: _____
Tom Bartholomew
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 12th day of July, 2021, before me a Notary Public within and for said County, personally appeared Tom Bartholomew and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was sealed on behalf of said municipality by authority of its City Council and said City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

DEVELOPER:
BUILDERS LOT GROUP, LLC

By: _____
Melvin L. Moore
Its: Chief Executive Officer and Co-Chief Manager

By: _____
Steven Soltau
Its: Chief Financial Officer and Co-Chief Manager

STATE OF MINNESOTA)
)
COUNTY OF _____) ss.

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin L. Moore and Steven Soltau, to me personally known, who being by me duly sworn, each did say that they are respectively the Chief Executive Officer and Co-Chief Manager and Chief Financial Officer and Co-Chief Manager of Builders Lot Group, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed by Melvin L. Moore and Steven Soltau on behalf of Builders Lot Group, LLC by authority of the Board of Governors of Builders Lot Group, LLC.

Notary Public

**ASSOCIATION:
EAGLES LANDING HOMEOWNERS ASSOCIATION**

By: _____
Melvin Moore
Its President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin Moore, to me personally known, who being by me duly sworn, did say that he is the President of Eagles Landing Homeowners Association, a Minnesota non-profit corporation, and that the foregoing instrument was executed on behalf of Eagles Landing Homeowners Association by authority of the Board of Directors of said non-profit corporation and said Melvin Moore acknowledged said instrument to be the free act and deed of Eagles Landing Homeowners Association.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

**AFTER RECORDING PLEASE
RETURN TO:**

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF RESIDENTIAL LOTS

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, legally described as follows:

Lots 2 through 6, Block 1, Eagles Landing, Dakota County, Minnesota

Lots 1 through 5, Block 2, Eagles Landing, Dakota County, Minnesota

according to the plat thereof on file and of record in the office of the Dakota County Recorder, State of Minnesota.

EXHIBIT B
RETAINING WALL LOT

Real Property located in the City of Inver Grove Heights, Dakota County, Minnesota, legally described as follows:

Outlot A, Eagles Landing, Dakota County, Minnesota

EXHIBIT C
RETAINING WALL CONSTRUCTION PLAN

RESTRICTIVE USE EASEMENT AGREEMENT
FOR LOT 1, BLOCK 1, EAGLES LANDING,
DAKOTA COUNTY, MINNESOTA

THIS RESTRICTIVE USE EASEMENT AGREEMENT FOR LOT 1, BLOCK 1 EAGLES LANDING (Easement Agreement) is made this 12th day of July, 2021, by and between Builders Lot Group, LLC, a Minnesota limited liability company (hereinafter referred to as “Grantor”) and the City of Inver Grove Heights, a Minnesota municipal corporation (hereinafter referred to as “City”).

WHEREAS, Grantor is the fee owner of land located in Dakota County, Minnesota, more fully described in **Exhibit A**, attached hereto and made a part hereof, (hereinafter referred to as “the Property”).

WHEREAS, a portion of the Property must remain free of any buildings, objects, trees, shrubs or structures (more specifically identified below) that would prevent clear visibility for vehicular traffic traveling at the intersection of the streets adjoining the Property. The City desires that nothing be placed on this portion of the Property.

WHEREAS, Grantor and City wish to enter into an agreement which will grant to City a Restrictive Use Easement that prohibits the placement of any trees, shrubs, or other vegetation (except grass) without the prior written consent of the City, and further prohibits the construction of any buildings or other man-made structures thereon (except for impervious pavement for driveways and except for stormwater facilities and other public utilities) over those portions of the Property described and depicted in **Exhibit B**, attached hereto (hereinafter referred to collectively as the “Restricted Easement Area”), without the prior written consent of the City.

NOW, THEREFORE, in consideration of the premises, it is hereby agreed by the parties as follows:

1. **Grant of Easement**. Grantor hereby forever grants to City and its successors and assigns, a Restrictive Use Easement, with those restrictions, terms, provisions, duties, and obligations herein contained in, under, on, over and through the Restricted Easement Area.

2. **Restrictions Relating to Vegetation.** Without the prior written consent of the City, no trees, shrubs, or other vegetation (except grass) may be planted or placed upon the Restricted Easement Area.
3. **Restrictions Relating to Structures.** No buildings and no other man-made structures (including, but not limited to: fences, sheds, retaining walls, play equipment, gazebo's, rock gardens and landscape boulders) shall be placed in the Restricted Easement Area without the prior written consent of the City; provided, however, nothing contained in this Easement Agreement prohibits Grantor from placing impervious pavement for driveways within the Restricted Easement Area and nothing contained in this Easement Agreement prohibits Grantor or City from placing stormwater facilities or other public utilities in the Restricted Easement Area.
4. **Restrictions Relating to Grade.** No change in the general topography of the Restricted Easement Area landscape, (including, but not limited to, excavation, movement, or removal of soil), shall be allowed without the prior written consent of the City.
5. **Duration of Easement.** The duration of the Restrictive Use Easement is perpetual, unless terminated by any of the following means:
 - a. The Restrictive Use Easement may be terminated by recordable written instrument signed by the parties.
 - b. The Restrictive Use Easement may be terminated if the City executes a written recordable release of the Restrictive Use Easement.
 - c. The Restrictive Use Easement shall be terminated if the City acquires a street easement over the Restricted Easement Area or otherwise acquires fee title to the Restricted Easement Area.
6. **No Impairment of City Rights.** Nothing contained herein shall impair any right of the City now held or hereafter acquired to construct, repair, replace, or maintain any existing or future public utilities or streets which are, or come to be placed in, on, or under the Restricted Easement Area.
7. **City Remedies.** If the Grantor fails to perform any of its covenants or obligations under this Easement Agreement, the City may avail itself of any remedy afforded by law and any of the following non-exclusive remedies:
 - a) **Specific Performance.** The City may specifically enforce this Easement Agreement.
 - b) **Notice of Non-Compliance; Cure Period.** If the City's Director of Public Works ("DPW") determines, at his sole discretion, that the Grantor has not complied with the terms and provisions set forth in this Easement Agreement, the DPW shall provide written notice to the Grantor of such

failure to comply with the terms and provisions of this Easement Agreement. This notice shall specify that the Grantor will have thirty (30) days to comply with the terms and provisions of this Easement Agreement, unless thirty (30) days is not practicable for the Grantor to so comply, in which case the Grantor shall be given a reasonable time, as determined by the DPW, to comply with the terms and provisions of this Easement Agreement provided the Grantor has commenced a suitable cure within the initial thirty (30) days. Notwithstanding the requirement contained in this Section relating to written notice and opportunity of the Grantor to comply with the terms and provisions of this Easement Agreement, in the event of an emergency as determined by the DPW, the City may perform the work necessary for compliance with the terms and provisions of this Easement Agreement without giving any notice to the Grantor and without giving the Grantor thirty (30) days to comply with the terms and provisions of this Easement Agreement. If the City performs emergency service work, the Grantor shall be obligated to repay the City the costs incurred to perform the emergency service work, and the City shall follow those procedures set forth in Sections 7 (c) and 7 (d) with respect to the billing, collection and/or tax certification of such costs.

- c) **Payment of Costs Incurred by City.** If the Grantor fails to comply with the terms and provisions of this Easement Agreement within thirty (30) days after delivery of the written notice, or in the case of an emergency situation as determined by the DPW, the City may perform those tasks necessary for compliance and the City shall have the right of access to the Property to perform such work. The City shall charge all costs incurred by the City to perform the tasks necessary for compliance to the Grantor. The amount of costs charged by the City to the Grantor shall be the usual and customary amounts charged by the City given the task, work, or improvement performed by the City to ensure compliance with the terms and provisions of this Easement Agreement. The Grantor shall make payment directly to the City within thirty (30) days after invoicing (“Due Date”) by the City. Bills not paid by the Due Date shall incur the standard penalty and interest established by the City for utility billings within the City.
- d) **Certification of Costs Payable With Taxes.** If payment is not made by the Grantor as provided in Section 7 (c), the City may certify to Dakota County the amounts due as payable with the real estate taxes for Property owned by the Grantor in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills.

8. **Binding Effect.** This Restrictive Use Easement shall run with the Property and shall inure to the benefit of the Grantor and the City and shall bind the Grantor and the successors and assigns of the Grantor and shall be binding upon the City and the

successor's and assigns of the City. This Restrictive Use Easement shall also be binding upon any right title or interest of the parties to the Property acquired after the date of this Restrictive Use Easement or acquired after the date of recording of this Restrictive Use Easement.

9. **No Assumption of Duty.** Nothing contained in this Easement Agreement shall be considered an affirmative duty upon the City to perform the Grantor's obligations.

10. **No Third Party Recourse.** Third parties shall have no recourse against the City under this Easement Agreement.

11. **Amendment And Waiver.** The parties hereto may by mutual written agreement amend this Easement Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Easement Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Easement Agreement, waive compliance by another with any of the covenants contained in this Easement Agreement and performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Easement Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Easement Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

12. **Governing Law.** This Easement Agreement shall be governed by and construed in accord with the laws of the State of Minnesota.

13. **Counterparts.** This Easement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

14. **Headings.** The subject headings of the sections in this Easement Agreement are included for purposes of convenience only and shall not affect the construction of interpretation of any of its provisions.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year aforesaid by its duly authorized representatives.

CITY OF INVER GROVE HEIGHTS

By: _____
Tom Bartholomew
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 12th day of July, 2021, before me a Notary Public within and for said County, personally appeared Tom Bartholomew and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**GRANTOR:
BUILDERS LOT GROUP, LLC**

By: _____
Melvin L. Moore
Its: Chief Executive Officer and Co-Chief Manager

By: _____
Steven Soltau
Its: Chief Financial Officer and Co-Chief Manager

STATE OF MINNESOTA)
)
COUNTY OF _____) ss.

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin L. Moore and Steven Soltau, to me personally known, who being by me duly sworn, each did say that they are respectively the Chief Executive Officer and Co-Chief Manager and Chief Financial Officer and Co-Chief Manager of Builders Lot Group, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed by Melvin L. Moore and Steven Soltau on behalf of Builders Lot Group, LLC by authority of the Board of Governors of Builders Lot Group, LLC.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

**AFTER RECORDING PLEASE
RETURN TO:**

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

The real property located in Inver Grove Heights, Dakota County, Minnesota, described as follows:

Lot 1, Block 1, Eagles Landing, according to the recorded plat thereof on file and of record with the Office of the County Recorder, Dakota County, Minnesota.

