JOINT SPECIAL MEETING
HARVEST CROSSING METROPOLITAN DISTRICT NOS. 3 AND 4

141 Union Boulevard, Suite 150
Lakewood, Colorado 80228
Tel: 303-987-0835
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NOTICE OF JOINT SPECIAL MEETING AND AGENDA

Board of Directors District Nos. 3 and 4:	Office:	Term/Expiration:
Daniel Frank	President	2025/May 2025
Marc L. Cooper	Treasurer	2025/May 2025
Richard Frank	Assistant Secretary	2025/May 2025
VACANT		2027/May 2027
VACANT		2027/May 2027

DATE: May 24, 2023
TIME: 12:00 p.m.
PLACE: Teleconference

Phone: 1 (253) 2158782
Meeting ID: 546 911 9353
Passcode: 912873

I. PUBLIC COMMMENT

A. Members of the public may express their views to the Board on matters that affect the District that are otherwise not on the agenda. Comments will be limited to three (3) minutes per person.

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II. ADMINISTRATIVE MATTERS

A. Present disclosures of potential conflicts of interest and confirm quorum.

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B. Approve agenda; confirm location of meeting and posting of meeting notice.

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III. LEGAL MATTERS

A. **[District Nos. 3 and 4]** Discuss and consider approval of Offsite Improvement and Escrow Agreement by and among Lennar Colorado, LLC, District No. 3, District No. 4, and Land Title Guarantee Company (enclosure).

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1. Discuss and consider approval of development budget for Harvest Road improvements (enclosure).

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B. **[District No. 4]** Discuss and consider approval of Limited Tax General Obligation Bonds Series 2022A(3) in the Aggregate Principal Amount of $12,913,000 (the "**Bonds**") – Trustee Instruction Letter transfer of funds from Restricted Account to Unrestricted Account (enclosure).

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C. **[District Nos. 3 and 4]** Discuss and consider approval of Amendment to Resolution Regarding Imposition of System Development Fees (enclosure).

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IV. OPERATION AND MAINTENANCE

A. Review and consider approval of proposal from A.G. Wassenaar, Inc. for Construction Testing and Observation Services (enclosure).

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B. Review and consider approval of proposal from Manhard Consulting, Ltd. for Construction Staking and Surveying Services (enclosure).

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V. OTHER BUSINESS

A. ____

VI. ADJOURNMENT

OFFSITE IMPROVEMENT AND ESCROW AGREEMENT

(Harvest Road)

THIS **OFFSITE IMPROVEMENT AGREEMENT** (this "**Agreement**") is made as of the ____ day of May, 2023 (the "**Effective Date**") by and among **LENNAR COLORADO LLC,** a Colorado limited liability company ("**Lennar**"), **HARVEST CROSSING METROPOLITAN DISTRICT NO. 3**, a quasi-municipal corporation and political subdivision of the State of Colorado, **HARVEST CROSSING METROPOLITAN DISTRICT NO. 4,** a quasi-municipal corporation and political subdivision of the State of Colorado (the "**District No. 4**" and together with District No. 3, the "**Districts**"), and **LAND TITLE GUARANTEE COMPANY** ("**Escrow Agent**"). Each of the District and Lennar may be referred to herein as a "**Party**" and collectively, the "**Parties**."

RECITALS

A. Lennar owns that certain real property located in the City of Aurora (the "**City**"), Adams County (the "**County**"), Colorado, which is more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the "**Lennar Property**").

B. The Districts were organized to facilitate the design, construction and financing of public improvements to benefit the residents and taxpayers within the development known as Harvest Crossing, which is more particularly described on **Exhibit B** attached hereto and incorporated herein by reference (the "**Harvest Property**").

C. The Lennar Property is adjacent to the west side of that certain to-be constructed roadway to be known as Harvest Road ("**Harvest Road**" and with the ½ of Harvest Road adjacent to the Lennar Property referred to herein as, the "**Lennar Portion**"). The Harvest Property is adjacent to the east of Harvest Road (with the ½ of Harvest Road adjacent to the Harvest Property being referred to herein as the "**District Portion**"), each as more particularly depicted on **Exhibit C** attached hereto and incorporated herein by reference.

D. Lennar intends to construct the Lennar Portion in connection with its development of the Lennar Property.

E. To achieve certain efficiencies and economies of scale, the Districts have requested and Lennar has agreed to construct the District Portion of Harvest Road at the same time as Lennar constructs the Lennar Portion.

F. The parties desire to enter into this Agreement to govern the terms pursuant to which the Escrow Agent will hold and disburse the funds to be deposited hereunder for the completion by Lennar of the District Portion of Harvest Road.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lennar, the Districts and Escrow Agent agree as follows:

1. Incorporation of Recitals. The Parties hereby acknowledge and agree to the Recitals set forth above, which are incorporated herein by this reference.

2. Appointment of Escrow Agent and Establishment of Escrow Account. Lennar and the Districts hereby appoint Escrow Agent as the escrow agent under this Offsite Improvement and Escrow Agreement and Escrow Agent hereby accepts such appointment.

3. Constructing Party. For purposes of this Agreement, the "**Constructing Party**" shall be Lennar. The Districts shall be hereinafter referred to as the "**Non-Constructing Party**" or "**Non-Constructing Parties**."

4. Responsibilities of Constructing Party.

4.1 Generally. The Constructing Party shall construct, or cause to be constructed, the District Portion of the Harvest Road improvements (the "**District Improvements**") in accordance with **Exhibit C-1** and those certain plans and specifications prepared by LJA approved by the City as the same may be further revised pursuant to a phasing plan approved by the City to align the District Improvements associated with the District Portion and the Lennar Portion, such phasing plan being attached hereto as **Exhibit C-2** (the "**Plans**") in the manner set forth hereinafter. Constructing Party shall coordinate, administer and oversee (a) the preparation and filing of all applications, filings, submittals, plans and specifications, budgets and other documents pertaining to construction and installation of the District Improvements; and (b) the construction and installation of the District Improvements. Constructing Party will engage or cause to be engaged consultants, contractors and subcontractors who will be responsible for the construction of the District Improvements and suppliers who will be responsible for supplying labor, materials, equipment, services and other work in connection with the construction of the District Improvements ("**Service Provider(s)**"), pursuant to the Contracts (as hereinafter defined).

4.2 Comply with Legal Requirements. Constructing Party shall comply with all terms and conditions of applicable law in performing its obligations under this Agreement. Constructing Party shall promptly provide to the Non-Constructing Parties copies of all notices filed by Constructing Party with the City and all other applicable governmental or quasi-governmental entities or agencies (the "**Approving Authorities**") related to the District Improvements and shall, within five (5) business days of receipt thereof, provide notice to the Non-Constructing Parties (together with copies of all notices received by Constructing Party) of any notice received by Constructing Party alleging any failure to comply with any applicable laws, ordinances, rules, regulations, or lawful orders of public authorities bearing on the construction of the District Improvements.

4.3 Surety and Assurances. Constructing Party shall post all surety required by the City in connection with completion of the District Improvements using the Improvement Funds to pay for the same.

4.4 Taxes, Fees and Permits. Constructing Party shall pay or cause to be paid (using the Improvement Funds, as hereinafter defined) all applicable sales, use, and other similar taxes pertaining to the District Improvements. Notwithstanding anything to the contrary contained herein, the Districts shall secure and pay for all third-party approvals, easements, assessments,

charges, permits and governmental fees, licenses and inspections necessary for proper completion of the District Improvements, including, but not limited to, any geotechnical reports or studies and Constructing Party shall have no obligation or liability hereunder to obtain the same.

4.5 Dedications. It is acknowledged that the District Improvements will ultimately be conveyed to an Approving Authority for perpetual ownership and maintenance. Constructing Party shall help the Districts facilitate all conveyances and dedications of the District Improvements if and as required by the Approving Authorities, free and clear of all liens and monetary encumbrances.

4.6 Insurance. Constructing Party shall procure and maintain, and shall cause any engaged Service Providers to procure and maintain, the insurance described in **Exhibit D** attached hereto during the construction of the District Improvements.

4.7 Limitation of Constructing Party. The Parties acknowledge and agree that Constructing Party's agreement to construct or cause the construction of the District Improvements as set forth in this Agreement is done as an accommodation to the Parties, except as expressly set forth in this Agreement, Constructing Party shall have no responsibility, liability or obligation with respect to (and the Parties hereby covenant not to sue Constructing Party for, and hereby release Constructing Party from, all liability and claims relating to or arising from): (i) the design, engineering, constructing or completion of the District Improvements; (ii) any damage, loss or injury to any of the Parties; (iii) any action or inaction of Constructing Party in connection with this Agreement; or (iv) any defect in the materials or workmanship pertaining to the District Improvements; but specifically excluding any "**Constructing Party Covered Liability**," as hereinafter defined. "**Constructing Party Covered Liability**" means the following matters for which Constructing Party shall be liable to the other Parties in connection with its performance under this Agreement: (a) any damage, loss or injury arising from the willful misconduct, bad faith, recklessness or illegal acts of the Constructing Party in performing or failing to perform hereunder, or (b) damage, loss or injury arising from the fraudulent conduct of Constructing Party; provided, however, that any damages to which the other Parties shall be entitled to recover for any Constructing Party Covered Liability shall be limited to out-of-pocket losses, costs, damages or expenses, and the other Parties shall not be entitled to recover from Constructing Party any punitive or consequential losses, costs, damages or expenses or lost profits as a result of, or in connection with, any Constructing Party Covered Liability, except in the event of fraudulent conduct by Constructing Party. Constructing Party makes no representation or warranty with respect to the District Improvements, and except for a Constructing Party Covered Liability, Constructing Party shall have no liability for any defect in the materials or workmanship pertaining thereto. The Parties hereby agree to look solely to the Service Providers engaged to construct and complete the District Improvements for any contractual violation, indemnity, warranty or guarantee relating to the District Improvements.

4.8 Stormwater Permit Responsibilities. Prior to a Non-Constructing Party engaging in any construction activities upon its applicable real property, such Non-Constructing Party shall obtain from the Colorado Department of Public Health, Water Quality Control Division, a Colorado Construction Stormwater Discharge Permit issued to such Non-Constructing Party with respect to its applicable real property. No fewer than five (5) business days prior to the initiation

of construction activities on any real property owned by a Non-Constructing Party, such Non-Constructing Party shall deliver a copy of at least one (1) of the following documents to Lennar:

4.8.1Such valid Colorado Construction Stormwater Discharge Permit for the applicable Non-Constructing Party's real property;

4.8.2A signed notice of reassignment of permit coverage (State of Colorado Form COR030000 or current equivalent), that transfers any pre-existing permit coverage for the applicable Non-Constructing Party's real property; or

4.803A signed State of Colorado modification form to add the Non-Constructing Party's real property if Non-Constructing Party has an existing site permit with the State of Colorado within the Development.

A Non-Constructing Party shall also obtain from the City, a Stormwater Quality Permit issued to such Non-Constructing Party by the City for such District Portion. The Non-Constructing Party shall be responsible to obtain and maintain any State of Colorado dewatering permits if required for Non-Constructing Party's further construction within the District Portion. If requested by Lennar, Non-Constructing Party shall execute a Notice of Property Conveyance and Change in Responsibility for the Colorado Discharge Permit held by District with respect to the District Portion. In all cases, Non-Constructing Party shall obtain from the Colorado Department of Public Health & Environment Water Quality Control Division, a Notice of Property Conveyance and Change in Responsibility on a form acceptable to the Colorado Department of Public Health & Environment Water Quality Control Division executed by Non-Constructing Party, for the Colorado Stormwater Discharge Permit held by Lennar with respect to the District Portion prior to any construction by Non-Constructing Party on the Non-Constructing Party's portion of the Property.

4.9 Constructing Parties' Stormwater Permit responsibilities. The Constructing Parties shall obtain and comply with all necessary permits related to stormwater and erosion control from all Applicable Authorities, in relation to the construction, repair, and maintenance of the Lennar Portion.

5. Construction of District Improvements.

5.1 Construction Standard. Constructing Party shall cause the District Improvements to be constructed in accordance with the Construction Standard (as hereinafter defined) and shall obtain preliminary and final acceptance thereof by all Approving Authorities. As used herein, the term "**Construction Standard**" means subject to the provisions as set forth Section 4.7, the construction and installation in a good, workmanlike and lien free manner and in substantial conformity with the Plans (as may be modified pursuant to the terms hereof) and the applicable requirements of the Approving Authorities.

5.2 Contracts for Work. Constructing Party or affiliates and contractors of Constructing Party shall contract for or provide all of the work and materials comprising the District Improvements. Constructing Party shall have the right to bid, pursue, negotiate, agree to

and execute contracts and agreements with Service Providers for the work and materials comprising the District Improvements (each a "**Contract**" and collectively, the "**Contracts**"), as the Constructing Party deems necessary or appropriate in its commercially reasonable discretion, subject to the provisions of this Agreement. Constructing Party shall deliver written notice to the Non-Constructing Parties not less than five (5) business days prior to entering into any Contract, which notice shall identify the Service Provider(s). Constructing Party shall cause each Contract, in addition to other matters, to (i) allow for the automatic assignment, without need for further action, of all of the applicable Constructing Party's rights (including, without limitation, the warranty and indemnity provisions thereof) to the Party that has delivered an Assumption Notice (as hereinafter defined) in the event of replacement of such Constructing Party pursuant to the terms of this Agreement, and identify the Non-Constructing Parties as an intended third-party beneficiary of the Contract, (ii) require the Service Providers to provide a warranty on materials and labor supplied by such Service Provider for a period of not less than one (1) year, or for such other period as the City may require, for any District Improvement, (iii) require the Service Provider to perform its work in accordance with the Construction Standard, (iv) require the Service Provider to indemnify, defend, and hold harmless the Constructing Party from all claims and causes of action arising from the negligent acts or omissions or intentional misconduct of the Service Provider or its employees or agents, (v) permit retainage in an amount of at least ten percent (10%) of the amounts payable to the Service Provider, until the work to be completed pursuant to such contract has been substantially completed and, if applicable, granted initial acceptance by the applicable Approving Authority, (vi) provide Constructing Party the right, but not the obligation, to pay subcontractors and suppliers of the Service Provider directly or by joint check, and (vii) provide for no limitation on remedies against the Service Provider for a default except the prohibition of recovery of punitive damages. Upon receipt of written request from a Non-Constructing Party, Constructing Party shall deliver a copy of each executed Contract to a Non-Constructing Party.

