

(reserved for recording information)

DEVELOPMENT AGREEMENT

(Developer Installed Improvements)

MAPLE BROOK TOWNHOMES

AGREEMENT (the “Agreement”) dated _____, 20____, by and between the **CITY OF NORTHFIELD**, a municipal corporation under the laws of the State of Minnesota, with its principal office located at 801 Washington Street, Northfield, MN 55057-2565 (the “City”); and Maple Brook, LLC, a limited liability company under the laws of the State of Minnesota, with its principal office located at c/o Schrom Construction, Inc., 704 Parkway Avenue, Eagle Lake, MN 56024 (the “Developer”); (collectively the “parties”).

RECITALS

WHEREAS, the Developer is the fee owner of a parcel of real property located in the City of Northfield, Rice County, Minnesota, with Parcel Identification (PID) No. 22.07.3.01.069, which is legally described in Exhibit A, which is attached hereto and incorporated herein by reference, (the “Development Property”); and

WHEREAS, the Developer proposes a project consisting of a 24-unit affordable multifamily rental housing development and all related amenities and improvements to be constructed, owned and operated by the Developer on the Development Property and associated infrastructure, including an extension of Maple Street in the City and associated public improvements, including but not limited to street improvements, sanitary sewer, water main, stormwater management facilities, sidewalk and a trail on the side of Maple Street adjacent to the Development Property, grading and erosion control facilities and other improvements (the “Project”); and

WHEREAS, the Developer and the City, desire to enter into this Agreement in satisfaction of applicable City requirements and to set out the undertakings and obligations of each party from this point forward with respect to the Project and with respect to the City Approval Process, all as required by the City’s Code of Ordinances (the “Code”).

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each does hereby covenant and agree with the other as follows:

1. **PLATTING.** The Developer will be platting the Development Property as a Community In Common (CIC) known as Maplebrook Townhomes (referred to in this Agreement as the “plat”). The platted land is situated in the County of Rice, State of Minnesota. The Developer is seeking to develop the Development Property for the purpose stated above.
2. **CONDITIONS OF PROJECT APPROVAL.** The City has approved the Project on the condition that the Developer enter into this Agreement, furnishes the security required by it, records the plat with the County Recorder or Registrar of Titles within one (1) year after the City Council approves the Project financing in the form of the TIF Assistance Agreement between the City and Developer, dated _____, 2019 (the “TIF Agreement”), and submits evidence of recording the plat to the City within sixty (60) days after the date of recording.
3. **RIGHT TO PROCEED/CONDITIONS PRECEDENT.** Unless separate written approval has been given by the City, within the Development Property, the Developer may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings within the Development Property until all of the following conditions have been satisfied:
 - a. This Agreement has been fully executed by both parties and filed with the City Clerk. This Agreement shall be recorded by the Developer within sixty (60) days following execution hereof;
 - b. The necessary security has been received by the City;
 - c. The site plan for the Project on the Development Property and the plans and specifications for the Improvements related thereto have been approved and signed by the City Engineer with such conditions as required by the City Code;
 - d. The construction plans and other such plans as required by the City have been approved and signed by the City Engineer;
 - e. A certificate of public liability and property damage insurance as described in this Agreement has been filed with the City Clerk; and

- f. The City Engineer has issued a letter that all conditions have been satisfied and that the Developer may proceed.
4. **FURTHER SUBDIVISION.** The City may refuse to approve further subdivision within the plat if the Developer has breached this Agreement and the breach has not been remedied within thirty (30) days after written notice of such breach from the City. If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached this Agreement and the breach has not been remedied. Development of subsequent phases may not proceed until Development Agreements for such phases are approved by the City and executed by the parties. Sanitary sewer and water area charges referred to in this Agreement are not being imposed on outlots, if any, in the plat that are designated in an approved preliminary plat for future subdivision into lots and blocks. Such charges will be calculated and imposed when the outlots are final platted into lots and blocks.
5. **CHANGES IN OFFICIAL CONTROLS.** For two (2) years from the date of this Agreement, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the use, development density, lot size, or lot layout unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Agreement to the contrary, to the full extent permitted by state law, the City may require that any future development of the Development Property comply with any amendments to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Agreement.
6. **DEVELOPMENT PLANS.** The Development Property shall be developed in accordance with the following plans where applicable. The plans shall not be attached to this Agreement. If the plans vary from the written terms of this Agreement, the written terms shall control. The plans are:
- a. Plan A - Final Grading, Drainage and Erosion Control Plan
 - b. Plan B - Final Construction Plans and Specifications for Public Improvements
 - c. Plan C - Traffic Signing and Control Plan (for construction and final development)
 - d. Plan D - Stormwater Pollution Prevention Plan
 - e. Plan E - Wetland mitigation plan (if applicable)