EXHIBIT B
RESTRICTED EASEMENT AREA

Depiction of Easement Area
(Part of Exhibit B)

RESTRICTIVE USE EASEMENT AGREEMENT
FOR LOT 5, BLOCK 1, EAGLES LANDING,
DAKOTA COUNTY, MINNESOTA

THIS RESTRICTIVE USE EASEMENT AGREEMENT FOR LOT 5, BLOCK 1 EAGLES LANDING (Easement Agreement) is made this 12th day of July, 2021, by and between Builders Lot Group, LLC, a Minnesota limited liability company (hereinafter referred to as “Grantor”) and the City of Inver Grove Heights, a Minnesota municipal corporation (hereinafter referred to as “City”).

WHEREAS, Grantor is the fee owner of land located in Dakota County, Minnesota, more fully described in **Exhibit A**, attached hereto and made a part hereof, (hereinafter referred to as “the Property”).

WHEREAS, a portion of the Property must remain free of any buildings, objects, trees, shrubs or structures (more specifically identified below) that would prevent clear visibility for vehicular traffic traveling at the intersection of the streets adjoining the Property. The City desires that nothing be placed on this portion of the Property.

WHEREAS, Grantor and City wish to enter into an agreement which will grant to City a Restrictive Use Easement that prohibits the placement of any trees, shrubs, or other vegetation (except grass) without the prior written consent of the City, and further prohibits the construction of any buildings or other man-made structures thereon (except for impervious pavement for driveways and except for stormwater facilities and other public utilities) over those portions of the Property described and depicted in **Exhibit B**, attached hereto (hereinafter referred to collectively as the “Restricted Easement Area”), without the prior written consent of the City.

NOW, THEREFORE, in consideration of the premises, it is hereby agreed by the parties as follows:

1. **Grant of Easement**. Grantor hereby forever grants to City and its successors and assigns, a Restrictive Use Easement, with those restrictions, terms, provisions, duties, and obligations herein contained in, under, on, over and through the Restricted Easement Area.

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3. **Restrictions Relating to Structures.** No buildings and no other man-made structures (including, but not limited to: fences, sheds, retaining walls, play equipment, gazebo's, rock gardens and landscape boulders) shall be placed in the Restricted Easement Area without the prior written consent of the City; provided, however, nothing contained in this Easement Agreement prohibits Grantor from placing impervious pavement for driveways within the Restricted Easement Area and nothing contained in this Easement Agreement prohibits Grantor or City from placing stormwater facilities or other public utilities in the Restricted Easement Area.
4. **Restrictions Relating to Grade.** No change in the general topography of the Restricted Easement Area landscape, (including, but not limited to, excavation, movement, or removal of soil), shall be allowed without the prior written consent of the City.
5. **Duration of Easement.** The duration of the Restrictive Use Easement is perpetual, unless terminated by any of the following means:
 - a. The Restrictive Use Easement may be terminated by recordable written instrument signed by the parties.
 - b. The Restrictive Use Easement may be terminated if the City executes a written recordable release of the Restrictive Use Easement.
 - c. The Restrictive Use Easement shall be terminated if the City acquires a street easement over the Restricted Easement Area or otherwise acquires fee title to the Restricted Easement Area.
6. **No Impairment of City Rights.** Nothing contained herein shall impair any right of the City now held or hereafter acquired to construct, repair, replace, or maintain any existing or future public utilities or streets which are, or come to be placed in, on, or under the Restricted Easement Area.
7. **City Remedies.** If the Grantor fails to perform any of its covenants or obligations under this Easement Agreement, the City may avail itself of any remedy afforded by law and any of the following non-exclusive remedies:
 - a) **Specific Performance.** The City may specifically enforce this Easement Agreement.
 - b) **Notice of Non-Compliance; Cure Period.** If the City's Director of Public Works ("DPW") determines, at his sole discretion, that the Grantor has not complied with the terms and provisions set forth in this Easement Agreement, the DPW shall provide written notice to the Grantor of such

failure to comply with the terms and provisions of this Easement Agreement. This notice shall specify that the Grantor will have thirty (30) days to comply with the terms and provisions of this Easement Agreement, unless thirty (30) days is not practicable for the Grantor to so comply, in which case the Grantor shall be given a reasonable time, as determined by the DPW, to comply with the terms and provisions of this Easement Agreement provided the Grantor has commenced a suitable cure within the initial thirty (30) days. Notwithstanding the requirement contained in this Section relating to written notice and opportunity of the Grantor to comply with the terms and provisions of this Easement Agreement, in the event of an emergency as determined by the DPW, the City may perform the work necessary for compliance with the terms and provisions of this Easement Agreement without giving any notice to the Grantor and without giving the Grantor thirty (30) days to comply with the terms and provisions of this Easement Agreement. If the City performs emergency service work, the Grantor shall be obligated to repay the City the costs incurred to perform the emergency service work, and the City shall follow those procedures set forth in Sections 7 (c) and 7 (d) with respect to the billing, collection and/or tax certification of such costs.

- c) **Payment of Costs Incurred by City.** If the Grantor fails to comply with the terms and provisions of this Easement Agreement within thirty (30) days after delivery of the written notice, or in the case of an emergency situation as determined by the DPW, the City may perform those tasks necessary for compliance and the City shall have the right of access to the Property to perform such work. The City shall charge all costs incurred by the City to perform the tasks necessary for compliance to the Grantor. The amount of costs charged by the City to the Grantor shall be the usual and customary amounts charged by the City given the task, work, or improvement performed by the City to ensure compliance with the terms and provisions of this Easement Agreement. The Grantor shall make payment directly to the City within thirty (30) days after invoicing (“Due Date”) by the City. Bills not paid by the Due Date shall incur the standard penalty and interest established by the City for utility billings within the City.
- d) **Certification of Costs Payable With Taxes.** If payment is not made by the Grantor as provided in Section 7 (c), the City may certify to Dakota County the amounts due as payable with the real estate taxes for Property owned by the Grantor in the next calendar year; such certifications may be made under Minnesota Statutes, Chapter 444 in a manner similar to certifications for unpaid utility bills.

8. **Binding Effect.** This Restrictive Use Easement shall run with the Property and shall inure to the benefit of the Grantor and the City and shall bind the Grantor and the successors and assigns of the Grantor and shall be binding upon the City and the

successor's and assigns of the City. This Restrictive Use Easement shall also be binding upon any right title or interest of the parties to the Property acquired after the date of this Restrictive Use Easement or acquired after the date of recording of this Restrictive Use Easement.

9. **No Assumption of Duty.** Nothing contained in this Easement Agreement shall be considered an affirmative duty upon the City to perform the Grantor's obligations.

10. **No Third Party Recourse.** Third parties shall have no recourse against the City under this Easement Agreement.

11. **Amendment And Waiver.** The parties hereto may by mutual written agreement amend this Easement Agreement in any respect. Any party hereto may extend the time for the performance of any of the obligations of another, waive any inaccuracies in representations by another contained in this Easement Agreement or in any document delivered pursuant hereto which inaccuracies would otherwise constitute a breach of this Easement Agreement, waive compliance by another with any of the covenants contained in this Easement Agreement and performance of any obligations by the other or waive the fulfillment of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Easement Agreement. Any agreement on the part of any party for any such amendment, extension or waiver must be in writing. No waiver of any of the provisions of this Easement Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

12. **Governing Law.** This Easement Agreement shall be governed by and construed in accord with the laws of the State of Minnesota.

13. **Counterparts.** This Easement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

14. **Headings.** The subject headings of the sections in this Easement Agreement are included for purposes of convenience only and shall not affect the construction of interpretation of any of its provisions.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year aforesaid by its duly authorized representatives.

CITY OF INVER GROVE HEIGHTS

By: _____
Tom Bartholomew
Its: Mayor

ATTEST:

Rebecca Kiernan, City Clerk

(CITY SEAL)

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

On this 12th day of July, 2021, before me a Notary Public within and for said County, personally appeared Tom Bartholomew and Rebecca Kiernan to me personally known, who being each by me duly sworn, each did say that they are respectively the Mayor and City Clerk of the City of Inver Grove Heights, the municipality named in the foregoing instrument, and that the seal affixed to said instrument was signed and sealed on behalf of said municipality by authority of its City Council and said City Clerk acknowledged said instrument to be the free act and deed of said municipality.

Notary Public

**GRANTOR:
BUILDERS LOT GROUP, LLC**

By: _____
Melvin L. Moore
Its: Chief Executive Officer and Co-Chief Manager

By: _____
Steven Soltau
Its: Chief Financial Officer and Co-Chief Manager

STATE OF MINNESOTA)
)
COUNTY OF _____) ss.

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin L. Moore and Steven Soltau, to me personally known, who being by me duly sworn, each did say that they are respectively the Chief Executive Officer and Co-Chief Manager and Chief Financial Officer and Co-Chief Manager of Builders Lot Group, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed by Melvin L. Moore and Steven Soltau on behalf of Builders Lot Group, LLC by authority of the Board of Governors of Builders Lot Group, LLC.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Timothy J. Kuntz
LeVander, Gillen, & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

**AFTER RECORDING PLEASE
RETURN TO:**

Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street
Suite 400
South St. Paul, MN 55075
(651) 451-1831

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

The real property located in Inver Grove Heights, Dakota County, Minnesota, described as follows:

Lot 5, Block 1, Eagles Landing, according to the recorded plat thereof on file and of record with the Office of the County Recorder, Dakota County, Minnesota.

EXHIBIT B
RESTRICTED EASEMENT AREA

Depiction of Easement Area
(Part of Exhibit B)

WARRANTY DEED

Corporation, Partnership or Limited Liability Company
to Corporation, Partnership or Limited Liability Company

DEED TAX DUE: \$ 1.65

Date: July 12, 2021

FOR VALUABLE CONSIDERATION, Builders Lot Group, LLC, a Minnesota limited liability company ("Grantor") hereby conveys and warrants to City of Inver Grove Heights, a municipal corporation under the laws of Minnesota, ("Grantee") real property in Dakota County, Minnesota, legally described as follows:

Outlot A, Eagles Landing, according to the plat thereof on file and of record in the office of the County Recorder, Dakota County, Minnesota.

total consideration for this transfer is less than \$3,000.00.

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions: easements and restrictions of record, if any.

Check box if applicable:

- ☒ The Seller certifies that the Seller does not know of any wells on the described real property.
- ☐ A well disclosure certificate accompanies this document.
- ☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Grantor:

Builders Lot Group, LLC

By: _____

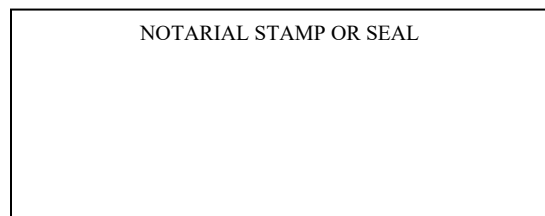
Melvin Moore
Its: Chief Executive Officer and
Co-Chief Manager

By: _____

Steven Soltau
Its: Chief Financial Officer and
Co-Chief Manager

STATE OF MINNESOTA)
)
COUNTY OF _____) ss.