5.3 Commencement and Completion Dates. Constructing Party shall cause construction of the District Improvements to be commenced and completed as follows:

5.3.1 Commencement; Completion. The Constructing Party shall commence construction of the District Improvements within thirty (30) days following the later to occur of: (a) the Effective Date hereof; or (b) the date the Non-Constructing Parties have obtained all necessary permits as set forth in Section 4.4 above (the "**Commencement Deadline**"). Constructing Party shall use commercially reasonable efforts to cause Final Completion (as hereinafter defined) of the District Improvements to occur on or before the date that is six (6) months after actual commencement of construction of the District Improvements, but in no event later than October 31, 2023 (the "**Outside Completion Date**").

5.3.2 Force Majeure. Notwithstanding any contrary provision of this Agreement, the Commencement Deadline and the Outside Completion Date and any other date or deadline set forth herein shall each be extended by a period of time equal to any period that such performance or progress in construction of the District Improvements is delayed due to any acts or failure to act of any Approving Authority (so long as the same are not related to a default or failure of a Constructing Party to perform in accordance with all applicable laws, rules and regulations), strike, riot, act of war, act of terrorism, act of violence, unseasonable or intemperate weather, pandemic, actions of a Non-Constructing Party (including, but not limited to, failure to

approve Service Providers in a timely manner, failure to grant Licenses or Easements or interference with construction) act of God, or any other act, occurrence or non-occurrence beyond Constructing Party's reasonable control, notice of which has been provided to the Non-Constructing Parties within ten (10) days after the occurrence thereof (each, an "**Uncontrollable Event**"). Notwithstanding the foregoing, delays caused by Constructing Party's failure to pay amounts it owes under this Agreement or that are otherwise due and payable by the Constructing Party relating to this Agreement or the District Improvements, including, without limitation, amounts owed to Service Providers, shall not constitute an Uncontrollable Event, unless such delay is caused by the failure of the Non-Constructing Party to timely perform its obligations under this Agreement.

5.4 Final Completion.

5.4.1 Definition of Final Completion. "**Final Completion**" of the District Improvements shall be deemed to have occurred when all of the following have occurred with respect to the District Improvements:

(a) Constructing Party has completed or corrected all punchlist items provided by the City and other Approving Authorities and the Non-Constructing Parties affecting the District Improvements in accordance with Section 4.4.2 below;

(b) The District Improvements shall comply with the Construction Standard and shall be complete as determined by the project engineer;

(c) The District Improvements that are intended to be dedicated to an Approving Authority shall have been inspected and preliminarily accepted by the applicable Approving Authority (subject to completion of any final punchlist items provided by the City and other Approving Authorities and the Government Warranty Period (as defined below)); and

(d) No mechanics' or materialmen's liens shall have then been filed against the any portion of the Community with respect to the District Improvements and unconditional final lien waivers have been obtained from the Service Providers that constructed the District Improvements.

5.4.2 Inspection.

(a) Notice to Non-Constructing Parties. The Constructing Party shall notify the Non-Constructing Parties prior to Final Completion of the District Improvements, with the date(s) and time(s) the Approving Authorities will inspect such District Improvements. The Non-Constructing Parties shall have the right to be present at all inspections by the Approving Authorities. Constructing Party shall provide the Non-Constructing Parties with copies of any inspection reports or punchlists received from the Approving Authorities in connection with the inspection of the District Improvements, and the Constructing Party shall be responsible to correct any and all punchlist items, including as may be identified by the City and other Approving Authorities (the "**Punchlist**"). If an Approving Authority grants preliminary approval to any of the District Improvements that it will accept for maintenance, it shall conclusively be presumed that such District Improvement was completed in accordance with the Construction Standard, subject to completion of the Punchlist.

(b) Correction of Punchlist Items. The Constructing Party shall cause any Punchlist items to be corrected within the time required by the City and other Approving Authorities or other applicable Approving Authorities.

(c) Interim Inspections. Upon reasonable prior notice, Non-Constructing Parties shall have the right to inspect the construction of the District Improvements; provided, however, such inspection shall be (i) at the sole risk of such Non-Constructing Party, (ii) such inspection shall be non-invasive and shall be performed in a manner that does not interfere with or result in a delay in the construction of the District Improvements, and (iii) Non-Constructing Party shall indemnify the applicable Constructing Party for any damage resulting from such inspection.

5.5 Self-Help Remedy.

5.5.1 Notice of Default. If Constructing Party (a) breaches its obligation under this Agreement to commence construction of the District Improvements in accordance with the Plans on or before the Commencement Deadline (as the same may be extended by mutual agreement by the Parties or for Uncontrollable Events), or otherwise breaches its obligation under this Agreement to construct and complete the District Improvements in accordance with the Construction Schedule and/or by the Outside Completion Date; (b) otherwise breaches any obligation under this Agreement; (c) fails to comply with any provision of its Contracts with Service Providers beyond any applicable express notice or cure periods; or (d) files a petition for relief in bankruptcy or makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due (each a "**Bankruptcy Event**"), then a Non-Constructing Party may deliver written notice of the breach to Constructing Party (a "**Notice of Default**"). Each of the events set forth in Subsections (a) through (d) inclusive of the preceding sentence shall be herein referred to as a "**Constructing Party Default**." For any Constructing Party Default other than a Bankruptcy Event, Constructing Party shall have thirty (30) days after Constructing Party's receipt of the Notice of Default from Non-Constructing Party to cure the Constructing Party Default (the "**Cure Period**"); provided, however, if the nature of the Constructing Party Default is such that it cannot reasonably be cured within thirty (30) days, the Cure Period shall be deemed extended for a reasonable period of time (not to exceed an additional ninety (90) days) so long as Constructing Party commenced such cure in good faith and with due diligence to cause such Constructing Party Default to be remedied. If Constructing Party does not cause the cure of the Constructing Party Default within the Cure Period (subject to Uncontrollable Events), or if a Bankruptcy Event occurs (either, an "**Event of Default**"), then a Non-Constructing Party may elect in writing to assume the duties of the Constructing Party (an, "**Assumption Notice**") as well as to terminate this Agreement and receive a return of all Improvement Funds (less any amounts accrued through the date of the Constructing Party Default), whereupon, the Non-Constructing Party that delivered the Assumption Notice shall be solely responsible to complete construction of the District Improvements.

5.5.2 Assumption Right. Subject to any rights of the Approving Authorities, if a Non-Constructing Party delivers an Assumption Notice, then Lennar shall cooperate to allow the applicable Non-Constructing Party to take over and complete the incomplete District Improvements, including the execution and delivery to the applicable Non-Constructing Party of such agreements, documents or instruments as may be reasonably necessary to assign to

the applicable Non-Constructing Party all Contracts with third parties pertaining to the District Improvements and Lennar will be relieved of all obligations under this Agreement with respect to the construction, completion and warranty of the District Improvements, provided that Lennar shall not be entitled to the return of any surety previously posted with the City in connection with the commencement of construction of the District Improvements pursuant to Section 4.3.

5.6 Government Warranty Period. The Approving Authorities may require a warranty period after the Final Completion of the District Improvements (a "**Government Warranty Period**"). In the event defects in the District Improvements to which a governmental warranty applies become apparent during the Government Warranty Period, then the Constructing Party shall coordinate the repairs with the applicable Approving Authorities and cause the Service Provider(s) who performed the work or supplied the materials in which the defect(s) appear to complete such repairs or, if such Service Providers fail to correct such defects, otherwise cause such defects to be repaired to the satisfaction of the Approving Authorities. Any costs and expenses incurred in connection with any repairs or warranty work performed during the Government Warranty Period (including, but not limited to, any costs or expenses incurred to enforce any warranties against any Service Providers) shall be included in Cost Overruns.

5.7 License for Construction. The Non-Constructing Parties shall use commercially reasonable efforts to cause the fee owners of any real property within the applicable District to grant to Constructing Party and the Service Providers a temporary, non-exclusive license to enter upon the Harvest Property as applicable and as reasonably necessary for the installation of the District Improvements and/or the performance of Constructing Party's responsibilities under this Agreement. No rights of entry and/or licenses over any portion of the Harvest Property may be exercised in any fashion that would unreasonably interfere with or adversely impact development thereof. Any rights of access or instruments delivered in accordance with this provision shall automatically terminate upon expiration of all Government Warranty Periods.

5.8 Liens. Constructing Party shall pay, or cause to be paid, when due, using the Improvement Funds, all liens and claims for labor and/or materials furnished for construction of the District Improvements pursuant to this Agreement and shall the filing or recording by any third party of any mechanics', materialmen's or other lien, stop notice or bond claim or any attachments, levies or garnishments (collectively "**Liens**") involving the District Improvements. Constructing Party will, within twenty (20) calendar days after written notice from a Non-Constructing Party or after Constructing Party otherwise becomes aware of such Liens, terminate the effect of any Liens by filing or recording an appropriate release or bond if so requested by the Non-Constructing Party. If the Non-Constructing Party requests Constructing Party to file and obtain any such release or bond and Constructing Party fails to do so within twenty (20) calendar days of such request for any reason other than because Non-Constructing Party has objected to a Draw Request, the Non-Constructing Party may obtain such bond or secure such release on behalf of Constructing Party, and Constructing Party shall reimburse the Non-Constructing Party for all costs and fees related thereto within ten (10) days after receipt of written request therefor.

6. Costs of District Improvements.

6.1 Definition of Costs. As used herein, the term "**Costs**" shall mean collectively all hard and soft costs incurred in connection with the construction and installation of the District Improvements, including, but not limited to, costs of labor, materials and suppliers, engineering, design and consultant fees and costs, blue printing services, construction staking, demolition, soil amendments or compaction, costs of compliance with all applicable laws, costs of insurance required by this Agreement, costs of any financial assurances, any corrections, changes or additions to work required by the Approving Authorities or necessitated by site conditions, municipal, state and county taxes imposed in connection with construction of the District Improvements, any warranty work, and any other costs incurred in connection with the performance of the obligations of Constructing Party hereunder to complete the District Improvements. Costs shall NOT include and the Non-Constructing Parties shall be solely responsible for obtaining all permits necessary in connection with the construction of the District Improvements. Further, the Non-Constructing Parties shall be responsible for all geotechnical studies or reports related to the District Improvements and the same shall not be included in the definition of Costs hereunder and Lennar shall have no liability or obligation with respect to the same.

6.2 Budget. Attached hereto as **Exhibit E** is an estimate of the Costs to construct the District Improvements (the "**Budget**"). The Costs identified on the Budget are referred to herein as "**Budgeted Costs**." Any Costs incurred in excess of the overall Budgeted Costs ("**Cost Overruns**") shall be paid by the Non-Constructing Parties with their own funds that are in addition to, and excluding, the Improvement Funds. Prior to the Constructing Party incurring any Cost Overruns, the Constructing Party must first give written notice to the Non-Constructing Parties of such anticipated Cost Overruns that would exceed $25,000 on an individual basis. If the aggregate amount of Cost Overruns exceeds $100,000, then prior to the Constructing Party incurring any additional Cost Overruns, the Constructing Party must first give written notice to the Non-Constructing Parties of such anticipated Cost Overruns. The Non-Constructing Parties shall have five (5) business days to approve or object to such Cost Overruns exceeding $25,000 individually or $100,000 in the aggregate, as applicable. Such approval shall not be unreasonably withheld, conditioned, or delayed and any objections thereto must be stated with reasonable specificity. If a Non-Constructing Party fails to timely respond and approve or object within said five (5) business day period, then such Cost Overrun shall be deemed approved by the applicable Non-Constructing Party. Following such approval or deemed approval, the Non-Constructing Parties shall have fifteen (15) business days to deposit with Escrow Agent additional funds to account for such Cost Overruns. If a Non-Constructing Party objects to any Cost Overruns and the Parties cannot resolve such objection within twenty (20) days following delivery of such objection, such Dispute shall be resolved pursuant to Section 8 of this Agreement. Notwithstanding the other provisions of this Section 6.2, the Non-Constructing Parties shall not have the right to approve any Cost Overruns that are directly related to curing an ongoing emergency or life or safety issues constituting an imminent and ongoing threat of material property damage to the District Improvements and/or the Lennar Property or Harvest Property or any portion thereof or personal injury or loss of human life and such Cost Overruns must be funded within fifteen (15) business days following notice thereof.

6.3 Accounting. Constructing Party shall keep good and accurate books and records in sufficient detail to allow the Costs to be calculated, which books and records shall be made available for review (upon reasonable prior written notice) by the Parties. Within thirty (30)

days after Final Completion of the District Improvements, Constructing Party shall deliver to the Non-Constructing Parties a reasonably detailed final accounting of the Costs and the amount of any and all funds then-remaining in the Improvement Fund Account (including, without limitation, those amounts covered by Section 7.4 below).

6.4 Progress Reports. Constructing Party shall, with each Draw Request (as defined below), and no less frequently than once per month, provide Non-Constructing Parties with a progress report (a "**Progress Report**") (a) setting forth the amount of Improvement Funds expended, to date, (b) listing the portions of the District Improvements completed, and (c) attaching a signed certification by Constructing Party's construction manager of the status of the overall completion of the District Improvements (the "**Progress Certification**") in the form attached hereto as **Exhibit F**. In addition, Constructing Party shall cooperate with Non-Constructing Partys' third-party engineer to verify the Costs incurred are for the purposes herein stated, are market reasonable and such other matters as may be reasonably requested by the Non-Constructing Parties (the "**District Engineer Verification**")

7. Payment of Costs.

7.1 Improvement Fund Account. Concurrently with the execution of this Agreement, the Non-Constructing Parties shall deposit their Proportionate Share of the Required Funds with Escrow Agent. Escrow Agent will hold all funds provided to Escrow Agent pursuant to this Agreement in an interest-bearing escrow account (the "**Improvement Fund Account**") in accordance with the terms of this Agreement. All funds held in the Improvement Fund Account will constitute "**Improvement Funds**."

7.1.1 Cost Overruns. In the event of any Cost Overruns for the District Improvements, the Non-Constructing Parties shall deposit cash with Escrow Agent into the Improvement Fund Account, an amount, as shall be necessary to pay the Cost Overruns.