f. Plan F - Landscape Plan

g. Plan G - Utility Plan

The foregoing plans and specifications shall be prepared by a competent registered professional engineer engaged by the Developer and shall be subject to the City's review and approval. The required Improvements below shall be installed in accordance with the City approved plans for such improvements and the policies, rules, regulations, standards and ordinances of the City. No work shall commence on the Project or the required Improvements until the Developer obtains a building permit for the Project and the Improvements and pays all costs and fees required in connection with the procurement of the building permit.

7. IMPROVEMENTS.

a. The Developer shall construct and install, at its sole cost and expense and subject to the terms and conditions contained herein, the following public or private improvements (the "public improvements" or "Improvements") in compliance with City approved plans and specifications prepared in accordance with all policies, rules, regulations, standards, specifications and ordinances of the City and as shown on the final construction plans and summarized below:

- i. Streets
- ii. Sanitary Sewer
- iii. Watermain
- iv. Surface Water Facilities (pipe, ponds, rain gardens, and similar improvements)
- v. Grading, Drainage and Erosion Control
- vi. Sidewalks/Trail
- vii. Street Lighting
- viii. Utilities (gas, electric, cable, telephone, etc.)
- ix. Street Signs and Traffic Control Signs
- x. Landscaping Required by the Zoning Ordinance (Street trees and tree preservation)
- xi. Surveying and Monuments Required by Minnesota Statutes
- xii. Miscellaneous Facilities or other elements defined by the guiding documents.

- b. The Improvements shall be constructed and installed in accordance with the latest versions in place at the time of this Agreement of the City Code, zoning ordinance and subdivision regulations, City standard specifications for utilities and street construction, and the City's engineering guidelines and standard detail plates, as applicable. The Developer shall submit plans and specifications that have been prepared by a competent registered professional engineer to the City for approval by the City Engineer. The City will provide field inspection and soil testing personnel, at the Developers expense, to assure an acceptable level of quality control for the construction of all public improvements and certify that the construction work meets the City's requirements, specifications, standards and approved plans. In addition, the Developer's engineer will be required to certify that the construction work meets the approved City requirements, specifications, and standards as a condition of City acceptance and provide record drawings for all Improvements. The Developer, its contractors and subcontractors, shall follow all instructions received from the City's inspectors and City Engineer to the extent applicable to comply with the approved plans and specifications, or applicable City Code or statutes for which the City inspectors have jurisdiction. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor. As required by the City, the Developer or its engineer shall schedule a pre-construction meeting at a mutually agreeable time at City Hall, or another location acceptable to the City, with all parties concerned, including the City staff, to review the program for the construction work.
- c. All labor and work shall be done and performed in a good and workmanlike manner and in conformance with the approved plans and specifications. No deviations from the approved plans and specifications will be permitted unless approved in writing by the City Engineer, which approval shall not be unreasonably withheld. The Developer agrees to furnish to the City a list of contractors being considered for retention by the Developer for the performance of the work required by this Agreement. If applicable, the contractor(s) shall have experience in the installation of municipal water and sanitary sewer mains; shall demonstrate the successful completion of at least three such installations and

municipal acceptance thereof; and shall be able to obtain the requisite performance and payment bonds for the purchase and installation of the minimum Improvements required hereby. Except as provided in Section 20 below, the Developer shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this Agreement, for which reimbursement is expected from the City, unless such work is first ordered in writing by the City Engineer as provided in the plans and specifications.