On this _____ day of July, 2021, before me a Notary Public within and for said County, personally appeared Melvin L. Moore and Steven Soltau, to me personally known, who being by me duly sworn, each did say that they are respectively the Chief Executive Officer and Co-Chief Manager and Chief Financial Officer and Co-Chief Manager of Builders Lot Group, LLC, a Minnesota limited liability company, and that the foregoing instrument was executed by Melvin L. Moore and Steven Soltau on behalf of Builders Lot Group, LLC by authority of the Board of Governors of Builders Lot Group, LLC.



SIGNATURE OF NOTARIAL OFFICER

Title (and Rank): Notary Public
My commission expires: _____

Check here if part or all of the land is Registered (Torrens) ☐

Tax Statements for real property described in this instrument
should be sent to: (include name and address of Grantee)

City of Inver Grove Heights
ATTN: Finance Director
8150 Barbara Avenue
Inver Grove Heights, MN 55077

This Instrument Was Drafted By
And After Recording Should Be
Returned To:
Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
Ph: 651-451-1831 / Fax: 651-450-7384
#58993



Request for Council Action

TITLE: Termination of Declaration of Local Emergency Due to COVID-19 Health Pandemic

		Fiscal/FTE Impact	Mark all that apply
Meeting Date:	July 12, 2021	None	x
Item Type:	Consent	Amount included in current budget	
Contact:	Chief Melissa Chiodo	Budget amendment requested	
Prepared by:	Bridget Nason, City Attorney	FTE included in current complement	
Reviewed by:	Chief Melissa Chiodo	New FTE requested - N/A	
		Other	

PURPOSE/ACTION REQUESTED:

On March 13, 2020, Governor Tim Walz declared a Peacetime State of Emergency as a result of the COVID-19 Health Pandemic. Following the statewide declaration of peacetime emergency, Mayor George Tourville declared that a local emergency existed due to the COVID-19 health pandemic, and the City Council subsequently adopted a series of resolutions consenting to the declaration of local emergency and extending the same, and the declaration of local emergency remains in effect at this time. Due to the termination of the state declaration of peacetime emergency and the success of the public health responses to the COVID-19 pandemic, it is recommended that the City Council formally declare that the local emergency due to the COVID-19 health pandemic has ended and rescind the current declaration of local emergency. Termination of the declaration of local emergency will result in the automatic termination of the resolutions, temporary ordinance amendment, and other COVID-related flexibilities approved by the adoption of those resolutions and the related temporary ordinance as a response to the COVID-19 pandemic.

SUMMARY:

The Council is asked to consider approval of the attached resolution terminating the existing declaration of local emergency due to the COVID-19 health pandemic.

RESOLUTION NO. _____

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

**RESOLUTION APPROVING THE TERMINATION OF THE EXISTING LOCAL
EMERGENCY DECLARATION**

WHEREAS, on March 13, 2020, Governor Tim Walz, by way of Emergency Executive Order 20-01, declared a Peacetime State of Emergency to authorize any and all necessary resources to be used in support of the COVID-19 response, effective immediately, which Peacetime Emergency has been extended multiple times by a series of executive orders; and

WHEREAS, by that Proclamation and Declaration of Emergency dated March 16, 2020, Mayor George Tourville declared a local emergency due to the COVID-19 health pandemic; and

WHEREAS, on March 17, 2020, the City Council adopted Resolution 2020-51 which agreed with the Mayor's Proclamation and Declaration of Emergency and consented to the declaration of a local emergency due to the COVID-19 health pandemic; and

WHEREAS, on May 26, 2020, the City Council adopted Resolution 2020-98 which extended the declaration of local emergency until such time as the City Council takes formal action to declare that the local emergency due to the COVID-19 health pandemic has ended and to rescind the declaration of local emergency; and

WHEREAS, due to the effective distribution of vaccines and other public health response measures, the threat posed by COVID-19 has substantially diminished; and

WHEREAS, effective July 1, 2021, the existing statewide Declaration of Emergency has been terminated; and

WHEREAS, based on all of the above, termination of the existing declaration of local emergency in the City of Inver Grove Heights is now appropriate.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Inver Grove Heights, Minnesota as follows:

1. Effective immediately, declares that the local emergency due to the COVID-19 health pandemic has ended.
2. Effective immediately, rescinds the existing declaration of local emergency for the City of Inver Grove Heights, and all related authorizations and approvals contained within the resolutions approving and extending the declaration of local emergency as well as the original Proclamation and Declaration of Emergency.

3. As a result of the rescission of the declaration of local emergency, the provisions of Ordinance No. 1381 are automatically suspended pursuant to the terms of Ordinance No. 1381 and City Code Section 1-2-3(F).

ADOPTED this 12th day of July, 2021, by the City Council of the City of Inver Grove Heights.

Thomas Bartholomew, Mayor

ATTEST:

Rebecca Kiernan, City Clerk

**Request for Council Action****TITLE: CONSIDER APPROVAL OF RESOLUTION MEMORIALIZING THE FINDINGS OF FACT AND REASONS FOR DENIAL ADOPTED BY THE COUNCIL RELATING TO APPLICATION BY LENNAR MULTIFAMILY COMMUNITIES LLC FOR A COMPREHENSIVE PLAN (MAP) AMENDMENT**

		Fiscal/FTE Impact	Mark all that apply
Meeting Date:	July 12, 2021	None	x
Item Type:	Consent	Amount included in current budget	
Contact:	City Attorney's Office	Budget amendment requested	
Prepared by:	Bridget Nason	FTE included in current complement	
Reviewed by:		New FTE requested - N/A	
		Other	

PURPOSE/ACTION REQUESTED:

At its June 28, 2021 meeting, the City Council voted 3-2 to deny the application of Lennar Multifamily Communities, LLC, for a Comprehensive Plan Amendment to change the land use designation of Outlots C and D, Argenta Hills, from RC, Regional Commercial, to HDR, High Density Residential. The attached resolution memorializes in written form the findings of fact and reasons for denial adopted by the Council members voting in favor of denial at that meeting.

SUMMARY:

Consider approval of attached resolution memorializing the findings of fact and reasons for denial related to the application for a comprehensive plan amendment to change the future land use classification of Outlots C and D, Argenta Hills, from RC, Regional Commercial to HDR, High Density Residential.

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA**

RESOLUTION NO. _____

**A RESOLUTION MEMORIALIZING THE FINDINGS OF FACT
AND REASONS FOR DENIAL RELATING TO THE
APPLICATION FOR A COMPREHENSIVE PLAN (MAP) AMENDMENT TO
CHANGE THE LAND USE CLASSIFICATION FOR OUTLOT C AND OUTLOT D,
ARGENTA HILLS, FROM RC, REGIONAL COMMERCIAL TO HDR, HIGH
DENSITY RESIDENTIAL**

**(CITY PLANNING CASE NO. 21-34PA
LENNAR MULTIFAMILY COMMUNITIES)**

WHEREAS, Applicant Lennar Multifamily Communities, LLC, with the permission of IGH Investments, LLC, the owner of the property legally described as follows: **Outlot C and Outlot D, Argenta Hills, Dakota County, Minnesota, according to the recorded plat thereof**, (the “Property”) applied to the City of Inver Grove Heights for the following land use request (the “Application”) related to the Property:

- A comprehensive plan (map) amendment to change the future land use classification (designation) of the Property from RC, Regional Commercial to HDR, High Density Residential.

WHEREAS, the purpose of the Comprehensive Plan Amendment is to change the land use classification (designation) of the Property from Regional Commercial to High Density Residential, which would permit the Property, once rezoned, to be developed with multi-family housing at densities exceeding 12 units per acre.

WHEREAS, the above-described Application was considered by the Inver Grove Heights Planning Commission on June 15, 2021, in accordance with the City Code and Minnesota Statutes, Section 462.355.

WHEREAS, the above-described Application was considered by the City Council of the City of Inver Grove Heights at the June 28, 2021 Inver Grove Heights Council Meeting.

WHEREAS, at the June 28, 2021 Council Meeting, a motion was made by Councilmember Murphy and seconded by Councilmember Dietrich, to deny the Application for a Comprehensive Plan (map) Amendment to change the land use classification (designation) for the Property from RC, Regional Commercial to HDR, High Density Residential, after which the motion to deny the Application passed on a vote of 3-2, with Councilmembers Murphy, Gliva, and Dietrich voting to deny the Application and Councilmember Piekarski Krech and Mayor Bartholomew voting against denial of the Application.

WHEREAS, Minnesota Statutes Section 15.99, subd. 2(c) provides that if a multimember governing body denies a request, it must state the reasons for denial on the record and provide the applicant in writing a statement of the reasons for the denial. If the written statement is not adopted at the same time as the denial, it must be adopted at the next meeting following the denial of the request but before the expiration of the time allowed for making a decision under this section.

WHEREAS, contemporaneously with the vote on the motion to deny the Application, each of the Councilmembers voting in favor of the motion to deny the Application stated on the record their reasons for voting to deny the application.

WHEREAS, at the June 28, 2021 Council meeting, the three (3) Councilmembers who voted in favor of denial of the Application for a Comprehensive Plan Amendment articulated findings of fact and reasons for denial and those reasons were made a part of the record. The findings of fact and reasons for denial stated by the three Councilmembers constitute the City's findings of fact and reasons for denial. The findings of fact and reasons for denial as so identified and stated by the three Councilmembers on June 28, 2021, were as follows:

- 1.) Councilmember Murphy stated findings of fact and reasons for denial as follows:
 - a. Wants to preserve the Regional Commercial designation and let recent development play itself out.
 - b. Believes that both residential and retail grow concurrently.
- 2.) Councilmember Dietrich stated findings of fact and reasons for denial as follows:
 - a. Wants to preserve the Regional Commercial designation and let recent development play itself out.
 - b. Believes that both residential and retail grow concurrently.
 - c. Want to preserve the existing designated commercial growth spaces, the opportunity to have potential retail and commercial expansion in the future, more time for retail uses to evolve, and that there shouldn't be any rush to change the current designated land use.
- 3.) Councilmember Gliva stated findings of fact and reasons for denial as follows:
 - a. Does not think [the proposed change in future land use designation] is well-thought out for this area.
 - b. Not ready to give up on commercial [for the Property].

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF INVER GROVE HEIGHTS:

1. That the City Council does hereby memorialize and confirm that the above findings of fact and reasons for denial constitute the findings of fact and reasons for denial set forth by those voting in favor of the motion to deny the Application for a comprehensive plan (map) amendment at the June 28, 2021 City Council meeting.

2. The findings and reasons for denial as stated above are hereby made the City's findings of fact and reasons for denial.

Passed and adopted by the City Council of the City of Inver Grove Heights this 12th day of July, 2021.