7.1.2 Escrow Agreement. This Agreement shall constitute an escrow agreement and instructions to Escrow Agent and all Improvement Funds and other funds deposited by any of the Parties with Escrow Agent hereunder shall be disbursed and dealt with by Escrow Agent in strict accordance with this Agreement. Escrow Agent shall not be liable for any action taken or omitted by it or by any Party to this Agreement, except for its own negligence, bad faith, recklessness or willful misconduct, and in any such event any Party may unilaterally terminate and replace Escrow Agent with another nationally-recognized escrow services provider or agent thereof (including, but not limited to, First American Title Insurance Company, Fidelity National Financial, and Stewart Title) effective immediately upon delivery of notice thereof to Escrow Agent and the other Party. If either Party unilaterally terminates and replaces Escrow Agent pursuant to this Section 7.1.2, or the Parties mutually agree to terminate and replace Escrow Agent for any reason or no reason, upon the appointment by the Parties of a new escrow agent or custodian, or upon their mutual written instructions to Escrow Agent for other disposition of the Improvement Funds, Escrow Agent will deliver the Improvements Funds within a reasonable period of time as so directed, and thereafter will be relieved of any and all liability under this Agreement. If any Party is in default under this Agreement, and such Party has not timely cured such default, then the other Party may, in its sole discretion, replace Escrow Agent. Escrow Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any document

or notice delivered to it hereunder which it believes to be genuine or to have been presented by a proper person. Escrow Agent shall be entitled to receive as compensation for its services hereunder the fees it normally charges customers for similar services, which fees will be part of the Budgeted Costs. Escrow Agent shall provide the Parties with monthly account statements regarding the accounts held by it hereunder. In the event that Escrow Agent shall be uncertain as to its duties or rights under this Agreement, or shall receive any certificate, statement, request, notice, advice, instruction, direction or other agreement or instrument from any Party with respect to the Improvement Funds which, in Escrow Agent's reasonable and good faith opinion, is in conflict with any of the provisions of this Agreement, or shall be advised that a dispute has arisen with respect to the Improvement Funds or any part thereof, Escrow Agent shall be entitled, without liability to any person, to continue to hold the Improvement Funds until (a) it receives written instructions from all of the Parties regarding the disbursement of the Improvement Funds, in which event Escrow Agent will then disburse the Improvement Funds in accordance with such instructions; (b) litigation between one or more of the Parties is initiated, at which point Escrow Agent will remit the Improvement Funds to the clerk of the court in which said litigation is pending; or (c) Escrow Agent takes such affirmative steps to terminate its duties under this Agreement, including, but not limited to initiating an action for interpleader in accordance with the following paragraph. Escrow Agent shall be under no duty to institute or defend any legal proceedings, although Escrow Agent may, in its discretion and at the expense of the Parties as provided in subsections, institute or defend such proceedings. The Parties authorize Escrow Agent, if Escrow Agent is threatened with litigation or is sued, to interplead all interested parties in any court of competent jurisdiction and to deposit the Improvement Funds with the clerk of that court; provided, however, that prior to interpleading any letter of credit deposited in the Improvement Fund Account, Escrow Agent shall provide at least five (5) business days' prior written notice to the Party who deposited such letter of credit, during which time such Party may substitute the entire amount (and not less than the entire amount) of the letter of credit with cash. In the event of any dispute, Escrow Agent shall be entitled to petition a court of competent jurisdiction and shall perform any acts ordered by such court.

7.2 Draw Requests.

7.2.1 Submission and Payment. Constructing Party shall submit periodic draw requests ("**Draw Requests**") to Escrow Agent, with a copy to the Non-Constructing Parties, not more often than once monthly that will allow timely payment of all amounts due and payable to the Service Providers for the construction of the District Improvements. Draw Requests will be in the form attached hereto as **Exhibit G** and must be accompanied by copies of (a) conditional lien waivers from all Service Providers covered thereunder for the amounts to be paid, (b) invoices for all amounts sought to be paid, (c) to the extent not previously provided, unconditional lien waivers from all Service Providers paid from prior Draw Requests, (d) a Progress Report as of the date of the Draw Request; and (e) an engineer's certificate that the Construction Standard has been satisfied for all work that is subject to the Draw Request. Escrow Agent will use the Improvement Funds held in the Improvement Fund Account, to pay the Draw Requests or so much thereof as is approved or deemed approved by the Non-Constructing Parties, promptly following the Non-Constructing Partys' approval or deemed approval thereof, less any retainage required by the applicable Contract. Notwithstanding anything to the contrary contained herein, in no event shall the Improvement Funds be reduced below the amount of Budgeted Costs for remaining District Improvements.

7.2.2 Objection. Within five (5) days following receipt of a Draw Request, the Non-Constructing Parties shall sign the Draw Request evidencing its approval thereof and return the same to Constructing Party and Escrow Agent. Notwithstanding the foregoing, any portion of a Draw Request that a Non-Constructing Party does not disapprove by notice to the applicable Constructing Party and Escrow Agent, which reasons for disapproval must be stated with specificity, within five (5) days following receipt thereof will be deemed approved. The Non-Constructing Parties may only object to a Draw Request in the event the documents required by Section 7.3.1 in conjunction with a Draw Request were not properly delivered. A Non-Constructing Party shall deliver written notice of any objection pursuant to the preceding sentence to Escrow Agent and the applicable Constructing Party within the five (5) day period described in the first sentence of this Section ("**Objection Notice**"). If Escrow Agent and the Constructing Party timely receive an Objection Notice, then, notwithstanding anything to the contrary contained herein, Escrow Agent shall not be authorized to disburse such disputed amount (but Escrow Agent shall be authorized to disburse all other amounts) unless and until Escrow Agent receives authorization to do so from the objecting Non-Constructing Party, or until Escrow Agent receives direction from the Informal Arbitrator (as defined below). If Escrow Agent and Constructing Party timely receive an Objection Notice, then the objecting Non-Constructing Party and Constructing Party shall meet and in good faith attempt to resolve all objections and provide direction to Escrow Agent to disburse mutually-acceptable amounts to Service Providers. If all such objectionable item(s) cannot be resolved within such five (5) day period after receipt, then any Party may submit to be resolved as an Expedited Dispute as provided in Section 7 below.

7.3 Delivery of Cash Funds. Promptly, but in any event not more than thirty (30) days, following Final Completion, the Constructing Party shall deliver to the Non-Constructing Parties an affidavit indicating Final Completion has occurred and including (i) copies of the letter(s) of preliminary acceptance (or equivalent written approval) from the Approving Authorities; (ii) evidence that all warranty surety required for the District Improvements has been deposited with the Approving Authorities or confirmation that Improvement Funds remaining in escrow hereunder shall not be required to be retained or used as warranty surety; and (iii) final, unconditional lien waivers from all Service Providers. If a Non-Constructing Party disputes that Final Completion has occurred, the Parties will resolve such dispute in accordance with Section 7. If the Non-Constructing Parties do not dispute that Final Completion has occurred within 10 days after receipt of such items, or if the decision of the Informal Arbitrator under Section 7 is that Final Completion has occurred, then the following shall occur within ten (10) days:

7.3.1 The Non-Constructing Parties shall pay any remaining portion of the Cost Overruns, if any, to Escrow Agent;

7.3.2 Escrow Agent will pay any final Draw Request from the Improvement Funds, less any retainage required by the Contracts; and

7.3.3 To the extent available for release and disbursement to the Non-Constructing Parties, and subject to the limitations and requirements contained in this Section 6.4, upon receipt of written authorization from all the Parties, Escrow Agent will pay to the Non-Constructing Parties (with amounts to be disbursed to each, to be determined by written instruction of the Non-Constructing Parties) any remaining Improvement Funds. Notwithstanding the foregoing sentence, if (a) any amount is required to be kept in escrow for any purpose, (b) any

amount is subject to a Dispute, or (c) the Parties have elected or are required to have such remaining Improvement Funds remain in escrow with Escrow Agent (for example, to serve as a warranty surety under the SIA and/or as otherwise required by an Approving Authority and not covered by Section 4.6 hereof), then Escrow Agent shall keep the applicable amount in the Improvement Fund Account, and shall not disburse such amount to the Non-Constructing Parties pursuant to the first sentence of this Section 6.4.3 unless and until Escrow Agent receives joint written instructions from all the Parties to do the same.

8. Disputes. In the event of a dispute hereunder (a "**Dispute**"), the aggrieved Party shall deliver written notice thereof to the other Parties (a "**Dispute Notice**"). Following receipt of a Dispute Notice the Parties agree to try and resolve the same through non-binding mediation. In the event the Parties are unable to agree upon a mediator or are unable to resolve the Dispute within twenty (20) days following receipt of the Dispute Notice, the aggrieved Party shall have the right to proceed to resolve the Dispute through any means available to it at law or in equity. Notwithstanding anything to the contrary herein, disputes related to the amount of any Draw Requests, Cost Overruns, change orders or any Punchlist item ("**Expedited Dispute**") shall be resolved by an independent, impartial third party qualified to resolve such disputes as determined by the Parties involved in the Expedited Dispute ("**Informal Arbitrator**"). If such Parties cannot agree on an Informal Arbitrator, then the Constructing Party involved shall select one (1) registered engineer and the affected Non-Constructing Party shall select one (1) registered engineer and the engineers so selected by such Parties shall promptly select an independent, impartial third party qualified to act as the Informal Arbitrator and resolve the Expedited Dispute. Within ten (10) business days after an involved Party delivers a Dispute Notice, the Constructing Party and the affected Non-Constructing Party shall deliver to the Informal Arbitrator a written statement of how such Party believes the Expedited Dispute should be resolved, together with reasonable supporting documentation of such position ("**Resolution Notice**"). Within ten (10) business days after receipt of Resolution Notices from both such Parties, the Informal Arbitrator shall approve one (1) of the Parties' Resolution Notice and shall deliver written notice of such approval to each Party. The decision of the Informal Arbitrator shall be binding on all Parties with respect to the applicable Expedited Dispute. All Parties shall timely cooperate with the Informal Arbitrator in rendering his or her decision. The Constructing Party shall pay one half (½) and the affected Non-Constructing Party shall pay one-half (½) of the Informal Arbitrator's fees. Each Party shall bear all of its own costs and attorneys' fees in the resolution of any Expedited Dispute. The Parties acknowledge that there is a benefit to the Parties in having work done as expeditiously as possible and that there is a need for a streamlined method of making decisions described in this Section so that work is not delayed.

9. Progress Meetings. From and after the Effective Date and until Final Completion of the District Improvements, the Parties shall cause their designated representatives to meet within five (5) business days following a request from a Party regarding the status of construction of the District Improvements, scheduling and coordination issues, engineering and design issues, and other similar issues. Any Party may change its designated representative under this Agreement at any time by written notice to the other Parties. The initial designated representative for each Party for the purpose of this Section shall be the individual listed on each Party's respective signature page attached hereto.

10. Notices. All notices provided for hereunder shall be deemed given and received (a) when personally delivered, including delivery by any nationally recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (b) by confirmed facsimile transmittal; PDF or email; or (c) forty-eight (48) hours after the same are deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the applicable Party at the address set forth on the Party's counterpart signature page attached hereto , or as to each Party, at such other address as shall be designated by such Party in a written notice to the other Party.

11. Attorneys' Fees. Except as otherwise provided in this Agreement, should any action be brought in connection with this Agreement, including, without limitation, actions based on contract, tort or statute, the prevailing Party in such action shall be awarded all costs and expenses incurred in connection with such action, including reasonable attorneys' fees. The provisions of this Section shall survive the expiration or termination of this Agreement.

12. Further Acts. Each of the Parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

13. No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement among the Parties hereto. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

14. Entire Agreement. This Agreement constitutes the entire agreement among the Parties hereto pertaining to the subject matter hereof. No change or addition is to be made to this Agreement except by written amendment executed by the Parties. The headings, captions and titles contained in this Agreement are intended for convenience of reference only and are of no meaning in the interpretation or effect of this Agreement. This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been initially drafted by one of the Parties or its counsel, since all Parties have contributed substantially and materially to the preparation hereof. No failure by a Party to insist upon the strict performance of any term, covenant or provision contained in this Agreement, no failure by a Party to exercise any right or remedy under this Agreement, and no acceptance of full or partial payment owed to a Party during the continuance of any default by one of the other Parties, shall constitute a waiver of any such term, covenant or provision, or a waiver of any such right or remedy, or a waiver of any such default unless such waiver is made in writing by the Party to be bound thereby. Any waiver of a breach of a term or a condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default under this Agreement, from having all the force and effect of a default.

15. Governing Law. This Agreement is entered into in Colorado and shall be construed and interpreted under the law of the State of Colorado without giving effect to principles of conflicts of law which would result in the application of any law other than the law of the State of Colorado.

16. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement and shall not affect the enforceability of the remaining provisions of this Agreement.

17. Assignment; Binding Effect. No Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties, which consent may be withheld in any Party's sole and absolute discretion. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

18. Counterparts; Copies of Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. This Agreement may be executed and delivered by facsimile or by electronic mail in portable document format (.pdf) or similar means and delivery of the signature page by such method will be deemed to have the same effect as if the original signature had been delivered to the other party.

19. Time of the Essence. Time is of the essence for performance or satisfaction of all requirements, conditions, or other provisions of this Agreement, subject to any specific time extensions set forth herein.

20. Computation of Time Periods. All time periods referred to in this Agreement shall include all Saturdays, Sundays and holidays, unless the period of time specifies business days. If the date to perform any act or give a notice with respect to this Agreement shall fall on a Saturday, Sunday or national holiday, or other day that Escrow Agent is not open for business, the act or notice may be timely performed on the next succeeding day which is not a Saturday, Sunday or a national holiday, or other day that Escrow Agent is not open for business.

21. Remedies. If any Party is in default of any of its obligations under this Agreement beyond any applicable notice or cure periods, the other Parties may avail themselves of any rights and remedies available at law and equity, but may only recover their actual, out-of-pocket damages (excluding any consequential or punitive damages) incurred as a result of such default.

22. Jury Waiver. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE PROVISIONS OF THIS AGREEMENT.

**[Balance of Page Intentionally Left Blank;
Signature Pages Follow]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first set forth above.