- d. The Developer shall replace or repair any damage or destruction to any property or improvements located on County or City land or in County or City streets, boulevards and rights-of-way, or adjacent private property not owned by Developer, caused by Developer, or its contractors and subcontractors, during the construction of the required Improvements and the Project. Any contaminated soils encountered during the construction of the Improvements and development on the Development Property shall be addressed as set forth in a Response Action Plan to be approved by the Minnesota Pollution Control Agency (MPCA) or other applicable agency having jurisdiction.
- e. Except as provided by the TIF Assistance Agreement between Developer and City and as provided in Section 20 below, the Developer shall be solely responsible for the costs of constructing the required Improvements. The costs of constructing the Improvements shall include the actual construction costs, the actual engineering, administration and any legal costs related thereto, and all other costs relating to the construction of the Improvements. The engineering, administration and legal costs shall include the actual outside construction engineering assistance costs and the legal costs.
- f. If this Agreement is terminated for any reason the City shall have no obligation to construct the Project or Improvements.

8. **CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION OBSERVATION.** The Developer shall pay a fee for in-house engineering administration. City engineering administration will include monitoring of construction observation, consultation with Developer and the Developer's engineer on status or

problems regarding the Project, coordination for final inspection and acceptance, Project monitoring during the warranty period, and processing of requests for reduction in security. Fees for administration services shall be:

ESTIMATED COST OF PROPOSED IMPROVEMENTS	CITY ADMINISTRATIVE COST
Up to \$150,000	3.0 percent (Minimum \$500.00)
\$150,000 to \$300,000	2.5 percent
Over \$300,000	2.0 percent

The Developer shall also deposit seven percent (7%) of the estimated construction cost to pay for construction observation and geotechnical testing performed by the City's in-house engineering staff or consulting engineer. This deposit is estimated to be \$15,957.00. If the City's costs exceed the deposit, the Developer agrees to reimburse the City within thirty (30) days of billing. Should the costs be less than the amount of the deposit, upon completion of the Improvement's, the amount of the remaining deposit shall be returned to the Developer. The Developer shall deposit the full construction observation fees with the City within ten days of approval of this Agreement. No construction of public improvements will be authorized until the construction observation fees have been paid to the City.

9. **CONTRACTORS/SUBCONTRACTORS.** City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a 25% ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the public improvements identified in this Agreement.

10. **PERMITS.** The Developer shall obtain or require its contractors and subcontractors to obtain all necessary and required permits for the Project from the Minnesota Pollution Control Agency (MPCA), Minnesota Department of Health (MDOH), and all other agencies and governmental authorities with jurisdiction over the Project and the Improvements before proceeding with construction of the Project and the Improvements. Copies of these permits shall be provided to the City Engineer, and may include but are not limited to the following:

- Minnesota Department of Health for Watermains
- NPDES Permit for Stormwater Management
- MPCA for Sanitary Sewer Extensions/Connections

- Wetlands permits as applicable
- DNR for Dewatering
- City of Northfield for Building Permits

The Developer or its engineer shall schedule a pre-construction meeting for the required Improvements with all the parties concerned, including City staff, to review the program for the construction work.

11. **TIME OF PERFORMANCE.** Except as otherwise provided in this Agreement, the Developer shall install all required improvements and other work required by this Agreement by March 31, 2021, with the exception of the final wear course of asphalt on streets. The final wear course on streets shall be installed between May 15th and October 1st the first summer after the base layer of asphalt has been in place one freeze thaw cycle. Any deficiencies in the base, asphalt, curb or other improvements in the judgment of the City Engineer must be repaired by the Developer at its own cost prior to final paving. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.
12. **LICENSE.** The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City in conjunction with this Agreement, the Project and Improvements, as applicable. The license shall expire upon the acceptance by the City of the Improvements. The City shall thereafter have the right to enter the Property to perform inspections as authorized by City Code.
13. **CONSTRUCTION ACCESS.** Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the subdivision via Maple Street. No construction traffic is permitted on the adjacent local streets other than identified herein.
14. **GRADING PLAN.** The Development Property shall be graded in accordance with the approved grading development and erosion control plan. The plan shall conform to City of Northfield requirements and specifications, City Code and applicable law. Within sixty (60) days after completion of the grading, the Developer shall provide the City with a certificate of survey/"record" grading plan certified by a registered land surveyor or engineer that all ponds, swales, and ditches have been constructed on public easements or land