Thomas Bartholomew, Mayor

ATTEST:

Rebecca Kiernan, City Clerk

**Request for Council Action****TITLE:** Consider approval of contract for services with Ellie Family Services

	Fiscal/FTE Impact	Mark all that apply
Meeting Date: July 12th, 2021	None	
Item Type: Consent	Amount included in current budget	x
Contact: Melissa Chiodo: 651-450-2526	Budget amendment requested	
Prepared by: Melissa Chiodo Chief of Police	FTE included in current complement	
Reviewed by: Heather Rand Interim City administrator	New FTE requested - N/A	
	Other	

PURPOSE/ACTION REQUESTED

The City Council is asked to approve a contract for services with Ellie Family Services.

BACKGROUND

Police officers make our communities stronger and safer every day. In doing so, they see daily conflicts, incidents, accidents, and violence. This stress and pressure add up. Trauma can begin to impact the health and lives of law enforcement officers. However, this trauma and its effects are highly treatable.

According to studies by PEW Trust, Police Officers have a 69 percent higher risk of suicide than the average worker, and investigators an 82 percent higher risk. Civilians working in a police environment have a higher risk of suicide as well.

ANALYSIS

In the past two years most law enforcement agencies have had at least one and up to six employees at one agency permanently leave their career due to PTSD related to their work. We need to ensure our officers and staff have some services to provide for their emotional and mental wellness.

Inver Grove Heights researched and met with several providers and found one that would be a good fit to provide the following services to all our staff:

Annual wellness consultations
Therapy sessions
Critical incident response

Peer support team development
Peer support team clinical leadership

RECOMMENDATIONS

It is the recommendation of the police department that the council approve the contract for services with Ellie Family Services, subject to any necessary revisions by the City Attorney. Funds have been set aside in the police department 2021 and 2022 budget for these services.



SERVICES AGREEMENT

This Services Agreement (“Agreement”) is made and entered into by Ellie Family Services, PLLP, a Minnesota professional limited liability partnership (“Clinic”), and City of Inver Grove Heights Police Department (“Client”), and is effective as of July 15, 2021 (the “Effective Date”).

RECITALS

- A. Clinic provides social work, marriage and family therapy, and physician services as authorized by Minnesota law.
- B. Client desires to engage Clinic to provide certain services and Clinic agrees to provide those services as described herein.

In consideration of the mutual promises and undertakings hereinafter contained, and other good and valuable consideration, Clinic and Client agree as follows:

AGREEMENT

1. Scope of Services. Clinic agrees to provide the following services (“Services”):

- Annual wellness consultations;
- Therapy sessions;
- Critical incident response;
- Peer support team development;
- Peer support team clinical leadership.

The location and scheduling of Services, including other specifications, are described in Exhibit 1 attached hereto and incorporated herein.

- 2. Change Orders.** The parties may change the scope of the Services only by a written amendment executed by an authorized representative of each party. If Clinic performs work at the request of Client that is not specified herein, the work will be considered Services provided under this Agreement, and Client will pay Clinic for such Services at Clinic’s then-current time and materials rates.
- 3. General Performance Standards.** Clinic shall furnish, at Clinic’s sole expense, the equipment, supplies, and other materials required or used by Clinic to perform the Services. Clinic shall use Clinic’s best efforts to perform Services in compliance with all applicable state, federal, or local laws, rules, regulations and ordinances applicable to the Services. Clinic will provide any deliverables described in Exhibit 1.

4. **Compensation.** Client agrees to pay Clinic compensation for the performance of the Services at the rate of \$120 per hour for therapy services and \$125 per hour for peer support team services.
- A. *Invoice Requirements.* Unless otherwise specified in Exhibit 1, Clinic shall submit itemized invoices to Client on a monthly basis for Services provided to Client during the month. The invoices will contain only the minimum necessary information about the patients (i.e. first initial/last name and date(s) of service) in order for Client to validate that the individuals are Client employees who received Services.
- B. *Payment.* Client shall pay Clinic undisputed invoiced amounts within thirty (30) calendar days after receipt. If Client in good faith disputes any amount set forth in an invoice, the parties agree to work together in good faith to resolve the dispute in a prompt and expeditious manner. Past due invoices shall bear interest at an annual rate of twelve percent (12%). Upon termination of this Agreement for any reason, Client shall pay the Clinic for any Services performed prior to termination.
5. **Insurance.** Clinic shall maintain in full force general and professional liability insurance coverage for the Services. Upon request, Clinic shall provide Client with evidence of such insurance coverage.
6. **Independent Contractor.** Clinic is, and at all times during the term of this Agreement shall remain, an independent contractor and not an employee, partner of, or joint venturer with Client. Neither party has the authority to bind the other to any third party. The parties expressly agree that this Agreement is exclusively a contract for services.
7. **Clinic's Representations and Warranties.** Clinic represents, warrants, and agrees:
- A. Clinic is and shall at all times during the Term (defined below) remain duly licensed and in good standing to provide Services in the State of Minnesota and that said license is not suspended, revoked or restricted in any manner.
- B. Clinic is not currently under investigation for, nor has been convicted of, any offense related to the delivery of a health care item or service under any state or federal or private health care benefit program;
- C. Clinic has not been required to pay any civil monetary penalty regarding false, fraudulent, or impermissible claims under, or payments to induce a reduction or limitation of health care services to beneficiaries of, any state, federal, or private health care benefit program;
- D. Clinic has not been excluded from participation in any state, federal or private health care benefit program;
- E. Clinic will provide Services in a professional and workmanlike manner at least consistent with the accepted professional standards applicable to the Services, all applicable federal and state statutes, regulations, rules and standards, and the requirements of other relevant state and national regulatory bodies as may be in effect from time to time; and

F. Clinic possesses the requisite competency to perform the Services.

- 8. Client's Representations and Warranties.** Client shall cooperate with Clinic in all matters relating to the Services and provide access to Client's premises and such office accommodation and other facilities as may reasonably be requested by Clinic, for the purpose of performing the Services. Client shall provide complete and accurate materials or information as Clinic may reasonably request to carry out the Services.
- 9. Non-Exclusive.** The relationship between Clinic and Client shall be non-exclusive and both parties shall have the right to enter into similar arrangements with any other party.

10. Confidential Information.

- A. *Patient Information.* All individual patient medical records and information are and will remain under the ownership and control of Clinic, and will be held in strictest confidence in accordance with applicable law, including but not limited to the Minnesota Health Records Act and the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and its implementing regulations, as may be modified or amended from time to time ("HIPAA"). The parties acknowledge that the Services provided under this Agreement are not anticipated to meet the criteria for business associate services. If necessary, the parties agree to execute a mutually acceptable business associate agreement.
- B. *Ownership of Proprietary Materials.* Each party is and shall remain the owner of all right, title, and interest in and to such party's proprietary materials, and all copies thereof, and in and to all of the related trade secrets, copyrights, patents and all other proprietary rights. Neither party shall obtain any right or license in and to the other party's proprietary materials.

- 11. Force Majeure.** The obligations of a party under this Agreement will be suspended for the duration of any force majeure applicable to that party. The term "force majeure" means any unforeseeable cause not reasonably within the control of the party claiming suspension, which may include an act of God; industrial disturbance; any mass viral, bacterial, or other microbial or biologic outbreak, including an epidemic or pandemic; war; riot; invasion; acts of a foreign enemy; terrorist action; weather-related disaster; earthquake; and governmental action. A party claiming suspension under this Section shall use its best efforts to resume performance as soon as feasible in accordance with its business continuity/disaster recovery plan. In the case of extended force majeure event of sixty (60) calendar days or more, either party may terminate as provided for in this Agreement.

- 12. Term and Termination.** The term of this Agreement shall be for a period of one year from the Effective Date of this Agreement, and shall be automatically renewed for successive terms of one (1) year each unless this Agreement is otherwise terminated. Either party may terminate this Agreement without cause by written notice provided to the other party. Either party may terminate this Agreement for cause, which is defined as a material breach of this Agreement that has not been cured within five (5) days after notice of the breach by the non-

breaching party specifying the nature of the breach; provided that Clinic may suspend the Services immediately at any time following a material breach by Client. The provisions of this Agreement which by their nature shall survive the termination or expiration of this Agreement, shall so survive.

13. Limitation of Liability. With the exception of the warranties stated in Section 7, the Services are provided as-is and Clinic makes no warranty of any kind, expressed or implied or otherwise whatsoever, that the services performed will be fit for any particular purpose or use. There is no guaranty of result. In no event shall either party be liable hereunder for incidental, special, indirect, consequential or punitive damages even if advised in advance of the possibility for such damages.

14. Indemnification. Each party agrees to indemnify, defend, and hold harmless the other party, its directors, officers, employees, agents, and contractors from and against any and all liabilities, losses, costs, damages, attorney's fees and expenses from any claim, loss, or suit ("Claim") to the extent the Claim: (i) arises as a result of the party's breach of this Agreement, or (ii) is attributable to the negligence, acts, or omissions attributable to that party.

15. Notices. Any notice or consent required or permitted under this Agreement must be in writing and is deemed given: (a) when personally delivered; (b) when delivered by reputable courier service; or (c) three (3) calendar days after being sent by prepaid certified or registered United States mail, in each case, to the receiving party's applicable address listed below or to the address the receiving party last provided to the other party by written notice in accordance with this Section.

16. General Terms.

- A. This Agreement shall in no way constrain the exercise of Clinic's independent professional judgment in providing care to patients so long as such judgment is consistent with sound professional practice and the terms of this Agreement. The foregoing shall not limit the ability of Clinic to establish protocols, procedures, or standards for professional practice.
- B. Client will not publicize or advertise this Agreement or any of the terms of this Agreement.
- C. This Agreement shall not be assignable by either party without the prior written consent of the other party. Notwithstanding the foregoing, either party may, upon written notice to the non-assigning party, assign this Agreement to a successor in interest to all or substantially all of its assets, whether by sale, merger, or otherwise. Except as otherwise provided, this Agreement shall be binding upon and inure to the benefit of the Parties' successors and lawful assigns.
- D. This Agreement constitutes the complete agreement between the parties with respect to the subject matter hereof, and it supersedes any and all prior or contemporaneous agreements, understandings, promises or representations, whether written or oral,

between the parties or made by either party to the other, concerning the subject matter hereof.

- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Any dispute which may arise between the parties concerning this Agreement will be determined by a court in Dakota County and the parties hereby submit to the exclusive jurisdiction of the Dakota County courts for such purpose. The parties expressly waive any right they may have to a jury trial and agree that any such litigation shall be tried by a judge without a jury and the prevailing party shall be entitled to recover its expenses, including reasonable attorneys' fees, from the other party.
- F. This Agreement may be amended or supplemented only by a writing executed by the parties.
- G. This Agreement shall be interpreted in accordance with the plain meaning of its terms and shall not be construed for or against any party because that party drafted or caused the party's legal representative to draft any of its provisions.
- H. In the event that any section, subsection, provision, or clause of this Agreement or any combination thereof is found to be unenforceable at law, those findings shall not in any way affect the remainder of this Agreement, which shall continue in full force and effect, and the unenforceable provision shall be interpreted in a manner that imposes the maximum restriction or obligation permitted by applicable law.
- I. Each individual signing this Agreement and any other writing requiring signature of a party (each, "Document") represents that he or she is duly authorized to sign and deliver the Document on behalf of the party for which he or she signs and that the Document is binding upon such party in accordance with its terms.
- J. This Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below to be effective as of the Effective Date first set forth above.