LENNAR:

LENNAR COLORADO LLC, a Colorado limited liability company

By: ______________________________
Name: ______________________________
Title: ______________________________

Designated Representative: _________________________

____
____
____
Attn: ____________
Telephone: ____________
Email: ____________

With a copy to:

____
____
____
Attn: ____________
Telephone: ____________
Email: ____________

DISTRICTS:

HARVEST CROSSING METROPOLITAN DISTRICT NO. 3, a quasi-municipal corporation and political subdivision of the State of Colorado

By: ______________________________
Name: ______________________________
Title: ______________________________

Designated Representative: ________________________

____
____
____
Attn: ___________
Telephone: ___________
Email: ___________

With a copy to:

____
____
____
Attn: ___________
Telephone: ___________
Email: ___________

DISTRICTS:

HARVEST CROSSING METROPOLITAN DISTRICT NO. 4, a quasi-municipal corporation and political subdivision of the State of Colorado

By: ______________________________
Name: ______________________________
Title: ______________________________

Designated Representative: ________________________

____
____
____
Attn: ___________
Telephone: ___________
Email: ___________

With a copy to:

____
____
____
Attn: ___________
Telephone: ___________
Email: ___________

ESCROW AGENT:

By signing below, the undersigned hereby accepts and approves of the relevant provisions of this Offsite Improvement Agreement.

Land Title Guarantee Company

By: ________________________________
Name: ________________________________
Title:

Land Title Guarantee Company
3033 East First Avenue, Suite 600
Denver, Colorado 80206
Attn: Derek Greenhouse
Fax: 303-393-4783
Telephone: 303-331-6239
Email: dgreenhouse@ltgc.com

List of Exhibits

Exhibit A: Lennar Property
Exhibit B: Harvest Property
Exhibit C: Depiction of Harvest Road
Exhibit C-1: District Improvements
Exhibit C-2 Phasing Plan
Exhibit D: Insurance Requirements
Exhibit E: Budget
Exhibit F: Form of Progress Certification
Exhibit G: Form of Draw Request

EXHIBIT A

to

OFFSITE IMPROVEMENT AGREEMENT

LENNAR PROPERTY

EXHIBIT B

to

OFFSITE IMPROVEMENT AGREEMENT

<u>HARVEST PROPERTY</u>

EXHIBIT C

to

OFFSITE IMPROVEMENT AGREEMENT

DEPICTION OF DISTRICT IMPROVEMENTS

EXHIBIT C-1

DISTRICT IMPROVEMENTS

EXHIBIT C-2

PHASING PLAN

EXHIBIT D

INSURANCE REQUIREMENTS

Constructing Party shall maintain the amounts and types of insurance described below and shall cause the Service Providers to maintain such coverages from insurance companies licensed to do business in the State of Colorado having a Best's Insurance Report Rating of A/VI or better covering the risks described below:

A. Commercial General Liability Insurance (including premises, operations, products, completed operations, and contractual liability coverages) in an amount not less than One Million Dollars ($1,000,000.00) per occurrence, One Million Dollars ($1,000,000.00) personal injury and advertising injury, and Two Million Dollars ($2,000,000.00) General Aggregate. Coverage must be on an occurrence basis with no exclusions for subsidence or residential construction. Deductible in excess of $100,000 (premises operation) or self-insured retentions in excess of $3,000,000 (products and completed operation) must be declared and approved.

B. Automobile Liability Insurance for all motor vehicles operated by or for Constructing Party, including owned, hired, and non-owned autos, with minimum Combined Single Limit for Bodily Injury and Property Damage of One Million Dollars ($1,000,000.00) for each occurrence.

C. Workers Compensation Insurance for all employees of Constructing Party as required by law, to cover the applicable statutory limits in the State of Colorado and employer's liability insurance with limits of liability of not less than One Million Dollars ($1,000,000.00) for bodily injury by accident (each accident) and One Million Dollars ($1,000,000.00) for bodily injury by disease (each employee).

D. With respect to Service Providers that provide professional services (e.g., engineers), professional liability insurance, including prior acts coverage with a retroactive date no later than the date of commencement of the services, with limits of not less than One Million Dollars ($1,000,000.00) per claim and annual aggregate. The professional liability insurance shall be maintained continuously during the term of the Agreement and so long as the insurance is commercially reasonably available. The professional liability insurance required by this paragraph shall not contain any exclusions or limitations applicable to residential projects.

The following general requirements shall apply to all insurance policies described in this Exhibit.

1. All liability insurance policies, except workers compensation and professional liability insurance, shall be written on an occurrence basis.

2. All insurance policies required hereunder except Workers Compensation and Employers Liability shall: (i) name the Parties as "additional insureds" on general liability and products and completed operations coverage utilizing an ACORD form or equivalent acceptable to Constructing Party, excluding, however, insurance policies of Service Providers who provide professional services whose insurance policies do not permit the designation of additional insureds; (ii) be issued by an insurer authorized in the State of Colorado; and (iii) provide that such policies shall not be canceled or not renewed, nor shall any material change be made to the policy

without at least thirty (30) days' prior written notice to the Parties. Each additional insured endorsement (or each policy, by reasonably acceptable endorsement) shall contain a primary insurance clause providing that the coverage afforded to the additional insureds is primary and that any other insurance or self-insurance available to any of the additional insureds is non-contributing. A waiver of subrogation endorsement for the workers' compensation coverage shall be provided in favor of the Parties.

3. The liability insurance policies shall provide that such insurance shall be primary on a non-contributory basis.

4. Service Providers shall provide Constructing Party with certificates evidencing the insurance coverages required by this Exhibit in the certificate form described in Item 2 of this Exhibit, prior to the commencement of any activity or operation which could give rise to a loss to be covered by such insurance. Replacement certificates shall be sent to Constructing Party, as policies are renewed, replaced, or modified.

5. The foregoing insurance coverage must be maintained in force at all times during the construction of the District Improvements.

EXHIBIT E

to

OFFSITE IMPROVEMENT AGREEMENT

BUDGET

(See following page.)

EXHIBIT F

to

OFFSITE IMPROVEMENT AGREEMENT

FORM OF PROGRESS CERTIFICATION

CONSTRUCTION MANAGER PROGRESS CERTIFICATION REPORT

______________ ("**Construction Manager**") hereby submits this Construction Manager Progress Certification Report (this "**Progress Certification**") pursuant to that certain **__________** Agreement between Lennar Colorado LLC ("**Client**") and Construction Manager dated ______________, 2022 (the "**Agreement**"), by which Client contracted with Construction Manager for construction management services for Copperleaf Blvd., located in the County of Arapahoe, State of Colorado (the "**Project**").

Construction Manager hereby certifies to Client that as of ______________, 202_ (the "**Certification Date**") the following accurately and truthfully reflects the status of each of the following milestones as of the Certification Date:

Substantial Completion of the Project:

a. Construction Manager certifies that the Project is _____% complete in accordance with the requirements of the Agreement.

b. Construction Manager certifies that the Project is on schedule to be completed in accordance with the requirements of the Agreement no later than __________ (the "**Project Expected Completion Date**").

c. Construction Manager knows of no material reason that the Project will not be completed in accordance with the requirements of the Agreement on or before the Project Expected Completion Date.

The undersigned Construction Manager certifies that to the best of the Construction Manager's knowledge, information and belief, (i) this Progress Certification has been completed in accordance with the Agreement; (ii) the work of the Project, including each Milestone listed above, has progressed to the degree of completion in accordance with the requirements of the Agreement as indicated above; (iii) that the estimates of the dates by which the Milestones and the overall work of the Project will be complete in accordance with the requirements of the Agreement as indicated above are reasonable, good faith estimates given all information known by the Construction Manager as of the Certification Date; and (iv) the work of the Project completed as of the Certification Date is in substantial compliance with all approved plans.

CONSTRUCTION MANAGER:

____
______________________, a _________________

____
____
____

EXHIBIT G

to

OFFSITE IMPROVEMENT AGREEMENT

FORM OF DRAW REQUEST

DRAW REQUEST

DRAW REQUEST NUMBER: ____

DATE: ___________, 202____

CONSTRUCTING PARTY: __________________

ESCROW AGENT: Land Title Guarantee Company

PROJECT: ___________, ___________, City of Aurora, Adams County, Colorado

Reference is made to that certain Offsite Improvement Agreement dated as of ___________, 202____, by and among ___________, a __________________, ___________, _________________________, _________________________ and _________________________ (as amended or otherwise modified from time to time, the "**Offsite Improvement Agreement**"). Capitalized terms used herein without definition have the meanings set forth in the Offsite Improvement Agreement unless the context requires otherwise.

Constructing Party requests Escrow Agent to disburse to Service Provider(s) cash from the Improvement Fund Account in the amounts set forth in the attached Schedule 1.

In connection with the requested disbursement, Constructing Party hereby represents, warrants and certifies to Escrow Agent and the Non-Constructing Parties as follows:

1. Attached are true and correct copies of (a) conditional lien waivers for the amounts to be paid in connection with the requested disbursement, (b) invoices for all amounts sought to be paid in connection with the requested disbursement, and (c) to the extent not previously provided, unconditional lien waivers from all Service Providers paid from prior Draw Requests;

2. Constructing Party is not subject to an Event of Default under the Offsite Improvement Agreement;

3. Constructing Party has satisfied all conditions precedent to the funding of the Draw Request as set forth in the Offsite Improvement Agreement;

4. The sum of all Costs expended to date for District Improvements does not exceed the total Budgeted Costs, or if such Costs do exceed the Budgeted Costs, attached hereto is a listing of Cost Overruns;

5. All Service Providers have been paid or will be paid for their services provided to date, subject to retainage, with the proceeds of this Draw Request;

6. All insurance required to be maintained by Constructing Party remains in full force, in the amounts and types required under the Offsite Improvement Agreement, and issued by insurers as required under the Offsite Improvement Agreement; and

7. All District Improvements covered by this Draw Request have been completed in accordance with the Construction Standard and the applicable Contract(s) and should now be paid, and all Costs incurred in connection with such District Improvements either have been paid or will be paid out of the proceeds of this Draw Request.

____________________, a ____________________

By: ________________________________
Name: ________________________________
Title: ________________________________

Reviewed and approved:

____

By: ___________________________
Name: ___________________________

By: ___________________________
Name: ___________________________

By: ___________________________
Name: ___________________________

SCHEDULE 1 TO DRAW REQUEST NUMBER ____

Harvest Street Improvements cost sharing agreement

IHC Scott's proposal	$ 2,030,559.00
Alternate hard digging	$ 48,280.00
	$ 2,078,839.00
10% Contingency	$ 207,883.90
	$ 2,286,722.90
3.5% Management Fee	$ 80,035.30
Total cost of Reimbursement	**$ 2,366,758.20**

May 16, 2023

VIA EMAIL

UMB Bank, NA
Attn: Corporate Trust & Escrow Services/John
Wahl
1670 Broadway
Denver, CO 80202
John.wahl@umb.com

Re: Harvest Crossing Metropolitan District No. 4 – Limited Tax General Obligation Bonds Series 2022A(3) in the Aggregate Principal Amount of $12,913,000 (the "**Bonds**") – Trustee Instruction Letter transfer of funds from Restricted Account to Unrestricted Account

Dear Mr. Wahl:

Our office serves as general counsel to the Harvest Crossing Metropolitan District No. 4 (the "**District**"). UMB Bank, NA ("**UMB**") serves as Trustee for the Bonds pursuant to that certain Indenture of Trust dated June 3, 2022 (the "**Indenture**").

This letter serves at the Trustee Instruction Letter contemplated by Section 3.04(b)(ii) of the Indenture. We hereby enclose for your information and files copies of the City-Issued Document, consisting of, (i) an Administrative Decision of the City of Aurora Planning and Development Services Department pertaining to the Harvest Crossing Planning Area 2 Master Plan Amendment (the "**FDP Amendment**"); (ii) the FDP with changed pages approved pursuant to the Administrative Decision and uploaded to the City website; and (3) a confirmatory email from Arianna Muca at the City of Aurora confirming that the FDP Amendment constitutes the "Master Plan" on record.

The amount deposited to the Restricted Account was $2,004,000. The Release Price is equal to $25,693.00 per Incremental Lot created. The FDP Amendment resulted in 181 Incremental Lots being created, which multiplied by the Release Price, exceeds the amount in the Restricted Account. Accordingly, we hereby request the Trustee to transfer the entirety of the Restricted Account to the Unrestricted Account of the Project Fund.

We have enclosed the Original FDP. As you can see, it provided for a total of 800 maximum lots and the FDP Amendment provides for a total of 981 maximum lots, creating the increase of 181 lots.

If you have any questions, please don't hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,

McGeady Becher P.C.

Paula J. Williams

Paula J. Williams

c: Board of Directors, Harvest Crossing Metropolitan District No. 4
Kristine Lay

RESOLUTION NO. 2023-05-____

FIRST AMENDMENT TO RESOLUTION OF THE BOARD OF DIRECTORS OF HARVEST CROSSING METROPOLITAN DISTRICT NO. 3 (F/K/A VILLIAGES AT MURPHY CREEK METROPOLITAN DISTRICT NO. 1) REGARDING THE IMPOSITION OF SYSTEM DEVELOPMENT FEES

A. Harvest Crossing Metropolitan District No. 3 (f/k/a Villages at Murphy Creek Metropolitan District No. 1) (the "**District**") is a quasi-municipal corporation and political subdivision of the State of Colorado.

B. Pursuant to its Service Plan, the District is empowered to provide for the design, acquisition, construction, installation, maintenance and financing of certain water, sanitation, storm drainage, street, safety protection, park and recreation, transportation, television relay and translation, and mosquito control improvements within and without the boundaries of the District ("**Improvements**").

C. The District is authorized pursuant to Section 32-1-1001(1)(j)(I), C.R.S., to fix fees and charges for services or facilities provided by the District.

D. The Service Plan authorizes the District to impose and collect fees at rates the District deems necessary to accommodate the financing, construction and installation of the Improvements.

E. The District duly adopted Resolution 2021-10-01 that imposed System Development Fees (the "**Original Resolution**"), which Original Resolution was recorded in the official records of Arapahoe County, Colorado at Reception Number E2005923 on January 18, 2022.

F. The District desires to amend the Original Resolution to provide that the System Development Fees are due at the time a building permit is issued by the City of Aurora for a residence or commercial structure.