owned by the City. The certificate of survey/"record" plan shall include field verified elevations of the following: a) cross sections of ponds; b) location and elevations along all swales, wetlands, wetland mitigation areas if any, ditches, locations and dimensions of borrow areas/stockpiles; c) lot corner elevations and building/house pads, d) top and bottom of retaining walls, and e) all lots with house footings placed on fill have been monitored and constructed to meet or exceed FHA/HUD 79G specifications. The Developer shall furnish the City Engineer satisfactory proof of payment for the site grading work and shall submit a certificate of survey (as constructed survey) of the Development Property after site grading is complete. Final lot grades shall be shown on the as constructed survey. Final grading shall substantially comply with the approved grading plan.

15. **EROSION AND SEDIMENT CONTROL.** Prior to initiating site grading, the erosion and sediment control plan shall be implemented by the Developer and inspected and approved by the City Engineer. The Erosion Control Plan and Storm Water Pollution Prevention Plan (SWPPP) shall be implemented by the Developer and inspected and approved by the City Engineer. Erosion and sediment control practices must comply with the Minnesota Pollution Control Agency's (MPCA) Best Management Practices and applicable MPCA NPDES permit requirements for construction activities and the Developer's SWPPP. The City may impose additional erosion and sediment control requirements if they would be necessary in the City's reasonable judgment. All areas disturbed by the excavation and backfilling operations shall be reseeded within 48 hours after the completion of the work or in an area that is inactive for more than fourteen (14) days unless authorized and approved by the City Engineer. Except as otherwise provided in the erosion and sediment control plan, seed shall be in accordance with the City's current seeding specifications, if any, which may include certified oat seed to provide a temporary ground cover as rapidly as possible. All seeded areas shall be fertilized, mulched, and disc anchored, and watered as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City Engineer, and such failure to comply is not corrected within five (5) days of written notice thereof from the City, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure

of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the City for any cost the City incurred for such work within thirty (30) days of receipt of the City's invoice, the City may draw down the letter of credit or any other security required herein to pay any costs. No development, utility or street construction will be allowed and no building permits will be issued unless the Project plans for the Development Property, as applicable, are in full compliance with the approved erosion control plan.

16. DECLARATION OF COVENANTS AND AGREEMENT FOR MAINTENANCE OF STORMWATER FACILITIES.

In order to provide stormwater management and control, to meet the City's stormwater permitting requirements, City Code and state law and regulations, as applicable, and to promote the water quality and volume control to the City's stormwater system and water bodies, the Developer and the City agree that it is reasonable for the City to require the Developer and all subsequent owners of the Development Property to construct, inspect, operate, repair, maintain and replace, at the Developer's cost and expense, City required stormwater facilities. Prior to commencement of construction of the Project and pursuant to City Code, the City and Developer shall enter into an agreement on a form reasonably acceptable to the City and containing terms and conditions as required by the City setting forth, in a recordable instrument, an agreement to establish covenants and declarations upon the Development Property for the installation of and ongoing operation, repair, maintenance and replacement of such stormwater facilities as required by applicable City Code and law at the Developer's and the Developer's successors' and assigns' cost and expense.