Ellie Family Services, PLLP

By: _____

Date: _____

Address: 1150 Montreal Avenue, Suite 107, St. Paul, MN 55116

Client

Signature

Printed Name

Address

E-Mail Address

Date: _____

EXHIBIT # 1: SERVICES

1. Wellness Consultation Services:

The opportunity to meet with a mental health professional to provide resources related to overall wellness. Wellness Consultations are up to 50 minutes in length and are not therapeutic in nature. Additional resources and recommendations may be provided by the mental health professional to the recipient and they may choose to engage in further services at their leisure.

- Mandatory wellness consultations are for approximately 51 sworn law enforcement officers and civilian staff.
- Wellness Consultations will take place between August 15, 2021- October 15, 2021
- Ellie Family Services Director of Emergency Responder Services will attend roll call/shift change at an agreed upon time to provide a brief introduction and an opportunity for scheduling:

2. Therapy Services:

After a sworn officer or civilian staff has completed their annual wellness consultation, they will have the opportunity to be connected with an Ellie Family Services provider who has experience working with law enforcement for continued services.

- Up to 45 sessions available between therapy services and critical incident response services until December 31, 2021

3. Critical Incident Services:

The World Health Organization defines a critical incident as an event out of the range of normal experience – one which is sudden and unexpected, involves the perception of a threat to life and can include elements of physical and emotional loss. Any sworn officer or civilian staff who believes they have experienced a critical incident and wants to receive services will have the opportunity for up to five sessions with an Ellie Family Services provider who has experience working with law enforcement.

- Up to 45 sessions available between therapy services and critical incident response services until December 31, 2021

4. Peer Support Team Services

A mental health provider will be assigned to your department to provide the following services to your peer support team:

- Program and policy development
- Continuously assess the mental wellness of the peer support team members
- Available for consultation with peer support team members when needed
- Available to peer support team members for debriefing when needed
- Available for debriefing with peer support team members when needed
- Ability to provide customized peer support team training and education

5. Location and Scheduling

The primary location for Wellness Consultation services will be the St. Paul Location of Ellie Family Services (1150 Montreal Ave # 107, St Paul, MN 55116).

All consultations and sessions can be scheduled by calling or texting (651) 319-1059.



Request for Council Action

TITLE: Consider the Application of a Temporary 2-Day Liquor License for the Church of St. Patrick for the premise located at 3535 72nd Street E, Inver Grove Heights, MN 55076

		Fiscal/FTE Impact	Mark all that apply
Meeting Date:	July 12, 2021	None	X
Item Type:	Consent	Amount included in current budget	
Contact:	651-450-2513	Budget amendment requested	
Prepared by:	Rebecca Kiernan City Clerk	FTE included in current complement	
Reviewed by:	Heather Rand	New FTE requested - N/A	
		Other	

PURPOSE/ACTION REQUESTED:

Consider the application of a temporary 2-day liquor license for the Church of St Patrick for the premise located at 3535 72nd Street E, Inver Grove Heights, MN 55076.

SUMMARY:

The Church of St. Patrick has applied for a Temporary 2-day Liquor License. This application would be for September 18th and September 19, 2021, in conjunction with their Annual Fall Festival. The public hearing notice was published in the June 27, 2021, Pioneer Press.

RECOMMENDATION:

Staff recommends approval however; the organization should work with Police and Fire Departments for their event.

ACTION REQUIRED:

Conduct public hearing and if Council concurs with the staff recommendation, they should pass a motion approving the application of the Church of St. Patrick and allow staff to submit the application to the Minnesota Alcohol & Gambling Enforcement Division (AGED) for approval.

**Request for Council Action**

TITLE: Consider approval of budget amendment to hire three full time police officers changing the authorized strength of sworn on the police department to 45 FTE's.

	Fiscal/FTE Impact	Mark all that apply
Meeting Date: July 12th, 2021	None	
Item Type: Regular	Amount included in current budget	
Contact: Melissa Chiodo: 651-450-2526	Budget amendment requested	X
Prepared by: Melissa Chiodo Chief of Police	FTE included in current complement	
Reviewed by: Amy Hove Finance Director	New FTE requested - N/A	X
	Other	

PURPOSE/ACTION REQUESTED

The City Council is asked to approve the budget amendment allowing the police department to hire three additional police officers.

BACKGROUND

The police department currently is authorized to have 42 full time peace officers. The department asked in the 2022 budget to increase the authorized sworn to 45 full time peace officers. Due to the ongoing staffing shortages and rise in police calls the department is asking to authorize 45 full time employees now instead of waiting for 2022.

ANALYSIS

The police department has seen a steady rise in police calls for service since 2015 and it is on trend to continue this climb in calls for service.

Law enforcement has seen an unprecedented number of officers take federally protected Family Medical Leave due to stressors of the job. We have not been immune to these leaves as well as leaves for other reasons. We are running with fewer officers, and they are taking more calls.

The police department is seeking a budget amendment to hire three more officers immediately instead of waiting for 2022 to help with the coverage of the rise in calls and the shortages we face in staffing. If we are authorized to hire now the entire process from posting for the job to training our officer and finishing training where they can work alone takes a minimum of 8 months. If we were authorized to hire the additional three officers now, they would be ready to work on their own by

Spring of 2022 which allows us to go into the busiest time of the year at full strength. If hiring were delayed until January 2022 the officers would not be ready to work on their own until August of 2022 and officers would be busy training new employees all summer.

The cost for salary and fringe for three full time officers from September 1, 2021, through December 31, 2021, is \$112,000. Fund balances in the General Fund can support the 2021 cost but the 2022 budget will need to be increased by \$345,000 to cover a full year of cost.

RECOMMENDATIONS

It is the recommendation of the police department that the council approve the budget amendment hire three full time officers now which would increase our full authorized strength to 45 sworn peace officers.

We recommend Council approve the cost of \$112,000 to hire the additional three officers using fund balances available in the General Fund.

Name	Position	Pay Grade	Step	Date Started	% of year	Hrs Worked	Pre-Step Wage	Gross Wages	MEDICARE	PERA	CITY CONTRIBUTION	HSA/HRA CITY CONTRIBUTION	HI ALLOCATION	LIFE ALLOCATION	Flex Comp Spending	LTD	Total Compensation	Work Comp	Total Budget Adjustment
New Hire	PATROL OFFICER	17	1	9/1/2021	33%	693.33	36.5	25306.67	366.95	4403.36	3407.67	444	3851.67	37.96	1544.33	120	\$ 35,630.93	\$ 1,695.11	\$ 37,326.04
New Hire	PATROL OFFICER	17	1	9/1/2021	33%	693.33	36.5	25306.67	366.95	4403.36	3407.67	444	3851.67	37.96	1544.33	120	\$ 35,630.93	\$ 1,695.11	\$ 37,326.04
New Hire	PATROL OFFICER	17	1	9/1/2021	33%	693.33	36.5	25306.67	366.95	4403.36	3407.67	444	3851.67	37.96	1544.33	120	\$ 35,630.93	\$ 1,695.11	\$ 37,326.04
																	<u>\$ 106,892.80</u>	<u>\$ 5,085.32</u>	<u>\$ 111,978.12</u>

CITY OF INVER GROVE HEIGHTS

REQUEST FOR COUNCIL ACTION

Consider Approval of Plans and Specifications, Ordering Bids and Quotes for the Northwest #1 Park Project

Meeting Date: July 12, 2021
 Item Type: Regular Agenda
 Contact: Bob Bierscheid – 651.403.3680
 Prepared by: Bob Bierscheid
 Reviewed by: Heather Rand
 Brian Swoboda
 Julie Dorshak

Fiscal/FTE Impact:

☐	None
☐	Amount included in current budget
☐	Budget amendment requested
☐	FTE included in current complement
☐	New FTE requested – N/A
☒	Other

PURPOSE/ACTION REQUESTED

Approve the plans and specifications and order bids and quotation authorization for the development of Northwest #1 Park. The Council is not approving a contract at this time but is authorizing staff to solicit allowable quotations of up to \$300,000 and to begin work on those items.

PRAC RECOMMENDATION

At their June 9th meeting, the PRAC recommended bids and quotes by approved on a 6-1 vote.

SUMMARY

Following the completion of plans and specifications, the construction of the NW#1 Park is ready to begin in the ground development. The City has been working with Hoisington Kogler Group Inc. to finalize the bid documents including up to date cost estimates. The prescribed work will include grading, basketball court, storm water, landscaping, trails, playground, and ADA accessibility issues. The project budget is:

Expenses:

Construction Bid Estimate	\$450,000
Construction Quote Estimate	<u>\$300,000</u>
Total Expenses	\$750,000

Revenues

DEED Grant	\$415,000
Parks 402 Fund	<u>\$335,000</u>
Total Revenue	\$750,000

The urgency of moving this process forward is to ensure the usage of DEED funding that expires on June 30, 2022. To accomplish this and save substantial costs, staff proposes Council authorize staff to spend up to \$300,000 to complete the quotation packages identified below.

Bid Package

- Site prep
- Stormwater and Utilities
- Earthworks
- Pavements
- Seeding Restoration
- Landscape Plants
- Basketball Court
- Nature Play Area

- Site Furnishings
- Trail Connection to Argenta Trail

Quotes for Purchases to be Completed by Staff

- Tree Removal
- Bike Skills Course Construction
- Lighting
- Stone Entrance Sign
- Basketball Hoops
- Geo Technical
- Vac Truck Pot Holes
- Tree Planting (this is a donation of trees and installation by Tree Trust)
- Benches, Picnic Tables, Bike Racks
- Playground Equipment

Anticipated Schedule

July 12, 2021	City Council review/approval of overall specifications for bidding
July 13, 2021	Bid Posting
July 16, 2021	10 A.M. Pre-Bid Meeting
July 28, 2021	Bid Opening
August 9, 2021	City Council awards a contract
Late August/Early September 2021	Construction Starts
Completion 2022	This will depend on product availability and weather conditions

**Request for Council Action**

	Fiscal/FTE Impact	Mark all that apply
Meeting Date: July 12, 2021	None	X
Item Type: Regular	Amount included in current budget	
Contact: Nicole Cook: 651-450-2491	Budget amendment requested	
Prepared by: Nicole Cook Rental and Code Compliance Coordinator	FTE included in current complement	
Reviewed by: Heather Rand Community Development Director	New FTE requested - N/A	
	Other	

REQUEST FOR APPROVAL OF RENTAL HOUSING LICENSE**PURPOSE/ACTION REQUESTED**

The City Council is to consider approval of three (3) rental license.