G. The property currently within the boundaries of the District's Service Area is described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**"), which legal description may be amended from time to time, pursuant to the inclusion of additional property into the District's Service Area.

H. This First Amendment to Resolution shall be recorded on the Property to put the property owners on notice of this imposition of System Development Fees and the timing for payment therefor.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF HARVEST CROSSING METROPOLITAN DISTRICT NO. 3 (F/K/A VILLAGES AT MURPHY CREEK METROPOLITAN DISTRICT NO. 1), CITY OF AURORA, ARAPAHOE COUNTY, COLORADO, AS FOLLOWS:

1. Section 6 of the Original Resolution is hereby deleted in its entirety and replaced as follows:

> "The System Development Fee with respect to any portion of the Property shall be due and payable upon the date of issuance by the City of Aurora of a building permit for construction of a residence on any portion of any lot by the City."

2. Except as modified herein, the Original Resolution is hereby ratified and in full force and effect.

3. Judicial invalidation of any of the provisions of this Resolution or of any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstances, shall not affect the validity of the remainder of this Resolution, unless such invalidation would act to destroy the intent or essence of this Resolution.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO RESOLUTION NO. 2023-____-____]

RESOLUTION APPROVED AND ADOPTED on ______________________.

HARVEST CROSSING METROPOLITAN DISTRICT NO. 3 (F/K/A VILLAGES AT MURPHY CREEK METROPOLITAN DISTRICT NO. 1)

By: ___________________________________
President

Attest:

____
Secretary

EXHIBIT A
LEGAL DESCRIPTION OF
HARVEST CROSSING METROPOLITAN DISTRICT NO. 3'S BOUNDARIES

RESOLUTION NO. 2023-05-____

FIRST AMENDMENT TO RESOLUTION OF THE BOARD OF DIRECTORS OF HARVEST CROSSING METROPOLITAN DISTRICT NO. 4 (F/K/A VILLIAGES AT MURPHY CREEK METROPOLITAN DISTRICT NO. 2) REGARDING THE IMPOSITION OF SYSTEM DEVELOPMENT FEES

A. Harvest Crossing Metropolitan District No. 4 (f/k/a Villages at Murphy Creek Metropolitan District No. 2) (the "**District**") is a quasi-municipal corporation and political subdivision of the State of Colorado.

B. Pursuant to its Service Plan, the District is empowered to provide for the design, acquisition, construction, installation, maintenance and financing of certain water, sanitation, storm drainage, street, safety protection, park and recreation, transportation, television relay and translation, and mosquito control improvements within and without the boundaries of the District ("**Improvements**").

C. The District is authorized pursuant to Section 32-1-1001(1)(j)(I), C.R.S., to fix fees and charges for services or facilities provided by the District.

D. The Service Plan authorizes the District to impose and collect fees at rates the District deems necessary to accommodate the financing, construction and installation of the Improvements.

E. The District duly adopted Resolution 2022-06-01 that imposed System Development Fees (the "**Original Resolution**"), which Original Resolution was recorded in the official records of Arapahoe County, Colorado at Reception Number E3025359 on April 18, 2023.

F. The District desires to amend the Original Resolution to provide that the System Development Fees are due at the time a building permit is issued by the City of Aurora for a residence or commercial structure.

G. The property currently within the boundaries of the District's Service Area is described on **<u>Exhibit A</u>** attached hereto and incorporated herein by this reference (the "**Property**"), which legal description may be amended from time to time, pursuant to the inclusion of additional property into the District's Service Area.

H. This First Amendment to Resolution shall be recorded on the Property to put the property owners on notice of this imposition of System Development Fees and the timing for payment therefor.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF HARVEST CROSSING METROPOLITAN DISTRICT NO. 4 (F/K/A VILLAGES AT MURPHY CREEK METROPOLITAN DISTRICT NO. 2), CITY OF AURORA, ARAPAHOE COUNTY, COLORADO, AS FOLLOWS:

1. Section 6 of the Original Resolution is hereby deleted in its entirety and replaced as follows:

> "The System Development Fee with respect to any portion of the Property shall be due and payable upon the date of issuance by the City of Aurora of a building permit for construction of a residence on any portion of any lot by the City."

2. Except as modified herein, the Original Resolution is hereby ratified and in full force and effect.

3. Judicial invalidation of any of the provisions of this Resolution or of any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstances, shall not affect the validity of the remainder of this Resolution, unless such invalidation would act to destroy the intent or essence of this Resolution.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO RESOLUTION NO. 2023-____-____]

RESOLUTION APPROVED AND ADOPTED on ________________________.

HARVEST CROSSING METROPOLITAN DISTRICT NO. 4 (F/K/A VILLAGES AT MURPHY CREEK METROPOLITAN DISTRICT NO. 2)

By: ____________________________________
President

Attest:

____
Secretary

EXHIBIT A
LEGAL DESCRIPTION OF
HARVEST CROSSING METROPOLITAN DISTRICT NO. 4'S BOUNDARIES

A.G. WASSENAAR, INC.

May 12, 2023

Harvest Crossing Metro District #3
c/o Paula Williams
McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, Colorado 80203-1254

Attention: Mr. Daniel Frank

Subject: **Proposed Construction Testing and Observation Services – South Harvest Road**
Harvest Crossing Subdivision, Filing 1 (Phases 1 and 2 Only)
East Jewell Avenue and South Harvest Road
Aurora, Colorado
Proposal Number 230136

As requested, A.G. Wassenaar, Inc. (AGW) has estimated our fees for providing the requested services. We understand the project consists of approximately 2,200 l.f. (half width) of South Harvest Road. The time required to complete the requested scope of services will be dependent upon the portion of work being constructed and the rate of construction. We have based our fees partly on our experience with similar projects and partly on construction schedule and/or quantity information you provided. If our assumed scope differs from your anticipated schedule, we should be contacted to revise this estimate. AGW's services are provided on a unit-rate basis in accordance with our estimate outlined below. The pavement study cost estimate was previously issued and not included in the scope of the estimate.

Fill Compaction Testing
(Overlot Grading, Subexcavation, Utility Backfill, Curb, Gutter, Sidewalk, and Pavement Subgrade)

Charges applicable to this project are inclusive and include the field technician's time at $80.00 per hour. The hourly rate includes travel time to and from the project. There is no per test fee, vehicle charge for mileage to and from the project or related equipment charges. Project Manager or Engineer's time is necessary for review of field work. Typically, one hour of review time is charged for every eight hours of field time. In addition, Project Manager or Engineer's time for any meetings or required evaluations will be charged at their respective hourly rates.

Fees in addition to field technician's time and density tests will include laboratory Proctor tests and associated classification testing (sieve analyses and Atterberg limits) for each significant material type sampled. Fees for this laboratory testing will be at the specified unit rates. The total fee for fill compaction testing services is difficult to determine because of the variables involved.

Concrete Testing
Field and laboratory testing of fresh concrete is charged on an hourly basis for field services and a per test basis for laboratory services. The field testing service is based on a field technician billing

rate of $70.00 per hour. The hourly rate includes travel to and from the project. There are no additional charges for vehicle or equipment usage. A fee of $15.00 is charged for each cylinder cast. Project Manager or Engineer's time is necessary for review of field work. Typically, one hour of review time is charged for every eight hours of field time. In addition, Project Manager or Engineer's time for any meetings or required evaluations will be charged at their respective hourly rates in accordance with our estimate outlined below.

Typically, each test includes round trip travel time; technician site time to perform slump, air content, unit weight, and temperature testing; recording of mix and batch data; casting of 4 x 8 inch concrete cylinders; transportation to our laboratory; and curing and compressive strength testing. The Contractor is responsible for providing the initial curing environment prior to transportation to our laboratory. AGW's field personnel must be informed of the storage accommodations prior to concrete placement. Upon completion of specified compressive strength testing, a report containing pertinent data will be issued. If requested, a self-heated/cooled curing box can be provided for an additional fee. This box will require an electrical connection (120 volt). Security of this equipment will be the responsibility of the Contractor. If the box is damaged or stolen, the replacement cost will be invoiced to our Client.

Asphalt Testing
Charges applicable to this project are inclusive and include the field technician's time at $80.00 per hour. The hourly rate includes travel time to and from the project. There is no per test fee, vehicle charge for mileage to and from the project or related equipment charges. Project Manager or Engineer's time is necessary for review of field work. Typically, one hour of review time is charged for every eight hours of field time. In addition, Project Manager or Engineer's time for any meetings or required evaluations will be charged at their respective hourly rates in accordance with our estimate outlined below. Additional charges would include laboratory testing.

Fee Estimate
This estimate is based upon the scope-of-work requested, quantities provided to AGW, our assumption of the Contractor's anticipated rate of progress, and our experience with similar projects. Depending on the Contractor's rate of progress, conditions encountered, and the required/requested scope, the actual total fees may vary. The Client will be billed only the amount required to complete the project as requested. Our fee estimate has been summarized below.

Service		**Estimated Fee**
Fill Compaction Testing:		
(Overlot Grading / Subexcavation)		
Field Technician: 15 days, 8.0 hours per day, $80.00/hour	$	9,600.00
Field Technician (overtime): 15 days, 2.0 hours per day, $100.00/hour		3,000.00
Project Manager/Engineer (review): 20.0 hours, $110.00/hour		2,200.00
Project Manager/Engineer (meetings/evaluations): 6.0 hours, $110.00/hour		660.00
Proctors and Associated Classification Testing: 4 at $275.00/each		1,100.00
Hand Drive Swell/Consolidation Testing: 15 at $60.00 /each		900.00
	$	17,460.00

Fill Compaction Testing:
(Utility Backfill, Curb, Gutter, Sidewalk, and Pavement Subgrade)

Item		Amount
Field Technician (Utility): 4 days, 8.0 hours per day, $80.00/hour	$	2,560.00
Field Technician (Subgrade): 21 days, 5.0 hours per day, $80.00/hour		8,400.00
Project Manager/Engineer (review): 18.0 hours, $110.00/hour		1,980.00
Project Manager/Engineer (meetings/evaluations): 4.0 hours, $110.00/hour		440.00
Proctors and Associated Classification Testing: 2 at $275.00/each		550.00
CTS Strength Testing: 12 at $35.00/each		420.00
	$	14,350.00

Concrete Testing:

Item		Amount
Field Technician: 45 sets, 4.5 hours per set, $70.00/hour	$	14,175.00
Cylinders: 225, $15.00/each		3,375.00
Project Manager/Engineer (review): 25.5 hours, $110.00/hour		2,805.00
	$	20,355.00

Asphalt Observation:

Item		Amount
Field Technician: 6 days, 8.0 hours per day, $80.00/hour	$	3,840.00
Field Technician (overtime): 6 days, 2.0 hours per day, $100.00/hour		1,200.00
Project Manager/Engineer (review): 8.0 hours, $110.00/hour		880.00
Extraction-Gradation Tests: 6 tests, $190.00/test		1,140.00
SHRP Gyratory Tests: 6 tests, $275.00/test		1,650.00
Core Density and Thickness: 10 cores at $175.00/core		1,750.00
	$	10,460.00
Total Estimated Fee	$	62,625.00

We caution the Owner that fee estimates for materials testing and construction observation services can vary from consultant to consultant, and are only preliminary estimates to assist in budget formulation. The accuracy is greatly affected by the information provided during proposal preparation (i.e., construction plans, material quantities, construction schedules, project specifications, and testing frequency required, etc.). AGW has no control over construction rates, quantity revisions, or changes in testing requirements. Our responsibility to the Owner is to provide services as requested. We will bill for the time required to complete each phase of the project as specified and/or requested, using the unit rates provided. These unit rates are subject to possible change on an annual basis. The Client understands that our testing/observation services in no way relieves the Contractor from properly constructing the work. The responsibility of performance is exclusively that of the Contractor.

AGW's services during construction shall be limited to observation and testing of the contracted phase of construction. AGW shall not be responsible for constant or exhaustive inspection of the work, the means and methods of construction or the safety procedures employed by the Client's Contractor. Performance of construction testing and observation services does not constitute a warranty or guarantee of any type, since even with diligent testing and observation, some construction defects, deficiencies or omissions in the Contractor's work may occur undetected. The Client shall hold its Contractor responsible for the quality and completion of the project, including construction in accordance with the construction documents. Any duty hereunder is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Upon completion, the Contractor and/or subcontractor should provide documentation that the fill was placed in accordance with project specifications and is suitable for intended support. It is the responsibility of the Client or Contractor to schedule the requested services.

If AGW is asked by the Client to subcontract inspection, geological, or laboratory testing services on behalf of the Client, AGW agrees to do so only as an accommodation to the Client and in reliance upon the Client's assurance that the Client will make no claim nor bring any action at law or in equity against AGW as a result of this subcontracted service. The Client understands that AGW is neither trained nor knowledgeable in the procedures or results of the subcontractor's services and the Client shall not rely upon AGW to check the quality or accuracy of their services. In addition, the Client agrees to the fullest extent permitted by law to indemnify and hold AGW harmless from any damage, liability, or cost (including reasonable Attorneys' fees and costs of defense) arising from the services performed by this subcontractor except only those damages, liabilities, or costs caused by the sole negligence or willful misconduct of AGW.

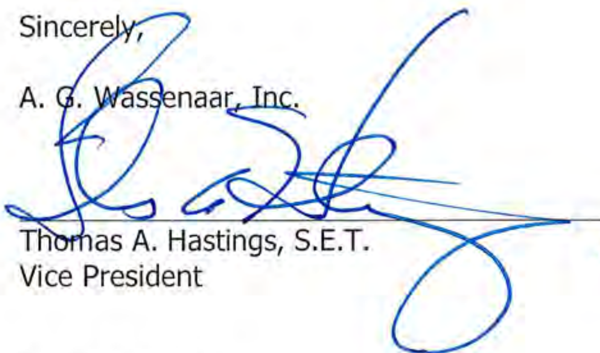
Scheduling
AGW has built its reputation on providing responsive and quality services. We are flexible when it comes to scheduling and report turn-around time. We request 24 hours notice before services are required in order to efficiently meet our Client's needs. We are confident we can meet any reasonable deadline. All we ask for is cooperation and proper communication to help us better serve you. We assume the Contractor and/or its subcontractors have the authority to schedule our services. If this assumption is incorrect, please notify AGW and supply the proper personnel information concerning who actually has authorization to schedule our services.