17. STREET MAINTENANCE DURING CONSTRUCTION AND SIDEWALKS.

The Developer shall be responsible for all street maintenance until the streets are accepted by the City. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and directing attention to detours. If and when streets become impassable, such streets shall be barricaded and closed. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage. The Developer shall be responsible for keeping streets within and without the subdivision swept clean of dirt and debris that may spill or wash onto the street from Developer's

operation. The Developer may request, in writing, that the City keep the streets open during the winter months by plowing snow from the streets prior to final acceptance of said streets. The City shall not be responsible for repairing the streets because of snow plowing operations. Providing snow plowing service does not constitute final acceptance of the streets by the City. The Developer shall contract for street cleaning as necessary to sweep within and immediately adjacent to the development. The street shall include Maple Street as determined by the City Engineer. A copy of this contract shall be approved by the City before grading is started, and shall remain in full force and effect until all construction within the Project is completed. When directed to do so by the City, the Developer shall have all streets cleaned of accumulated debris, dirt, and mud. Concrete sidewalks shall be constructed along Maple Street after the concrete curb and gutter and bituminous base course have been placed. The Developer shall close the sidewalk along Maple Street – South of Ford Street in its entirety during construction of the project. Type III Barricades shall be placed at the end of the sidewalks on Maple Street. Any sidewalk damaged (severely cracked, broken or spalled) shall be replaced by the Developer at no cost to the City. City staff shall identify those sections of sidewalk to be replaced.

18. **OWNERSHIP OF IMPROVEMENTS.** Upon completion of the work and construction required by this Agreement and acceptance of Improvements by the City, the Improvements lying within public easements and public rights-of-way shall become City property without further notice or action upon completion and City acceptance thereof. Prior to acceptance of the Improvements by the City, the Developer must furnish the following affidavits:

- a. Contractor's Certificate;
- b. Engineer's Certificate;
- c. Land Surveyor's Certificate; and
- d. Developer's Certificate;

certifying that all construction has been completed in accordance with the terms of this Agreement. The requisite forms will be furnished by the City of Northfield and are attached hereto as Exhibit B. Upon receipt of the required affidavits, the City Engineer will accept the completed public improvements. Within

sixty (60) days after the completion of the Improvements, the Developer shall supply the City with a complete set of reproducible "record" plans, an electronic file of the "record" plans in a format acceptable to the City Engineer (e.g., AutoCAD format, DWG or a .DXF file), and two complete sets of hard copy "record" plans, all prepared in accordance with City standards. Upon receipt of these documents, and the warranty documents specified in this Agreement, the City Engineer will certify acceptance of the completed public improvements.

19. **PARK DEDICATION.** Requirements for Park Dedication were satisfied with the park dedication in the Southbridge 1st Addition development. No additional dedication is required with this development.

20. **SANITARY SEWER AND WATER TRUNK UTILITY CHARGES.** The Developer is subject to sanitary sewer and water access/availability area charges for the Development Property. The Developer will be charged 75% of the unit equivalent for public housing units and housing units subsidized under any governmental program for low and moderate income housing pursuant to City Code, section 82-32 (b) (3). The developer is providing five of the twenty four units that qualify for the above-referenced credit. Based on the application of the above-referenced credit, the sanitary sewer and water access/availability area charges are as follows:

- a. Sanitary Sewer Availability Charge: The Developer shall pay a sanitary sewer availability charge of \$45,886.75. The area charge is based on the number of units in the Project and is calculated as follows: 19 units x \$2,017/unit; plus 5 units x \$1,512.75/unit = \$45,886.75. The public improvements include \$58,746.00 of eligible costs for reimbursement to the Developer for the City portion of the Trunk Sanitary Sewer installation costs associated with oversizing the infrastructure for future City use to be reimbursed by the City. Within thirty (30) days of the completion of the public improvements, the Developer shall submit to the City an invoice for reimbursement for the trunk sanitary sewer installed with the public improvements in an amount not to exceed \$58,746.00.
- b. Water Availability Charge: The Developer shall pay a watermain availability charge of \$20,042.75. The access charge is based on the number of units in the Project and is calculated as follows: 19 units x \$881/unit plus 5 units x \$660.75/unit = \$20,042.75. The public improvements include the installation of Trunk Watermain by the Developer at a cost of \$6,930.00, which are costs associated

with oversizing the infrastructure for future City use to be reimbursed by the City. Within thirty (30) days of the completion of the public improvements the Developer shall submit to the City an invoice for reimbursement for the trunk watermain installed with the public improvements in an amount not to exceed \$6,930.00.