BACKGROUND

The City Council adopted a rental licensing ordinance that requires all rental property owners to obtain a rental license every two years. The purpose of the ordinance is to assure proper maintenance of structures to preserve neighborhood stability, protect the quality of existing rental housing stock, and maintain property values. The ordinance provides for basic safety and living standards for rentals.

ANALYSIS

The following rental license applications have been submitted:

7473 DICKMAN TRAIL - JOHN STILES
8842 BRANSON DRIVE - JOSEPH ANDERT
4376 UPPER 71ST ST - REINALDO CINTRON

The above applications have been found to be complete. The applications include the necessary fee payment and the BCA background check. The Inver Grove Heights Police Chief/Designee has also reviewed and approved the license applications.

RECOMMENDATIONS

Community Development staff recommends approval of the licenses listed above.



Request for Council Action

	Fiscal/FTE Impact	Mark all that apply
Meeting Date: July 12, 2021	None	X
Item Type: Regular	Amount included in current budget	
Contact: Nicole Cook: 651-450-2491	Budget amendment requested	
Prepared by: Nicole Cook Rental and Code Compliance Coordinator	FTE included in current complement	
Reviewed by: Heather Rand Community Development Director	New FTE requested - N/A	
	Other	

PURPOSE/ACTION REQUESTED:

Consider application for a chicken license for property located at 7935 Charles Way.

SUMMARY:

An application was submitted by Douglas and Heather Allen for a chicken license to keep a total of two (2) chickens on the property. Two (2) written objections were received within the ten (10) day response period. The complainants state they are concerned about the chickens being confined and the condition of the property. Please note staff found one record of a complaint against the property from 2019, but the property was under different ownership at that time so it is not being included with this report. A recent inspection found no violations that could be seen from the street. The objection letters are attached for your review.

A. Licensing Process Overview

Provided that the license application is complete, the fee is paid, and the license application demonstrates compliance with all applicable Code provisions, the City Clerk may administratively approve an urban chicken license application; if all requirements for a license are not met, the City Clerk must deny the license. See City Code Section 5-4-2 (attached). Even if all license requirements appear to be met, if the application is for a new (initial) license and a written objection to the license is received from an abutting property owner, the City Clerk may not issue the license, and instead the license application must be reviewed by the City Council prior to issuance. The City Council must review the application and determine whether the license should or should not be issued. The City Code contains limited grounds for denial of the license application: a license may be denied if: 1) all of the criteria for issuing the license have not been met (see City Code Section 5-4-2 for a full list of all applicable license requirements for the urban chicken license); or 2) the Council finds that

other grounds for denial exist under the provisions of City Code Sections 3-2-5 or 3-2-10 (attached). A license may not be denied solely based on objections from neighbors.

B. Information Regarding Current Chicken Licenses and History of Complaints

There are currently twenty-three (23) active chicken licenses in the city. Since I began issuing these licenses approximately 7-8 years ago, I have only received two complaints; one involving chickens that escaped their coop after the door was accidentally left open, and another about the condition of a coop. In that situation, the license holder moved so no additional follow-up was needed. There have been no complaints about noise or odors.

If a complaint is received, an inspection is done. If a violation is found, the owner is notified by mail of the violation and given a deadline for compliance. If compliance is not met, the violation would be treated like other similar violations and a citation would be issued to the property owner.

C. Staff Recommendation

A recent inspection found no property violations that could be seen from the street. Based on the information provided by the applicant, staff finds no cause for denial and recommends approval.

REQUESTED COUNCIL ACTION

Council is asked to review the application and determine if the license request should be approved or denied.

3-2-5: APPROVAL OR REFUSAL OF LICENSE:

Where the approval of any city officer or state officer or the city council is required prior to the issuance of a license, the approval must be presented to the clerk before the license is issued. No license may be approved by any city officer or issued by the clerk if it appears that the conduct of the activity for which a license is sought will be contrary to the health, safety or welfare of the public or any regulation, law or ordinance applicable to such activity. The following licenses will not be approved if there are any outstanding debts or delinquencies on taxes or special assessments due to the city:

Automobile sales.

Automobile service stations.

Body art establishments.

Bowling alleys.

Contractors.

Garbage collection.

Liquor sales.

Massage therapists and therapeutic massage businesses.

Pawnbrokers and precious metal dealers.

Rental licensing. (Ord. 1325, 10-24-2016)

3-2-10: REVOCATION, DENIAL OR SUSPENSION OF LICENSE:

A. Grounds: A license issued or to be issued by the city may be denied, suspended or revoked by the council for any of the following causes:

1. Fraud, misrepresentation, or incorrect statement contained in the application for license, or made in carrying on the licensed activity.
2. Conviction of any crime or misdemeanor pertaining to the license held or for which applied.
3. Conducting such licensed activity in such manner as to constitute a breach of the peace, or a menace to the health, safety and welfare of the public, or a disturbance of the peace or comfort of the residents of the city, upon recommendation of the public health authorities or other appropriate city official.
4. Expiration or cancellation of any required bond or insurance, or failure to notify the city within a reasonable time of changes in the terms of the insurance or the carrier.
5. Actions authorized or beyond the scope of the license granted.
6. Violation of any regulation or provisions of this code applicable to the activity for which the license has been granted, or any regulation or law of the state so applicable.
7. Failure to continuously comply with all conditions required as precedent to the approval of the license. (1974 Code § 1005.21)

B. Hearing: No license may be suspended or revoked until after a hearing is granted to the licensee; such hearing to be held before the city council upon due notice to the licensee stating the time and place of such hearing, together with a statement of the violation alleged to be the cause for the revocation or suspension of the license. (1974 Code § 1005.23)

5-4-2: KEEPING OF CERTAIN ANIMALS PERMITTED:

A. Animals Permitted Pursuant To Regulations: The following animals may be kept in the City pursuant to the regulations of this chapter and relevant provisions of the Zoning Ordinance: domestic animals; farm animals and permitted nondomestic animals; and inherently dangerous animals.

B. Chickens On Urban Residential Lots:

1. License Required: No person shall keep chickens on any property zoned R-1A, R-1B, R-1C or R-2, within the City without first obtaining a license from the City.

2. Application: An application for a license to keep chickens shall be made to the City Clerk on the form prescribed by the City. The applicant must provide all the information required on the form, including, but not limited to:

- a. The name and address of the owner(s) where the chickens will be kept;
- b. The number of chickens to be kept on the property;
- c. Site plan or property survey showing the proposed location of the chicken coop and/or run on the subject property;
- d. Drawing or picture of the proposed chicken coop;
- e. The applicant must pay the fee for the license to keep chickens as set forth in the City fee schedule.

3. Notice To Surrounding Property Owners: Once the City Clerk receives a complete application from an applicant, the City Clerk shall provide written notice of and include a copy of said application to those owners of properties directly abutting the proposed location. Owners shall be determined as those shown as owners on the tax statement prepared by the County Treasurer. This notification requirement shall only apply to an application for an initial license to keep chickens and shall not apply to applications for renewal of an existing license.

4. Granting Issuance Of License: The City Clerk may administratively grant an initial or renewal license under this subsection provided all of the following have been met:

- a. All submittal information is submitted and complete.
- b. Appropriate fee is paid.
- c. The application filed demonstrates compliance with the requirements of this subsection and any other applicable regulations of this Code.
- d. No persons mailed a notice object in writing to the request within ten (10) days of notice being mailed; an objection sent electronically shall be deemed an objection in writing.

5. Denying Issuance Of License: The City Clerk shall deny issuance of a license if any of the items in subsection B4 of this section have not been met. In the instance where an objection has been received by an abutting property owner, the item shall be placed on the next available City Council agenda for Council review and determination of whether the license shall be issued.

6. Standards: Any person keeping chickens in residential areas of the City as noted in subsection B1 of this section, shall comply with all of the following:

- a. No person shall keep more than six (6) total hen chickens on the property.
- b. No person shall keep roosters or adult male chickens on the property.
- c. Cockfighting is specifically prohibited within the City.

- d. The slaughter of chickens is prohibited on residentially used or zoned properties.
- e. The owner of the chickens shall live in the dwelling on the property.
- f. The raising of chickens for breeding purposes is prohibited.
- g. Chickens shall not be kept inside a dwelling.

7. Shelter And Enclosure Requirements: Every person who owns, controls, keeps, maintains or harbors hen chickens must keep them confined on the premises at all times in a chicken coop or chicken run. Chicken coops and runs shall comply with the following standards:

- a. Only one chicken coop and/or run shall be allowed per lot.
- b. Chicken coops and runs shall not be located in the front or side yards and shall not be placed within any drainage and utility easement.
- c. Any chicken coop or chicken run shall be set back at least twenty five feet (25') from any principal structure on any adjacent lot and ten feet (10') from all property lines.
- d. Any chicken coop and run fencing must be consistent with applicable Zoning Codes.
- e. No chicken coop or run shall be constructed on a lot prior to the time of occupancy of the principal structure.
- f. Chickens shall be provided a secure and well-ventilated roofed structure in compliance with applicable Zoning Codes.
- g. The floors and walls of the roofed structure shall be kept clean, sanitary and in a healthy condition.
- h. Chickens shall be contained within a chicken run at all times.
- i. The run area shall be well drained so there is no accumulation of moisture.
- j. Chicken feed shall be stored in leakproof containers with a tightfitting cover to prevent attracting vermin.

8. License Modification: The license may be reasonably modified by animal control authority if necessary to respond to changed circumstances. Any modification shall be effective ten (10) days after the mailing of written notice by certified mail to the license holder. The license holder may challenge the modification by contacting the City Clerk and requesting a hearing within ten (10) days after the receipt of written notice. A hearing regarding the proposed modification shall be held before the City Council.

9. Duration Of License: A license to keep chickens shall be issued for a period of two (2) years beginning March 1 and ending February 28. Applications for a renewal permit may not be made prior to sixty (60) days before March 1.

10. Conditions/Maintenance And Inspections: No person who owns, controls, keeps, maintains or harbors chickens shall permit the premises where the chickens are kept to be or remain in an unhealthy, unsanitary or noxious condition. The premises should be maintained to prevent odors from permeating into neighboring properties. Any chicken coop and run authorized under this section may be inspected at any reasonable time by authorized City staff to inspect for compliance with this chapter and other relevant laws and regulations.

11. Revocation Of License: A license may be revoked by the City Council for a violation of any condition of this section following notice and a hearing as provided for in title 3, chapter 2 of this Code.