Billing
We will invoice for our services at the end of each month and anticipate payment within 30 days.

If this description of services, fees, and Professional Services Agreement meets with your approval, please sign this proposal and return it to AGW. By signing and returning this proposal, it is assumed that notice to proceed has been given. If provided verbal or written notice to proceed, we assume you have read and understand this agreement. If you have any further questions, please do not hesitate to contact our office.

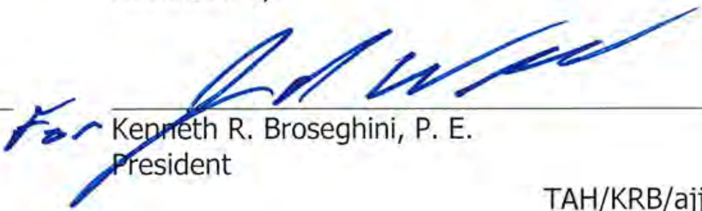
Sincerely,

A. G. Wassenaar, Inc.



Thomas A. Hastings, S.E.T.
Vice President

Reviewed by:



For Kenneth R. Broseghini, P. E.
President

TAH/KRB/ajj

Agreed to this ____________ day of ____________________ 20____
By: ______________________________________
Printed Name: ______________________________
Title: ____________________________________

A.G. WASSENAAR, INC.

PROFESSIONAL SERVICES AGREEMENT

1. Definitions

a. "Client" shall mean the person, firm, or corporation identified in the A. G. Wassenaar, Inc. Proposal for whom Services are to be performed.
b. "AGW" shall mean A. G. Wassenaar, Inc., a privately held company, and each of its officers, directors, owners, employees and subcontractors, acting within the scope of their employment for A. G. Wassenaar, Inc.
c. "Client Order" shall mean the purchase order, request, authorization, or other notification, and addition or modification thereto whereby Client indicates its desire for AGW to furnish Services.
d. "AGW Proposal" shall mean the letter, proposal, quotation, or other modification, including any response to the Client Order, wherein AGW offers to furnish Services.

2. Equipment and Access to Site

a. The Client will provide AGW with permission to enter the site unless otherwise agreed upon. The Client will also provide AGW with the place and manner of entry to complete exploration. AGW will use diligence and take reasonable precautions to minimize damage from use of equipment. However, AGW has not included in its fee the restoration of property, land or landscape. The Client agrees to hold AGW harmless from any loss or claim suffered as a result of entry on land for the purpose of exploration.
b. If utilities/structures exist, i.e., gas, electric, telephone, cable, sewer, storm, water, tanks, pipes, wires, sprinkler lines, etc., in the general area of exploration, the Client will provide AGW with a site plan showing utility/structure locations. AGW will use diligence and reasonable caution to avoid utilities/structures shown on the plan. The Client agrees to indemnify and hold AGW, its employees and subcontractors harmless for loss or claim resulting from inaccuracy of plans or lack of plans for utilities/structures.
c. The Client agrees to release, indemnify and hold AGW harmless for any claims arising out of errors in the accuracy of utility locates provided by others. Disruption/damage to underground utilities/structures not provided, or inaccurately provided, to AGW will be the responsibility of the Client.

3. Responsibility For Services

a. Standard of Care. AGW shall perform its services in a manner consistent with that degree of knowledge and skill ordinarily used by members of the same profession practicing at the same time under the same or similar circumstances. Client acknowledges that the Services provided for in the Agreement may require AGW to make decisions based on experience and engineering judgment, rather than on precise scientific or empirical criteria. AGW makes no other representations, either express or implied, as to the findings, recommendations, plans, specifications, professional advice, or other services provided under this Agreement.
b. Limitation of Liability. Notwithstanding any other provision of this Agreement, the total liability of AGW and its employees to Client for any and all services provided to Client, under any legal theory, shall not in any event exceed the total compensation received by AGW or the sum of $25,000, whichever is greater. The limitation in this paragraph shall apply to AGW, its officers, directors, shareholders, agents and employees in the aggregate.
c. In the course of performance of its Services, AGW may rely upon the accuracy and completeness of the information supplied by Client, Client's contractors or consultants, or information available from generally accepted reputable sources, without independent verification.
d. The Client agrees that AGW has been engaged to provide technical professional services only, and that AGW does not owe a fiduciary responsibility to the Client.
e. If construction observations are included in the Services, AGW's services during construction shall be limited to observation and testing of the contracted phase of construction. AGW shall not be responsible for constant or exhaustive inspection of the work, the means and methods of construction or the safety procedures employed by Client's contractor. Performance of construction observation services does not constitute a warranty or guarantee of any type, since even with diligent observation, some construction defects, deficiencies or omissions in the Contractor's work may occur undetected. Client shall hold its contractor solely responsible for the quality and completion of the Project, including construction in accordance with the construction documents. Any duty hereunder is for the sole benefit of the Client and not for any third party, including the contractor or any subcontractor. Client, or its designees, shall notify AGW at least twenty-four (24) hours in advance of any field tests and observations required by the construction documents.
f. It is understood by the parties that the existing or constructed building may, as a result of construction, use, maintenance, operation or occupation, contain or be caused to contain mold substances which can present health hazards and result in bodily injury, property damage and/or necessary remedial measures and costs. AGW shall not be responsible for the discovery or remediation of any mold on the Project. Client agrees to release, indemnify and hold AGW harmless from and against all claims, costs, liabilities and damages, including reasonable attorneys' fees and costs, arising in any way from the existence of mold as a result of the use, maintenance, operation, or occupation of the completed Project. Client further agrees to include in the contract for construction a provision whereby the contractor shall defend, indemnify and hold AGW harmless from any claims arising in any way from the existence of mold as a result of the contractor's workmanship or construction means, methods, techniques, sequencing or procedures including without limitation, the failure to protect materials from moisture during the construction process. In this regard, Client recognizes AGW is providing geotechnical engineering services and is providing no input into detection or prevention of mold growth.

3. Responsibility For Services (continued)

g. Hazardous Materials

1. In the event that samples collected by AGW or provided by Client or wastes generated as a result of Project site investigation activities contain or potentially contain substances or constituents which are or may be hazardous or detrimental to health, safety, or the environment as defined by federal, state, or local statutes, regulations, or ordinances, including but not limited to samples or wastes containing Hazardous Materials, said samples or wastes remain the property of the Client and the Client shall have responsibility for them as generator. If set forth in the Proposal, AGW will, after completion of testing and at Client's expense, either (1) return said samples and waste to Client or (2) using a manifest signed by Client as generator, have said samples and/or wastes transported to a location selected by Client for disposal.
2. Client agrees to pay directly all costs associated with the storage, transport, and disposal of said samples and/or wastes. Unless otherwise agreed upon in the applicable Proposal, AGW shall not transport, handle, store or dispose of waste or samples or arrange or subcontract for waste or sample transport, handling, storage, or disposal.
3. Client recognizes and agrees that AGW is working as a bailee and at no time assumes title to said waste or samples or any responsibility as generator of said waste or samples.

h. Client recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program, implemented with appropriate equipment and experience by personnel under the direction of a trained professional functioning in accordance with the standard of care may fail to detect certain hidden conditions. For similar reasons, actual environmental, geological, and technical conditions that AGW properly inferred to exist between sampling points may differ significantly from those that actually exist. The passage of time also must be considered, and the Client recognizes that due to natural occurrences or direct or indirect human intervention at the Site or distance from it, actual conditions may quickly change. The Client realizes that nothing can be done to eliminate these risks altogether and that the Services included in this Agreement are those which the Client agreed to or selected in light of his/her own risk preferences and other considerations.

4. General Indemnity

Client agrees to indemnify and hold harmless AGW and its consultants, agents, directors, officers, and employees from and against all claims, damages, losses, and expenses, direct and indirect, and consequential damages, including but not limited to attorney fees and all costs of any kind associated with any claim, loss, litigation, mediation, or arbitration, arising out of or resulting from the performance or nonperformance of the work by AGW, or claims against AGW arising from the work of others, or related to or based upon, the actual, alleged, or threatened discharge, dispersal, release, or escape of hazardous chemicals and materials, or from any obligation to test for, study, monitor, report, clean up, remove, abate, contain, treat, detoxify, or neutralize such hazardous chemicals and materials. The term hazardous chemicals and materials shall include without limitation asbestos. This indemnification shall apply to the fullest extent permitted by law regardless of any action or omission (active, passive, or comparative negligence included) on the part of AGW. In the event of any applicable law limiting the enforceability of this provision, the provision shall be construed so as to provide the maximum protection permitted under the law.

5. Certificate of Review

Prior to asserting any claim against AGW, Client agrees to consult with a then currently practicing geotechnical engineer and to obtain a written, signed and stamped certificate from said engineer stating that he or she has reviewed all written materials produced by AGW to Client for the project at issue and has concluded that a claim that AGW fell beneath the standard of care for practicing geotechnical engineers in Colorado has merit. Client agrees to provide AGW a copy of said certificate prior to asserting any claim.

6. Corporate Protection

It is intended by the parties to this Agreement that AGW's services in connection with the Project shall not subject AGW's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the AGW, a Colorado corporation, and not against any of AGW's individual employees, owners, officers or directors.

7. Consequential Damages

AGW and Client shall in no event be liable, in contract, tort, or otherwise (including negligence, warranty, and strict liability), for any special, indirect, or consequential damages, including specifically but without limitation, loss of profits or revenue, loss of full or partial use of any equipment or facility, cost of capital, loss of goodwill, claims of customers, or similar damages.

8. Precedence and Divisibility

The provisions of the AGW Proposal and this Professional Services Agreement shall fully govern any Services furnished by AGW and shall prevail over and render void any inconsistent or conflicting provision of the Client Order. If any term, condition, or provision of this Contract is declared void or unenforceable, or limited in its application or effect, such event shall not affect any other provision hereof and all other provisions shall remain fully enforceable.

9. Entire Agreement

This Contract contains the entire agreement between the parties as to the Services rendered hereunder. All previous or contemporaneous agreements, representations, warranties, promises, and conditions relating to the subject matter of this Agreement are superseded by this Agreement.

10. Dispute Resolution

Prior to the initiation of any legal proceedings, the parties to this Agreement agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The Party seeking to initiate mediation shall do so by submitting a formal, written request to the other party to this Agreement. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under the laws of the State. Client and AGW shall share the cost of the mediator equally.

11. Statute of Limitations and Repose

Causes of action between the parties to this Agreement shall be deemed to have accrued and the applicable statutes of limitations and repose shall commence to run not later than the date of the last services provided by AGW for the project at issue.

12. Force Majeure

AGW shall have no liability for any failure to perform or delay in performance of the Services caused by circumstances beyond its reasonable control, including, but not limited to, strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, labor disturbances, delays in transportation or inability to obtain material or equipment.

13. No Third Party Beneficiaries

This Agreement gives no rights or benefits to anyone other than the Client and AGW and this Agreement has no third-party beneficiaries.

14. Applicable Law

The law of the State of Colorado shall govern the validity of the Agreement, including these general terms and conditions and its interpretation and performance.

15. Work Product

Services provided under this Agreement, including all reports, information, recommendations, or opinions ("Reports") prepared or issued by AGW, are for the exclusive use and benefit of Client or its agents in connection with this Project, are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client or its agents for any purpose other than the construction of the Project. Client will not distribute or convey such Reports to any other persons or entities without written permission from AGW. Client shall indemnify AGW from any claims arising or related to unauthorized distribution. Any use of the Reports by a third party shall constitute the third party's acceptance of these terms and conditions. AGW's Reports, boring logs, maps, field data, drawings, test results and other work products are part of AGW's professional services, do not constitute goods or products and are copyrighted works of AGW. However, such copyright is not intended to limit the Client's use of its work product in connection with the construction of the Project. The Client agrees to waive any and all claims against AGW and to defend, indemnify and hold AGW harmless from and against any and all claims, losses, liabilities and damages arising out of or resulting from the unauthorized use, reuse or alteration of AGW's designs, drawings and specifications.

16. Certifications

AGW shall sign certifications only if (a) AGW approves the form of such certification prior to the commencement of Services, (b) the subject matter of such certification is included in AGW's Services, (c) the certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied. Any certification shall not relieve any entity of its obligations.

17. Electronic Files

The Client recognizes that data, plans, specifications, reports, documents or other information recorded on or transmitted as electronic media are subject to undetectable alteration, either intentional or unintentional due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the electronic documents provided to the Client are for informational purposes only and are not intended as an end-product. AGW makes no warranties, either expressed or implied, regarding the fitness or suitability of the electronic documents. Accordingly, the Client agrees to waive any and all claims against AGW and AGW's consultant's relating in any way to the unauthorized use, reuse or alteration of the electronic documents. In no event shall AGW be liable for any loss of profit or any damages associated with use of this information.

18. Payment

Client shall pay invoices upon receipt. Invoices not paid within thirty (30) days of the invoice date shall be subject to a late payment fee of 12% per month from the date of invoice. Additionally, AGW may upon five (5) days' notice to Client, suspend all Services until paid in full and may terminate the Agreement

Civil Engineering
Surveying
Water Resources Management
Construction Management

May 11, 2023 **Revised May 12, 2023**

Mr. Daniel Frank
Centre Communities
5950 South Willow Drive, Suite 225
Greenwood Village, CO 80111

RE: PROPOSAL FOR CONSTRUCTION STAKING AND SURVEYING SERVICES
HARVEST CROSSING SUBDIVISION FILING NO. 1 – PHASE 1
AURORA, COLORADO

Dear Mr. Frank:

We appreciate the opportunity to submit a proposal to provide construction staking and surveying services to Centre Communities as, Owner of the subject property. Services are in connection with the engineering plans for the proposed Harvest Road Phase 1 improvements in Aurora, Colorado. Manhard Consulting offers to provide the following services for fees as detailed below:

A. CONSTRUCTION STAKING

1. HORIZONTAL AND VERTICAL CONTROL

Establish horizontal and vertical control within the development for the construction staking services. Recover the subject control and site benchmarks. Additional fees shall be incurred if the existing control is not found, is disturbed, or determined to be outside of acceptable positional tolerances. Control map will be provided to the Client.