The Developer shall pay the above sanitary sewer and water availability charges specified above herein within ten (10) days after approval of this Agreement. The City shall pay for the trunk sanitary sewer and trunk watermain oversizing on Maple Street required by this Agreement in the amounts set forth in subsections a. and b. above. City payment for such amounts will be made within 30-days of receipt of the Developer's invoice for reimbursement, which invoice shall not be submitted to the City by Developer until completion of the public improvements.

21. **SANITARY SEWER, STORM SEWER AND WATERMAIN.** The Developer shall install or contract for the installation of all public improvements in the Project related to sanitary sewer, storm sewer and watermains, as required by the City in accordance with those plans approved by the City Engineer.
22. **TRAFFIC CONTROL AND STREET NAME SIGNS.** Any street name signs, stop signs, or other directional and safety signs required by the City shall be purchased and installed by the Developer per City standards at the Developer's expense.
23. **WETLAND MITIGATION.** No wetland mitigation is planned for the site. The Developer is responsible for any undisclosed mitigation on the land, and will be required to submit any necessary security should subsequent wetlands be identified.
24. **BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.**
 - a. No Certificate of Occupancy will be issued until the grading, curbing, sidewalk and one lift of asphalt is installed in accordance with approved plans on all public streets and private drives. In addition, no Certificates of Occupancy shall be issued for any buildings until the sewer and water has been installed and tested to the satisfaction of the City Engineer, which shall not constitute final acceptance of the sewer and water utilities.

- b. Breach of the terms of this Agreement by the Developer and failure to cure such breach within thirty (30) days after written notice from the City thereof, including nonpayment of billings from the City within thirty (30) days of the date of an invoice from the City to the Developer, shall be grounds for denial of building permits, including lots sold to third parties, and the halting of all work on the Development Property.
- c. If building permits are issued prior to the acceptance of public improvements, the Developer assumes all liability and costs resulting in delays in completion of public improvements and damage to public improvements caused by the City, Developer, their contractors, subcontractors, materialmen, employees, agents, or third parties. No certificates of occupancy and no sewer and water connection permits may be issued and no one may occupy a building for which a building permit is issued on either a temporary or permanent basis until the streets and sidewalks needed for access have been paved with a bituminous surface and the utilities are accepted by the City Engineer.

25. **UNDERGROUND UTILITIES – PRIVATE.** This section covers those smaller private utilities such as gas, electric, phone, cable, etc.

- a. The Developer is responsible for the cost of installing all private utilities of any nature or kind whatsoever.
- b. The Developer shall contact the utility companies to coordinate the installation of the utilities. All utilities shall be installed underground or as otherwise approved in writing by the City Engineer.
- c. The City Engineer must approve of the final location for all private utilities. Joint trenching of the utilities is strongly encouraged. All utilities must be located in public rights-of-way or within drainage and utility easements.
- d. If any conditions set forth in this Agreement conflict with the City's utility franchise agreements, the franchise agreements shall in all cases prevail.

26. **RESPONSIBILITY FOR COSTS.**

- a. Except as otherwise specified herein, including g Section 20 hereof, the Developer shall pay all costs incurred by it and the City in conjunction with this Agreement, the grading and development of the

Development Property and the construction of the Improvements required by this Agreement, including but not limited to, all costs of persons and entities doing work or furnishing skills, tools, machinery, equipment and materials; insurance premiums; legal, planning and engineering fees; the preparation and recording of this Agreement and all easements and other documents relating to the Development Property, as applicable; all Response Action Plans, traffic studies, environmental assessments and/or engineering and other studies and reports; all permits and approvals; and all City's costs incurred pertaining to the inspection and monitoring of the work performed in connection with the Project and the construction of the Improvements and the other work done and improvements constructed on the Development Property or otherwise related to the Project.