12. Penalty: Violation of this section shall be a petty misdemeanor. (Ord. 1367, 4-8-2019, eff. 5-1-2019)

Nicole Cook

From: Troy Ausen <tausen@centurylink.net>
Sent: Monday, June 21, 2021 5:57 PM
To: Nicole Cook
Subject: 7935 Charles Way Chicken Application

7935 Charles Way has applied for a onsite chicken permit to which **object to**.

The residence in question is located on a small ~120' x 130' city lot. The residence yard is currently fenced because the owners have two large dogs and two cats. Because of the existing pets present at the current residence, the chickens will never be able to leave the chicken coop. Why should residence be allowed to have chickens on a city lot, if you want chickens you should be required to have acreage so the animals can roam.

We have had numerous problems with wild animals in the neighborhood, mostly foxes. I am fearful the chickens will draw more wild animals and potentially kill my pets.

I am 100% certain this will be a negative experience for prospective sellers/buyers when they see the neighborhood has dogs, cats and now chickens next door to them. MOST IMPORTANTLY think about how **extremely inhumane** it is to make these chickens sit in a cage the entire day, day in and day out.

Please do not approve this permit as denying the permit has zero impact to the requestor but potentially lots of impacts to neighbors and neighborhood.

Troy Ausen
tausen@centurylink.net

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Nicole Cook

From: Francour <francour4@q.com>
Sent: Monday, June 21, 2021 10:20 AM
To: Nicole Cook
Subject: Response to Chicken License Application - 7935 Charles Way

Good morning,

We are not in favor of approval of the application to keep chickens or have a chicken coop in our neighbors yard. We are the direct backyard neighbors to the applicants. We feel this type of activity belongs on larger properties. Given the small scale of lots within the neighborhood, keeping chickens would detract from property values for those around this type of activity.

The applicant's yard has been in rough shape for many years and we don't feel we have seen any real change or improvement with the new owners. There is somewhat of a lack of upkeep. There was some cleanup in the back yard the week before last, likely in anticipation of a code compliance visit, including limited stacking of excess material from a fence that was erected last year. A chicken coop would additionally detract from our view of the yard and we would also anticipate new, unpleasant smells. We are concerned about future upkeep of the coop and yard.

Please note that one of the owners with property that directly abuts the applicant's property is IH2 Properties, a national company owning many, many rental properties throughout the US. There will likely be no response from this entity. This is a company, not an individual neighbor, and as such has no real investment in the city of IGH and knows nothing about the people who live in our neighborhood or the pride of ownership we have in our individual properties. This rental property also lacks in upkeep which we feel detracts from our neighborhood. They previously have had to remedy some issues with upkeep and excess garbage.

We are aware that there may also be additional neighbors that are not in favor of the idea of chickens or a chicken coop in our neighborhood. These neighbors would likely have been given notice and the opportunity to respond directly prior to a change in the notification requirement in the City's ordinance in early 2021. The change modified the requirement from notification to those within 350' of the coop to only those neighbors whose property abuts the property making application thereby excluding others who we think have an interest in this issue.

We truly wish we would have been approached directly regarding this instead of through notice from the city. We appreciate the opportunity to respond to the application to let you know that we do object to it. Thank you.

Mike & Lisa Francour

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Paulsen ✓
Aasen ✓
Francour ✓
IH2 Prop ✓

Chicken License Application

License Period: March 1, 2021 - February 28, 2023

Cost: \$25

Applications can be dropped off or sent to City Hall at 8150 Barbara Avenue, Inver Grove Heights, MN 55077

Section 1: Site/Applicant/Property Owner Information

SITE & APPLICANT INFORMATION			
SITE STREET ADDRESS: 7935 Charles Way	CITY I.G.H	STATE MN	ZIP CODE 55076
APPLICANT NAME: Douglas Allen Heather Allen			
APPLICANT HOME ADDRESS: 7935 Charles Way	CITY I.G.H.	STATE MN	ZIP CODE 55076
DAYTIME PHONE NUMBER: 612-559-0842		EVENING PHONE NUMBER: 612-940-8392	
APPLICANT EMAIL: hlars13@gmail.com			

PROPERTY OWNER INFORMATION (IF DIFFERENT FROM APPLICANT)			
PROPERTY OWNER NAME:			
PROPERTY OWNER HOME ADDRESS:	CITY	STATE	ZIP CODE
PROPERTY OWNER SIGNATURE (ONLY SIGN IF PROPERTY OWNER IS DIFFERENT THAN APPLICANT):			

The above referenced property's Homeowner's Association rules, if any, do not prohibit the keeping of chickens on the property (please initial next to one):

	Yes, they do prohibit keeping chickens
	No, they do not prohibit keeping chickens
	Not Applicable

Section 2: Chicken Coop/Run Information

CHICKEN COOP/RUN INFORMATION	
PROVIDE THE TOTAL NUMBER OF CHICKENS TO BE KEPT:	2
PROVIDE THE DIMENSIONS OF THE COOP:	31 1/2" - H 63 1/4" - L 29 1/2" - W
PROVIDE THE DIMENSIONS OF THE RUN:	5'5" - H 7'4 1/2" - L 3'1" - W
PLEASE DESCRIBE THE MATERIALS TO BE USED FOR THE COOP AND RUN. ATTACH A DRAWING OR PICTURE OF THE COOP:	WOOD + wire

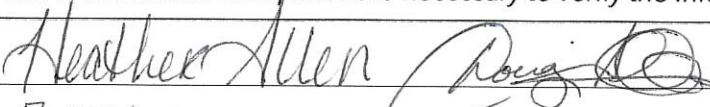
WILL A FENCE BE ADDED IN ADDITION TO THE COOP AND RUN? ☐ YES ☒ NO

IF YES, PLEASE PROVIDE A DESCRIPTION OF THE FENCE, INCLUDING LOCATION, SIZE AND MATERIALS.

--

PLEASE ATTACH A SITE PLAN OF THE PROPERTY FOR DEPICTING THE LOCATION OF THE CHICKEN COOP AND RUN.

Notice and Applicant Signature

I declare that the information I have provided on this application is truthful, and I understand that falsification of answers on this application will result in denial of the application. I authorize the City of Inver Grove Heights to investigate and make whatever inquiries are necessary to verify the information provided.	
Signed:	
Date:	6-7-2021

FOR OFFICE USE ONLY

Application Received: _____

By: _____

Fee Paid: _____

Property Owner Information Sent: _____

CODE COMPLIANCE SPECIALIST REVIEW

Review Date: _____

Staff: _____

Comments: _____

CITY COUNCIL REVIEW (IF REQUIRED)

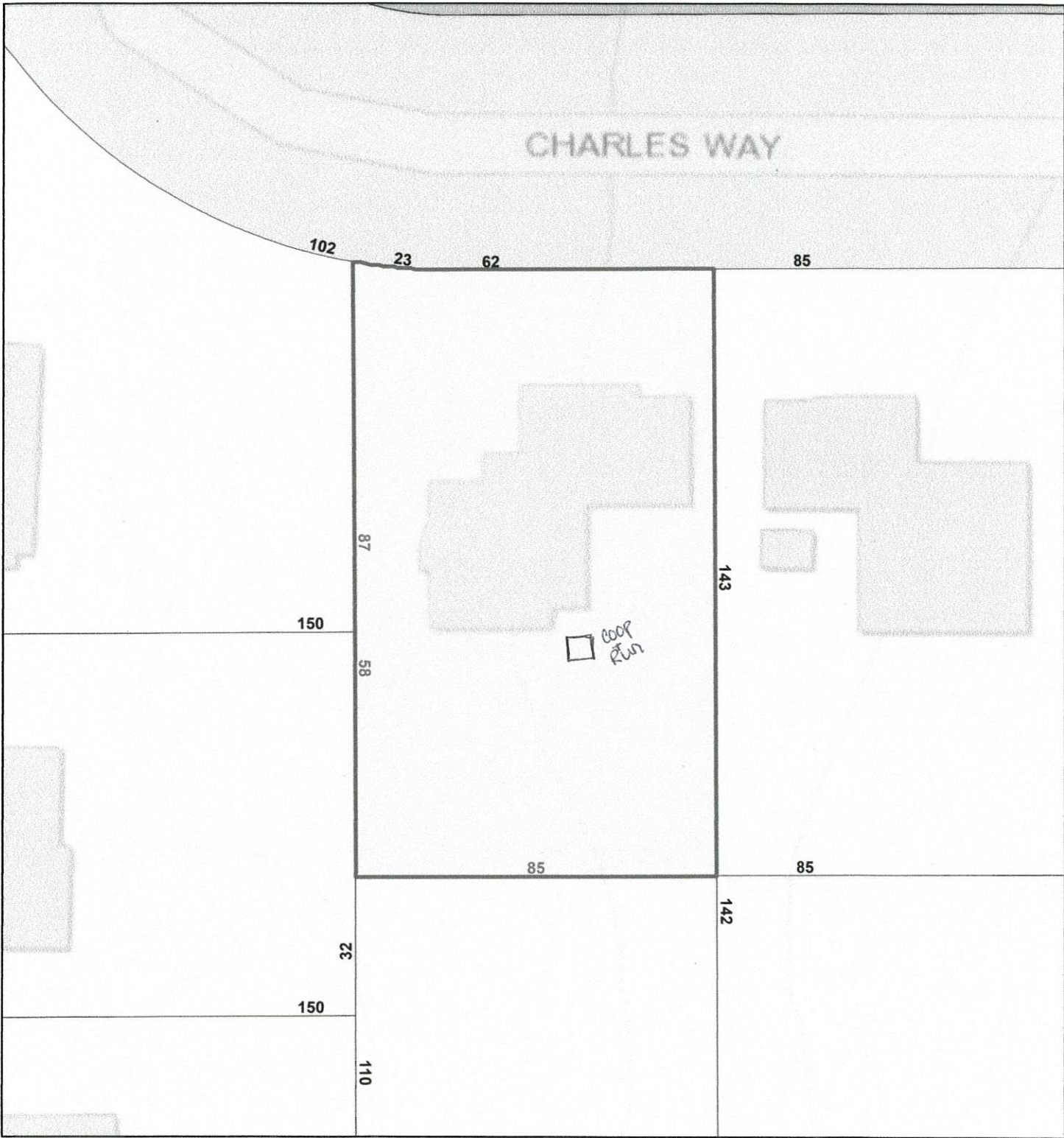
Council Action Date: _____

Comments/Additional Conditions: _____

Approve: ☐

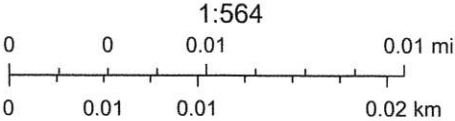
Deny: ☐

Property Map



6/7/2021, 7:45:05 PM

- Lot Dimensions Parcels
-  Tax Parcels
 -  Dedicated Right of Way
 -  Multi-owner Parcel





**CITY OF INVER GROVE HEIGHTS
NOTICE OF PENDING ACTION
RE: CHICKEN LICENSE APPLICATION**

To: Property owners contiguous to and directly abutting the property located at:
7935 Charles Way

Response Deadline: **June 21, 2021**

Applicant: Douglas and Heather Allen

Location: 7935 Charles Way

Request(s):

The applicant is seeking a chicken license to keep two (2) chickens. The chickens are proposed to be kept on the property in accordance with the regulations set forth by Inver Grove Heights City Code, Title 5, Chapter 4, Section 2. An inspection of the property will be conducted by the Code Compliance Specialist to ensure the plans and specifications are in compliance with the regulations set forth in the City Code.