LUMP SUM FEE $1,500

2. EROSION CONTROL STAKING

One set of line stakes shall be set for the silt fencing at 100’ intervals and additional stakes at points of geometric change. Silt fence will be set for horizontal position only. It will be the contractor’s responsibility to utilize the stakes to construct the erosion control measures in accordance with the approved plans. This fee includes one site visit.

LUMP SUM FEE $2,000

3. ROADWAY SUB-EXCAVATION STAKING

One (1) set of line and grade stakes shall be set for 2,243 LF of roadways as defined by the soils report in accordance with the approved engineering plans. Stakes will be set at a 1:1 slope offset to the bottom of excavation 1-foot behind back of curb, with stories across the roadway. It will be the earthwork contractor's responsibility to use said stakes to sub-excavate the site as shown on the plans. This fee includes two site visits.

LUMP SUM FEE $1,700

4. ROADWAY SUB-EXCAVATION GRADE CHECK

As the roadways achieve the required sub-excavation depth, the Client or Client's contractor shall request Manhard to survey the sub-excavated area for horizontal and vertical position. Manhard will not certify as to the adequacy of the sub-excavation achieved, but only record the depth attained. At the completion of the sub-excavation construction, a final map will be provided to the Client sharing the survey results. Budgets are subject to increase based on contractor performance. This fee includes three site visits.

LUMP SUM FEE $2,200

5. ROADWAY FINE GRADE STAKING

One set of line and grade stakes will be set for the 3,370 LF of roadway corridor grading with stakes set at right of way with cut and fills to top of curb elevations. In addition, story stakes will be marked reading from one side of roadway to the opposite side. It will be the earthwork contractor's responsibility to transition the stakes for use with the roadway fine grade check. This fee includes three site visits.

LUMP SUM FEE $2,700

6. ROADWAY FINE GRADE CHECK

Upon completion of the roadway fine grading the Consultant shall check the grading to a tolerance of 0.2'. For any spot checks not within that tolerance a correction stake will be provided. Any additional checks will be invoiced on an hourly rate basis. This fee includes four site visits.

LUMP SUM FEE $2,400

7. DETENTION POND STAKING – POND A

A. One set of rough grade stakes will be set for pond grading and private temporary swales. Slope stakes will be set to the finished dirt grades at the perimeter of the pond/swales with stories to the bottom.

B. Line and grade stakes will be set at the outlet structure, forebay, stilling basins, trickle channel, overflow wall, and maintenance trail.

C. One set of fine grade stakes will be set for pond grading and private temporary swales. Slope stakes will be set to the finished dirt grades at the perimeter of the pond/swales with stories to the bottom.

The fee for these services includes six site visits.

LUMP SUM FEE $5,500

8. DETENTION POND STAKING – INTERIM WATER QUALITY POND

A. One set of rough grade stakes will be set for pond grading and private temporary swale. Slope stakes will be set to the finished dirt grades at the perimeter of the pond/swale with stories to the bottom.

B. Line and grade stakes will be set at the outlet structure, stilling basin, trickle channel, overflow wall, and maintenance trail.

C. One set of fine grade stakes will be set for pond grading and private temporary swale. Slope stakes will be set to the finished dirt grades at the perimeter of the pond/swale with stories to the bottom.

The fee for these services includes five site visits.

LUMP SUM FEE $5,000

9. SANITARY SEWER STAKING

One set of line and grades stakes shall be set for up to 83 LF of sanitary sewer at 25-foot intervals for the first 100 feet and at 50-foot intervals thereafter from each manhole. Manholes shall be staked with the approximate rim finished grade. Concurrently, the service lateral locations shall be staked for the main line, wye, and service termination within the lot. All stakes will be marked with a cut to the flowline of the sewer pipe. This fee includes one site visit.

LUMP SUM FEE $500

10. <u>WATER LINE STAKING</u>

One set of line and grade stakes shall be set for up to 674 LF of water lines. Stakes will be set at 50-foot intervals. Gate valves, bends, and tees will be staked. Fire hydrants will be staked with offsets parallel with the property lines and graded to the adjacent top of curb. The contractor is responsible for any adjustments to the flange elevation with respect to top of curb grade. This fee includes one site visit.

LUMP SUM FEE $1,100

11. <u>STORM SEWER STAKING</u>

One set of line and grade stakes shall be set for up to 1,224 LF of storm sewer and the corresponding inlets and manholes. Stakes will be set at 25-foot intervals with grades marked to the flowline of the pipe. Inlets will have the four corners staked and the manholes will be staked with two offsets. All stakes will be marked with a cut to the flowline of the sewer pipe. This fee includes two site visits.

LUMP SUM FEE $2,000

12. <u>CURB & GUTTER STAKING</u>

One set of line and grade stakes shall be staked for 1,019 LF of curb and gutter. Stakes will be set at 50-foot intervals for main roadways and 25-foot intervals in horizontal and vertical curves with additional stakes being set at PCs, PTs. Stakes will be set at a 3-foot offset to the top back of curb with grades marked to finished concrete grade at the top of curb. Cross pans will be set at an agreed upon offset to center line of pan and marked to finished concrete grade. Handicap ramps will be staked with one centerline stake and graded to the top of curb. This fee includes one site visit.

LUMP SUM FEE $1,200

13. <u>PAVEMENT STAKING</u>

One set of line and grade stakes shall be staked for 486 LF of pavement. Stakes will be set at 50-foot intervals for main roadways and 25-foot intervals in horizontal and vertical curves with additional stakes being set at PCs, PTs. Stakes will be set at a 3-foot offset to the edge of pavement with grades marked to finished grade at the edge of asphalt. This fee includes one site visit.

LUMP SUM FEE $800

SECTION A SUBTOTAL $28,600

B. RECORD DRAWINGS

1. SANITARY SEWER

At the completion of the sanitary sewer construction the Consultant shall survey each manhole and establish elevations for each rim and invert. Survey data will be provided to the engineer of record for preparation of a record drawing in accordance with municipal requirements. This fee does not include preparation of a record drawing plan set.

LUMP SUM FEE $300

2. WATER LINE

At the completion of the water line construction the Consultant shall review the location of the fire hydrants and valves. Survey data will be provided to the engineer of record for preparation of a record drawing in accordance with municipal requirements. This fee does not include preparation of a record drawing plan set.

LUMP SUM FEE $500

3. STORM SEWER

At the completion of the storm sewer construction the Consultant shall survey each manhole and inlet and establish elevations for each rim and invert. Survey data will be provided to the engineer of record for preparation of a record drawing in accordance with municipal requirements. This fee does not include preparation of a record drawing plan set.

LUMP SUM FEE $800

4. PUBLIC STREETS

At the completion of street construction (final pavement lift), the Consultant shall survey the top of curb, flow line and center crown elevations at 50-foot intervals. Survey data will be provided to the engineer of record for preparation of a record drawing in accordance with municipal requirements. This fee does not include preparation of a record drawing plan set.

LUMP SUM FEE $1,200

5. DETENTION POND CERTIFICATIONS

At the completion of the grading operations the Consultant shall survey the detention ponds to verify the as-constructed slopes and storage volumes. This fee does not include preparation of a record drawing plan set.

LUMP SUM FEE $2,600

SECTION B SUBTOTAL $5,400

C. ADDITIONAL SERVICES

Re-staking, additional site visits due to out of sequence work, out of scope tasks, project delays, additional meetings with the Client, municipalities, or contractors shall be on a time and material basis, portal to portal, upon authorization from the client.

TIME AND MATERIAL

FEE SUMMARY

SECTION A - SUBTOTAL	**$28,600**
SECTION B - SUBTOTAL	**$5,400**
SECTION C - SUBTOTAL	**TIME AND MATERIAL**
TOTAL ESTIMATED FEES	**$34,000**

ASSUMPTIONS

Line and grade stakes shall be set one time only. Client shall notify Manhard that stakes shall be needed at least two (2) working days in advance of starting work. Any and all required re-staking will be performed by Manhard as an additional service.

Civil drawings will be provided to our office electronically in AutoCAD format and shall include all surface files. All computer-generated drawings and other information (herein referred to as data) received by Manhard Consulting will be assumed to be the final product, with dimensions and elevations shown to be accurate.

We have included “Exhibit A”, which details services not included in the scope of this Proposal. If you would like to add any of the listed additional services, please notify us and we will revise this Proposal accordingly.

The terms of the attached “General Terms & Conditions” dated January 1, 2023 which Client hereby acknowledges receiving, are incorporated and made a part of this Proposal. The lump sum fees for all services to be completed that are not authorized to begin by December 31, 2023 will be increased by 5 percent per annum. If the above is acceptable, please have this Proposal executed. We will begin work as soon as we receive an executed copy of this Proposal. This Proposal will be null and void if not accepted by July 31, 2023.

Thank you again for the opportunity to submit this Proposal. Should you have any questions, please do not hesitate to contact us.

Yours truly,

MANHARD CONSULTING

James M. Roake, P.L.S
National Director of Land Surveying

Jeromy M. Wood
Field Operations Manager

The undersigned is the (a) _____actual owner of record of the property; (b) ______authorized agent of the owner of the property; (c) __________ contract purchaser of the Property; (d) ________ general contractor (e) _________uncertain

If (b), (c), (d) or (e) is checked, the property owner's name and address is _____________________.

ACCEPTED: **CENTRE COMMUNITIES**

By: ___________________________
(Authorized Representative)

____
(Printed Name)

TITLE: ___________________________

DATE: ___________________________

GENERAL TERMS AND CONDITIONS

JANUARY 1, 2023

1. **<u>ONE INSTRUMENT/INCONSISTENCIES</u>** – These GENERAL TERMS AND CONDITIONS, and the Manhard PROPOSAL to which these terms are attached (collectively this “Agreement”) shall be deemed one instrument. Wherever there is a conflict or inconsistency between the provisions of these GENERAL TERMS AND CONDITIONS, the PROPOSAL, and any plans or specifications, as applicable, the provisions provided for in these GENERAL TERMS AND CONDITIONS shall, in all instances, control and prevail. These GENERAL TERMS AND CONDITIONS shall apply to the work provided in the PROPOSAL to which this is attached or an amendment or modification, including an AGREEMENT FOR ADDITIONAL SERVICES. Client’s authorization to Manhard to commence the performance of the services under this Agreement shall be deemed as Client's acceptance of these GENERAL TERMS AND CONDITIONS.

2. **<u>ENTIRE AGREEMENT</u>** – These GENERAL TERMS AND CONDITIONS, the PROPOSAL, and any plans or specifications represent the entire Agreement between the Parties and supersedes any and all prior oral or written understandings between the Parties. Changes to these GENERAL TERMS AND CONDITIONS shall only be binding when in writing and agreed to by both parties.

3. **<u>REMEDIES</u>** – All disputes between relating to this Agreement or the Project (as defined in the Proposal) shall first be submitted to mediation with a mediator selected by the Parties. The costs of the mediator shall be split evenly between Client and Manhard. If the Client and Manhard cannot agree on a mediator, then each of Client and Manhard shall nominate a mediator and the two nominated mediators shall select the ultimate mediator. Client and Manhard shall include a similar mediation provision in all of their respective agreements with other parties regarding the Project and will require all such other persons or entities to include a similar mediation provision in all agreements with their respective subcontractors, subconsultants, suppliers and fabricators. Such mediation shall be a condition precedent to a party filing any judicial or other proceeding against the other, except with regard to delinquent fees owed to Manhard.

No claim can be made for professional negligence, either directly or by way of cross complaint against Manhard, unless Client has first provided Manhard with a written certificate of merit executed by an independent consultant currently practicing in the same discipline as Manhard, and licensed in the state the Project is located in. The certificate of merit should contain the name and license number of the certifier, the specific acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances, and the basis for the certifier’s opinion. The certificate of merit shall be provided to Manhard not less than thirty (30) calendar days prior to presentation of any claim for any mediation or judicial proceeding.

4. **<u>AUTHORIZATION TO SIGN</u>** – The person signing this Agreement represents and warrants that he/she is signing this Agreement on behalf of the Client and is authorized to enter into this Agreement on the Client’s behalf.

5. **<u>BREACH AND COST OF COLLECTION</u>** – In the event Client breaches the terms of this Agreement, Manhard shall be entitled, in addition to the specific remedies provided for in this Agreement, to pursue all remedies available at law or in equity. Client further agrees that Manhard shall be entitled to recover all costs incurred in enforcing any provision of this Agreement, including court costs and reasonable attorney’s fees. All payments received from the Client will be credited first to interest, then to the cost of enforcement, and then to the amount due to Manhard

6. **<u>CHANGES IN REGULATORY ENVIRONMENT</u>** – The services provided by Manhard under this Agreement were determined based upon the applicable municipal, county, state and/or federal regulations, codes, laws, and requirements that were in existence on the date of this Agreement. Any material additions, deletions, or changes in the regulatory environment, which require an increase in the scope of services to be performed, will be an Additional Service. Client and Manhard expressly acknowledge that the time and duration of public and governmental reviews and approvals is uncertain and outside their respective control. In the event of prolonged or excessive public or governmental review, Client and Manhard shall collaborate and negotiate in good faith for a modification of applicable schedule and fees.

7. **<u>CONTROLLING LAW</u>** – This Agreement is to be governed by the laws of the State of Illinois. The venue for any action arising out of this Agreement shall be the state of Illinois.

8. **<u>CURE PERIOD</u>** – If during the project term, Client observes or becomes aware of any improper service which has been provided by Manhard, Client agrees to immediately notify Manhard of the same, in writing. Manhard shall then have five working days to cure, or begin to cure in a diligent manner, such improper service before Client may exercise its rights under any default and remedy provision provided for in this Agreement, including the right to take corrective action prior to the termination of the cure period. If Client fails to notify Manhard of any defects within thirty (30) working days of learning of the defects, any objections to Manhard’s work shall be waived. Manhard will not accept any backcharges unless Client has complied with the foregoing and allowed Manhard the opportunity to cure any problem.

9. **<u>DELAYS</u>** – Client agrees that Manhard shall not be responsible for damages arising directly from any delays for causes beyond Manhard’s control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes, severe weather disruptions or other natural disasters; fires, riots, war, pandemics, epidemics or other emergencies or acts of God; failure of any government agency to act in a timely manner; failure of performance by the Client or the Client’s contractors or consultants; or discovery of any hazardous substances or differing site conditions. In addition, if delays resulting from any such causes increase the cost or time required by Manhard to perform its services in an orderly and efficient manner, Manhard shall be entitled to an equitable adjustment in schedule and/or compensation.