- b. Except as provided in Section 20 above, the City shall not be obligated to pay Developer or any of its agents or contractors for any costs incurred in connection with the construction of the Improvements or the development of the Development Property. Developer agrees to defend, indemnify, and hold the City and its mayor, council members, employees, agents and contractors harmless from any and all claims of whatever kind or nature and for all costs, damages or expenses which the City may pay or incur in consequence of such claims, including reasonable attorneys' fees, which may arise as a result of the Project, this Agreement, the construction of the Improvements (except for the negligence or intentional misconduct of the City), the development of the Development Property or the acts of Developer, and its employees, agents, contractors or subcontractors, in relationship thereto.
- c. The Developer hereby covenants and agrees that Developer will not permit or allow any mechanic's or materialman's liens to be placed on the City's interest in any property that is the subject of the Project or this Agreement during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on the City's interest, the Developer shall take all steps necessary to see that it is removed within thirty (30) business days of its being filed; provided, however, that the Developer may contest any such lien provided the Developer first posts a surety bond, in favor of and insuring the City, in an amount equal to 125% of the amount of any such lien.

- d. The Developer shall reimburse the City for reasonable costs incurred in the enforcement of this Agreement, including engineering and attorneys' fees.
- e. The Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, all special assessments referred to in this Agreement. This is a personal obligation of the Developer and shall continue in full force and effect even if the Developer sells one or more units in the Project.
- f. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within thirty (30) days of the date of the City's invoice to Developer. If Developer fails to pay a required bill, then after providing the Developer with at least fifteen (15) days prior written notice, the City may draw on the Security or alternatively declare the same an event of default, and the City may thereafter assess and certify such unpaid charges to the County Auditor for collection in like manner with property taxes on the Development Property, or the City may take any other actions as may be available under this Agreement, at law, or in equity. Bills not paid within sixty (60) days shall accrue interest at the rate of eight percent (8%) per year.
- g. In addition to the charges and special assessments referred to herein, other charges and special assessments may be imposed such as but not limited to sewer availability charges ("SAC"), City water connection ("WAC") charges, City sewer connection charges, City storm water connection charges, building permit fees, which shall be paid by Developer.

27. **SPECIAL PROVISIONS.** The following special provisions shall apply:

- a. Implementation of any other recommendations listed by the City Council or City Engineer as follows:
 - i. The Developer shall have all required MPCA stormwater permits approved prior to beginning any installation of public improvements.
- b. The Developer shall post a \$200 security for the final placement of interior subdivision iron monuments at property corners. The security was calculated as follows: 1 lot(s) at \$200.00 per lot. The security will be held by the City until the Developer's land surveyor certifies that all irons have been set following site grading and utility and street construction. In addition, the certificate of survey must also

include a certification that all irons for a specific lot have either been found or set prior to the issuance of a building permit for that lot.

- c. The Developer shall be responsible for the cost of street light installation consistent with a street lighting plan approved by the City Engineer.
- d. The Developer must obtain a sign permit from the City Planner prior to installation of any subdivision identification signs.
- e. Individual buildings must comply with the overall grading plan for the site. Each individual building permit will be reviewed for compliance with the overall grading plan and is subject to review and approval of the City Engineer.
- f. Utility hook-ups are subject to review and approval by the City Engineer.
- g. The Developer must obtain approval of a Site Plan as provided by current City Code and complete the required plan review and approval thereof, as applicable.

28. MISCELLANEOUS.

- a. The Developer may not assign this Agreement without the written permission of the City Council, which consent shall not be reasonably withheld, conditioned or delayed. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots or any part of the Development Property.
- b. As applicable, in compliance with the Response Action Plan approved by the MPCA for the Development Property, the Developer shall remove and properly dispose of any environmental contamination within the Development Property.
- c. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved plans and specifications. All retaining walls identified on the development plans or by special conditions shall be constructed prior to a certificate of occupancy being issued for a building.