Notice to property owners regarding the above request is required by Inver Grove Heights City Code, Title 5, Chapter 4, Section 2.

The Code Compliance Specialist will consider administrative approval of the above request if no objections are received, in writing, by the close of business on June 21, 2021.

If a written objection is received by the deadline, the application and written objection will be sent to the City Council for a final decision on June 28th at 7:00 pm in the City Council Chambers at City Hall. Please be mindful written objections may be discussed during the public meeting.

How to Participate: You may submit a written objection prior to the deadline to the Rental and Code Compliance Coordinator:

1. By mail: 8150 Barbara Ave., Inver Grove Heights, MN 55077

OR

2. By E-mail to Nicole Cook at ncook@ighmn.gov

Questions: Call the Rental and Code Compliance Coordinator at (651) 450-2491

City of Inver Grove Heights
Mailing date: June 11, 2021

Nicole Cook, Rental and Code Compliance Coordinator

Nicole Cook

From: Nicole Cook
Sent: Friday, June 11, 2021 2:11 PM
To: hlars13@gmail.com
Subject: Chicken Application

Hello,

Thank you for submitting your chicken license application.

All first-time applications require a neighbor notice to your immediate neighbors with a copy of your application. Neighbors may file a written objection within 10 days of the date of the notice. Often times there is no objection but sometimes people will object out of concern about noise, odors, or worries the coop may attract wild animals. If an objection is received you will be immediately notified and the item will go before city council for their consideration. If no objection is received after 10 days your license will be issued and sent to you by mail.

Please let me know if you have any questions.

Thank you,
Nicole

**Request for Council Action****TITLE:** City of Inver Grove Heights Market Garden Ordinance

		Fiscal/FTE Impact	Mark all that apply
Meeting Date:	July 12, 2021	None	
Item Type:	Regular Agenda	Amount included in current budget	
Contact:	Allan Hunting 651-450-2554	Budget amendment requested	
Prepared by:	Allan Hunting	FTE included in current complement	
Reviewed by:		New FTE requested - N/A	
		Other	

PURPOSE/ACTION REQUESTED:

Consider the Third Reading of an Ordinance Amendment to allow Market Gardens as a permitted use in the E-2, R-1 and R-2 Districts.

- Requires a 3/5th's vote.
- 60-day deadline: N/A

SUMMARY:

The City Council reviewed the ordinance amendment and approved the second reading on June 28. A couple of corrections were noted and listed below:

1. The definition of Market Gardens has been corrected to remove the reference to ornamental crops. Market Gardens are solely for food crops to be sold.
2. Relating to signs. Council chose to leave out any regulations permitting signage. This will be addressed when the zoning ordinance sign code is updated in the future.

RECOMMENDATION:

Planning Staff: Recommends approval of the third reading of the ordinance with the changes removing ornamental crops and no reference to signage.

Attachments: Ordinance Amendment for Third Reading (strike through version)
Ordinance Amendment (clean version)

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA
ORDINANCE NO. ____
AN ORDINANCE AMENDING INVER GROVE HEIGHTS CITY CODE TITLE 10,
CHAPTER 2, SECTION 2, TITLE 10, CHAPTER 6, SECTION 1, AND
TITLE 10, CHAPTER 15, SECTION 33, TO PERMIT MARKET GARDENS IN
CERTAIN ZONING DISTRICTS**

THE CITY COUNCIL OF THE CITY OF INVER GROVE HEIGHTS ORDAINS AS FOLLOWS:

Section One. Amendment. Title 10, Chapter 2, Section 2 of the Inver Grove Heights City Code is hereby amended to read as follows. The ~~struck-out text~~ shows the deleted wording and the underlined text shows the language added to the code:

MARKET GARDENS:

A market garden is a growing space where food ~~or ornamental~~ crops to be sold are grown. A market garden is distinguished from a farm by its smaller scale and lack of mechanization. A market garden is distinguished from a community garden by its exclusionary control.

Section Two. Amendment. Title 10, Chapter 6, Section 1 of the Inver Grove Heights City Code is hereby amended to read as follows. The ~~struck-out text~~ shows the deleted wording and the underlined text shows the language added to the code:

10-6-1: LAND USES IN ALL RESIDENTIAL DISTRICTS:

Use	Zoning District												
	A	E-1	E-2	R-1A	R-1B	R-1C	R-2	R-3A	R-3B	R-3C	R-4	MF-PUD	MU-PUD
<u>Market Gardens</u>			<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>						

Section Three. Amendment. Title 10, Chapter 15, Section 33 of the Inver Grove Heights City Code is hereby amended to read as follows. The ~~struck-out text~~ shows the deleted wording and the underlined text shows the language added to the code:

10-15-33: COMMUNITY GARDENS, MARKET GARDENS, AND PERSONAL GARDENS:

Where permitted, market gardens shall be subject to the following provisions:

P. Market Garden planting areas can be no larger than ten percent (10%) of lot area and shall not be located in front yards.

Q. Retail Sales Allowed. On-site sales are allowed under the following conditions:

1. The only products sold are the food ~~or ornamental~~ crops grown in the market garden on the property;
2. Sales are limited to a maximum of seventy-five (75) sales days per calendar year;
3. Sales shall take place only between the hours of 8:00 a.m. to 7:00 p.m. weekdays and 9:00 a.m. to 7:00 p.m. on weekends;
4. Sales cannot take place on the public sidewalk or boulevard.

R. Setback: The market garden shall be set back a minimum of five feet (5') from all property lines in order to provide a vegetated buffer of grass or other plants to minimize the transfer of sediment and to delineate the edges of the market garden.

S. Equipment: Market garden equipment shall be limited to that which is commonly used for household gardening. Any tools, equipment, and material shall be stored and concealed within an enclosed, secured structure.

T. Negative Impacts Prohibited: The market garden site shall be designed and maintained to prevent negative impacts to adjacent properties from gardening activities including, but not limited to, irrigation, fertilizer, soils, stormwater, cultivated areas, and garden debris.

U. Maintenance: Market gardens shall be maintained in a neat and orderly manner. Trash, weeds, dirt piles and debris of any sort shall not be allowed to accumulate on the market garden site. When a market garden is discontinued the property shall be restored with native plantings, grass, or other allowed ground cover.

V. Nuisance: Improperly maintained market gardens are subject to nuisance abatement procedures as detailed elsewhere in this code.

Section Four. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed in regular session of the City Council on the _____ day of _____, 2021.

CITY OF INVER GROVE HEIGHTS

Thomas Bartholomew, Mayor

Ayes:

Nays:

Attest:

Rebecca Kiernan, City Clerk

**CITY OF INVER GROVE HEIGHTS
DAKOTA COUNTY, MINNESOTA
ORDINANCE NO. _____
AN ORDINANCE AMENDING INVER GROVE HEIGHTS CITY CODE TITLE 10,
CHAPTER 2, SECTION 2, TITLE 10, CHAPTER 6, SECTION 1, AND
TITLE 10, CHAPTER 15, SECTION 33, TO PERMIT MARKET GARDENS IN
CERTAIN ZONING DISTRICTS**

THE CITY COUNCIL OF THE CITY OF INVER GROVE HEIGHTS ORDAINS AS FOLLOWS:

Section One. Amendment. Title 10, Chapter 2, Section 2 of the Inver Grove Heights City Code is hereby amended to read as follows. The ~~struck-out text~~ shows the deleted wording and the underlined text shows the language added to the code:

MARKET GARDENS:

A market garden is a growing space where food crops to be sold are grown. A market garden is distinguished from a farm by its smaller scale and lack of mechanization. A market garden is distinguished from a community garden by its exclusionary control.

Section Two. Amendment. Title 10, Chapter 6, Section 1 of the Inver Grove Heights City Code is hereby amended to read as follows. The ~~struck-out text~~ shows the deleted wording and the underlined text shows the language added to the code:

10-6-1: LAND USES IN ALL RESIDENTIAL DISTRICTS:

Use	Zoning District												
	A	E-1	E-2	R-1A	R-1B	R-1C	R-2	R-3A	R-3B	R-3C	R-4	MF-PUD	MU-PUD
<u>Market Gardens</u>			<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>						

Section Three. Amendment. Title 10, Chapter 15, Section 33 of the Inver Grove Heights City Code is hereby amended to read as follows. The ~~struck-out text~~ shows the deleted wording and the underlined text shows the language added to the code:

10-15-33: COMMUNITY GARDENS, MARKET GARDENS, AND PERSONAL GARDENS:

Where permitted, market gardens shall be subject to the following provisions:

P. Market Garden planting areas can be no larger than ten percent (10%) of lot area and shall not be located in front yards.

Q. Retail Sales Allowed. On-site sales are allowed under the following conditions:

1. The only products sold are the food crops grown in the market garden on the property;
2. Sales are limited to a maximum of seventy-five (75) sales days per calendar year;
3. Sales shall take place only between the hours of 8:00 a.m. to 7:00 p.m. weekdays and 9:00 a.m. to 7:00 p.m. on weekends;
4. Sales cannot take place on the public sidewalk or boulevard.

R. Setback: The market garden shall be set back a minimum of five feet (5') from all property lines in order to provide a vegetated buffer of grass or other plants to minimize the transfer of sediment and to delineate the edges of the market garden.

S. Equipment: Market garden equipment shall be limited to that which is commonly used for household gardening. Any tools, equipment, and material shall be stored and concealed within an enclosed, secured structure.

T. Negative Impacts Prohibited: The market garden site shall be designed and maintained to prevent negative impacts to adjacent properties from gardening activities including, but not limited to, irrigation, fertilizer, soils, stormwater, cultivated areas, and garden debris.

U. Maintenance: Market gardens shall be maintained in a neat and orderly manner. Trash, weeds, dirt piles and debris of any sort shall not be allowed to accumulate on the market garden site. When a market garden is discontinued the property shall be restored with native plantings, grass, or other allowed ground cover.

V. Nuisance: Improperly maintained market gardens are subject to nuisance abatement procedures as detailed elsewhere in this code.

Section Four. Effective Date. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed in regular session of the City Council on the _____ day of _____, 2021.

CITY OF INVER GROVE HEIGHTS

Thomas Bartholomew, Mayor

Ayes:

Nays:

Attest:

Rebecca Kiernan, City Clerk