10. **<u>ENGINEER’S OPINION OF PROBABLE COST</u>** – Manhard’s Opinions of Probable Cost provided for herein, if applicable, are to be made on the basis of Manhard’s experience and qualifications and represents Manhard’s judgment as an experienced and qualified professional engineer generally familiar with the construction industry. However, because Manhard has no control over the cost of labor, materials, equipment, or services furnished by others, the Contractor’s methods of determining prices, or competitive bidding or market conditions, Manhard cannot and does not warrant, represent or guarantee that proposals, bids or actual construction cost will not vary from Manhard’s Opinions of Probable Cost. If Client wishes greater assurance as to probable construction cost, Client shall employ an independent cost estimator. The parties acknowledge that the Project design will evolve through the completion of the Project and is subject to outside factors, including, but not limited to, permit approval and review. Client shall carry sufficient contingencies in both budget and schedule to reasonably account for such design evolution and outside factors.

11. **INDEMNITY** – To the fullest extent permitted by law, the Client shall waive any right of contribution and shall indemnify and hold harmless Manhard and its employees from and against claims, damages, losses, and expenses, including reasonable attorneys' fees, to the extent caused by Client's negligence or the negligence of Client's agents. This indemnity shall not require the Client to indemnify Manhard for the negligent acts of Manhard or its agents.

To the fullest extent permitted by law, Manhard shall waive any right of contribution and shall indemnify and hold harmless the Client, and its employees from and against claims, damages, losses, and expenses, including reasonable attorneys' fees, to the extent caused by Manhard's negligence or the negligence of Manhard's agents. This indemnity shall not require Manhard to indemnify the Client for the negligent acts of the Client or its agents.

12. **MANHARD'S INSURANCE COVERAGE** – Before work is commenced on the site, and throughout the duration of the services performs, Manhard shall maintain the following insurance coverage:

a. Workmen's compensation and occupational disease insurance covering all employees in statutory limits who perform any obligations assumed under Contract.
b. Commercial general liability insurance covering operations under contract; the limits for bodily injury or death not less than $1,000,000 for each occurrence.
c. Automobile liability insurance on all self-propelled vehicles used in connection with the Project, whether owned, non-owned or hired; public liability limits of not less than $1,000,000 for each accident.

At the Client's request, Manhard shall (i) provide a Certificate of Insurance evidencing Manhard's compliance with the above requirements, and (ii) include Client as an "additional insured" on the commercial general and automobile liability policies.

13. **LIMITATION OF MANHARD'S LIABILITY** – In recognition of the relative risks of the Project to the Client and Manhard, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Manhard and Manhard's consultants, to Client, to Contractor and to any Subcontractors on the Project and to those claiming by or through Client for any and all claims, losses, costs, damages or claim expenses from any cause or liability of Manhard's or Manhard's consultants to all of those named herein with respect to the Project shall not exceed $50,000.00 or the agreed upon professional services fee, whichever is greater. Should Client desire a greater limitation of liability it is available for an additional fee as agreed to in writing by Client and Manhard.

Client acknowledges and understands that Manhard's liability exposure for potential claims related to its performance of services is being specifically limited by this Agreement, and that Client's potential recovery in a claim situation is limited to the amount herein. Client agrees that based upon Manhard's fee and services, it is unreasonable to hold Manhard responsible for liability exposure greater than the set limit.

14. **INFORMATION TO BE PROVIDED TO MANHARD** – Client agrees to provide Manhard with such site information as may be needed to enable Manhard to perform its services. Such information may include but shall not be limited to: latest plat of record; current title report and the documents contained therein; previous reports; title search report/chain-of-title documents; copies of environmental permits, registrations, liens, or cleanup records for the property; building plans and specifications; location, elevation and sizes of existing gas, telephone, electrical, street lighting and cable television lines on-site and off-site; boundary survey; wetland delineation; soil borings; archaeological phase 1 survey; first floor foundation plan and such other information as may be requested by Manhard, from time to time. Client shall not be responsible for providing site information which Manhard has specifically agreed to provide in its Proposal.

15. **MANHARD'S RELIANCE ON INFORMATION PROVIDED** – Manhard may rely on the accuracy and completeness of any information furnished to Manhard by or on Client's behalf. Furthermore, Client agrees to hold Manhard harmless from any engineering errors, including but not limited to, grading, earthwork analysis and off-site stormwater outlets, resulting from inaccurate site information which is provided by Client, including topographical surveys which have been prepared by consultants other than Manhard.

16. **PAYMENT** – Invoices will be submitted to the Client for payment on a monthly basis as the work progresses. Invoices are due within thirty days of rendering. Within thirty days of receipt of Invoice, Client shall examine the invoice in detail to satisfy themselves as to its accuracy and completeness and shall raise any question or objection that Client may have regarding the invoice within this thirty-day period. After sixty (60) days from receipt of invoice, Client waives any question or objection to the invoice not previously raised. If Client fails to make any payment due Manhard for services and expenses within thirty days after receipt of Manhard's invoice therefore, the amounts due Manhard will be increased at the rate of 1.0 percent per month (or the maximum rate of interest permitted by law, if less), from said thirtieth day. In addition, Manhard may, after giving notice to Client, suspend services under this Agreement until Manhard has been paid in full all amounts due for services, expenses, and charges. In the event Manhard elects to suspend its services, and after receipt of payment in full by Client, Manhard shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for Manhard to resume performance. In addition, prior to commencing such services, Manhard shall have the right, from time to time, to require Client to provide a retainer payment for services to be rendered. Manhard shall have no liability to Client for any costs or damages incurred as a result of such suspension that is caused by Client.

17. **PERMITS & FEES** – Unless the proposal specifically provides otherwise, Client shall be responsible for paying all application and permit fees and obtaining all permits. Manhard does not warrant, represent, or guarantee that the permits or approvals will be issued.

18. **RIGHTS-OF-WAY & EASEMENTS** – Client shall be responsible for obtaining (or vacating) all right-of-way, easements, real covenants and/or agreements necessary for the proper development of the property, including but not limited to right-of-way and easements which may be necessary for roadway and access improvements; stormwater conveyance and detention; sanitary sewer collection, pumping and treatment facilities; water distribution, treatment or storage facilities; and temporary construction access.

19. **SEVERABILITY** – If any clause or provision of this Agreement is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

20. **STANDARD OF CARE** – Manhard will strive to perform its services in accordance with a manner consistent with and limited to the level of care and skill ordinarily exercised by other Design Professionals in the same locale ("Standard of Care"). Manhard shall perform its services as expeditiously as is consistent with such Standard of Care and the orderly progress of the Project. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other.

21. **TERMINATION** – This Contract shall terminate at the time Manhard has completed its services for Client, or prior to that time, if one party provides to the other party written notice, whereby such termination date shall be effective seven (7) days after receipt of such notice. Client agrees to pay for all services, expenses, and charges, as agreed, which have been incurred by Manhard through the date of termination.

22. **THIRD-PARTY BENEFICIARY** – Nothing in this Agreement shall create a contractual relationship between Manhard and any outside third party. The services performed under this Agreement are solely for the benefit of Client. If Client is a contractor for the owner of the property, the parties acknowledge that Manhard is intended to be a third-party beneficiary of the construction contract entered into between owner and Client.

23. **USE OF DOCUMENTS AND ELECTRONIC DATA** – All documents (including drawings and specifications) as well as electronic data (including designs, plans or data stored in machine readable form) that are provided to Client are instruments of service with respect to the Project. Upon receipt of payment for all services performed in connection with such documents prepared under the Agreement, Manhard grants an irrevocable non-exclusive license to the Client relative to the Client's use of the documents in connection with the Project. Client agrees not to reuse or make any modification to the documents without the prior written authorization of Manhard. The authorized reproduction of the documents/electronic data from Manhard's system to an alternate system cannot be accomplished without the introduction of inexactitudes, anomalies, and errors, and therefore, Manhard cannot and does not make any representations regarding such compatibility. With respect to such reproduction or unauthorized use, Client agrees to indemnify and hold Manhard harmless from all claims, damages, losses, and expenses, including reasonable attorneys' fees and costs, arising from Client's unauthorized use, misuse, modification or misinterpretation of the documents or electronic data.

24. **WAIVER OF CONSEQUENTIAL DAMAGE** – In no event will either party be liable to the other party for exemplary, punitive, indirect, special, incidental, or consequential damages, including, but not limited to, loss of profits, revenue or benefits, loss of use of assets, related to this Agreement.

25. **MANHARD'S SITE VISITS** – If requested by Client or as required by the Proposal, Manhard shall visit the site at intervals appropriate to the various stages of construction as outlined in the Proposal in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of contractor's work. Construction staking or survey control staking is not considered a site visit. Such visits and observations by Manhard are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve inspections of the work beyond the responsibilities specifically assigned to Manhard in this Agreement, but rather are to be limited to spot checking, and similar methods of general observation of the work based on Manhard's exercise of professional judgment. Based on information obtained during such visits and such observations, Manhard shall endeavor to determine in general if such work is proceeding in accordance with the contract documents and Manhard shall keep Client informed of the progress of the work.

The purpose of Manhard's visits to the site will be to enable Manhard to better carry out the duties and responsibilities assigned to and undertaken by Manhard hereunder including, but not limited to, visits during the Construction Phase and the Surveying Phase. Manhard shall not, during such visits or as a result of such observations of work in progress, supervise, direct or have control over the work, nor shall Manhard have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by contractor(s), for safety precautions and programs incident to the work, for any failure of contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to the furnishing and performing the work or authority to stop the work. The means, methods, techniques, sequences, and procedures of construction shall be the sole responsibility of the contractor(s). Accordingly, Manhard neither guarantees the performance of any contractor(s) nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract documents. Should the Client determine that such service is necessary, Manhard will provide such services as the resident project representative as an Additional Service.

Manhard shall not have the authority to instruct any contractor to suspend or terminate its work on the Project. Manhard shall not be responsible for the acts or omissions of any contractor(s), or of any subcontractor(s), any supplier(s), or of any other person or organization performing or furnishing any of the work.

Manhard shall have no responsibility for job site safety on the Project. The contractor and the Subcontractor's shall have full and sole authority for all safety programs and precautions in connection with the work. Manhard shall have no authority to take action whatsoever on the site regarding safety precautions and procedures.

26. **DESIGN WITHOUT CONSTRUCTION ADMINISTRATION** – It is understood and agreed that Manhard's basic services under this Agreement do not include project observation or review of the Client's performance or any other construction phase services, and that such services will be provided for by the Client. The Client assumes all responsibility for interpretation of any contract documents and for construction observation, and the Client waives any claims against Manhard for additional costs or delays that may be in any way connected thereto. In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Manhard, its officers, directors, employees and subconsultants (collectively, Manhard) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to any contract documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of Manhard If the Client requests in writing that Manhard provide any specific construction phase services and if Manhard agrees in writing to provide such services, then Manhard shall be compensated for Additional Services as provided in Exhibit A.

27. **STATUTE OF LIMITATIONS AND REPOSE** – All legal actions by either party against the other arising out of the Agreement or services performed are barred after five (5) years from completion of the services, or five (5) years from the termination of the Agreement, whichever is sooner. If the five (5) year duration is shorter than the shortest duration permitted by law, then the shortest duration permitted by law applies.

28 **NON-SOLICITATION –** Manhard and Client agree for the term of this Agreement and continuing for a period of one (1) year thereafter, neither party shall (a) directly or indirectly solicit or entice any employee of either party to terminate his or her employment relationship, and/or (b) employ any employee without express written consent of the other party. Damages shall be the amount of fees or $100,000, whichever is greater.

29. **CONSTRUCTION STAKING** – If Manhard is to provide construction staking as required by the Proposal, then line and grade stakes shall be set one time and one time only under the provisions of this Agreement. Client shall notify Manhard that stakes shall be needed at least two (2) working days in advance of starting work. Client to provide all required geometric data, including but not limited to: points of intersection, curvature and tangent; property corners along the rights-of-way; building corners for mass grading operations when appropriate; and other "key" points as necessary, prior to requesting construction staking if engineering is not provided by Manhard.

30. **RECORD DRAWINGS** – If Manhard is to prepare record drawings as required by the Proposal, then the information submitted by the Contractor and incorporated by Manhard into the record documents will be assumed to be reliable, and Manhard will not be responsible for the accuracy of this information, nor for any errors in or omissions in the information provided by the Contractor which may appear in the record documents as a result, and Client will hold Manhard harmless for any such errors or omissions.

EXHIBIT A
ADDITIONAL SERVICES

Additional services (including, but not limited to those listed below) shall be performed by Manhard, if requested, at an additional cost ("Additional Services"). The following services or items are not included within the scope of work outlined in this PROPOSAL to which this is attached unless specifically set forth therein. Such additional services shall be provided either for an agreed upon Lump Sum Fee or on a Time and Material Basis, subject to the rates as listed below:

SCHEDULE OF TIME AND MATERIAL RATES FOR 2023

CATEGORY	CURRENT HOURLY RATES
National Director of Land Surveying	$195.00
Survey Manager	$180.00
Survey Project Manager	$165.00
Project Surveyor	$145.00
Staff Surveyor	$125.00
Field Operations Manager	$120.00
High Definition Scanning Technician	$125.00
High Definition Scanner	$90.00
UAV Technician	$125.00
UAV	$50.00
1-Person Crew	$160.00
2-Person Crew	$205.00
3-Person Crew	$250.00
Construction Manager	$140.00
Administrative Assistant	$75.00

	REIMBURSABLES
Mileage	$0.55/mile
Printing – Paper (in-house)	$0.15/sf
Printing – Vellum (in-house)	$1.75/sf
Printing – Mylar, Film, (in-house)	$2.50/sf

A. Overnight mail, messenger services, prints or mylars.
B. Additional services due to significant changes in general scope or character of the Project or its design including, but not limited to, changes in size, complexity, or character.
C. Services resulting from facts revealed about conditions: 1) which are different from information about such conditions that Client previously provided to Manhard and upon which Manhard was entitled to rely; or 2) as to which Client had responsibility to provide information and such information was not previously provided.