- d. Appropriate legal documents regarding Homeowner Association documents, covenants and restrictions, as applicable, shall be filed with the City Clerk with the Plat.
- e. Developer shall take out and maintain or cause to be taken out and maintained until six (6) months after the Project is completed and the City has accepted the public improvements, liability and property damage insurance covering bodily injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$500,000 for one person and \$1,500,000 for each occurrence; limits for property damage shall be not less than \$1,000,000 for each occurrence. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate evidencing coverage prior to the City authorizing the commencement of work on the public and private improvements specified in this Agreement. The certificate shall provide that the City must be given thirty (30) days advance written notice of the cancellation of the insurance.
- f. Third parties shall have no recourse against the City or Developer under this Agreement.
- g. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- h. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- i. This Agreement shall run with the land and shall be binding upon Developer and its successors and assigns.
- j. This Agreement will be recorded against the title to the Development Property within sixty (60) days following execution hereof. The Certificate of Compliance/Completion described in Section 36 hereof

shall be in recordable form and upon recording thereof, this Agreement will be deemed terminated and Developer released from its obligations hereunder

- k. The Developer covenants with the City, its successors and assigns, that the Developer is well seized in fee title of the Development Property and/or has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the Development Property; that there are no unrecorded interests in the Development Property; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.
- l. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.
- m. The Developer agrees to comply with all local, state and federal laws, ordinances and regulations applicable to the development of the Development Property and Improvements.
- n. The City's approval of this Agreement does not include approval of building permits for any structures to be constructed within the Development Property. The Developer must submit and the City approve building plans prior to the issuance of building permits for structures within the Development Property.

29. **DEVELOPER'S DEFAULT.** In the event of default by the Developer as to any of the work to be performed by it hereunder or the failure to comply with all terms and conditions of this Agreement, which is not cured within thirty (30) days after written notice thereof to the Developer from the City, the City may, at its option, take one or more of the following actions:

- a. Perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City, provided the Developer, except in an emergency as determined by the City, is first given notice of the work in default. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part for collection with the property taxes on the Development Property;

- b. Obtain an order from a court of competent jurisdiction requiring Developer to perform its obligations pursuant to the terms and provisions of this Agreement;
- c. Obtain an order from a court of competent jurisdiction enjoining the continuation of an event of default;
- d. Halt all development work and construction of improvements until such time as the event of default is cured;
- e. Withhold the issuance of a building permit or permits or certificates of occupancy and/or prohibit the occupancy of any structure(s) for which permits have been issued until the event of default has been cured;
- f. Draw upon and utilize the Security to cover the City's costs to correct the default, the costs to complete any unfinished Project Improvements and/or the costs to enforce this Agreement; or
- g. Exercise any other remedies which may be available to it at law or in equity.

In addition to the remedies and amounts payable set forth or permitted above, upon the occurrence of an event of default by Developer, the Developer shall pay to the City all fees and expenses, including reasonable attorneys fees, incurred by the City as a result of the event of default, whether or not a lawsuit or other action is formally taken.

30. **WARRANTY.** The Developer warrants all Improvements required to be constructed by it pursuant to this Agreement against poor material and faulty workmanship. The warranty period for streets and utilities is two (2) years and shall commence following completion and final written acceptance of the work by the City Engineer. The required warranty period for seed, trees, and landscaping is two growing seasons following installation. The Developer shall post a security in the form of either a) a warranty/maintenance bond for 100% of the cost of the portion of the Improvements required by this Agreement, or b) a letter of credit or cash escrow for 25% of the amount of the original cost of the portion of the Improvements required by this Agreement as warranty for the Improvements prior to the City authorizing the commencement of work on the public and private Improvements specified in this Agreement. The retainage from the Project securities identified in this

Agreement may also be used to pay for warranty work. The City standard specifications for utilities and street construction identify the procedures for final acceptance of streets and utilities.

31. **SUMMARY OF SECURITY REQUIREMENTS.** To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public improvements, and construction of all public improvements, the Developer shall furnish the City, at the time of approval of this Development Agreement, a cash escrow for the amount set forth below, in the form attached hereto as Exhibits C and D, as applicable (the "Security") for \$286,436.00. The amount of the Security was calculated as follows:

CONSTRUCTION COSTS:

Maple Street and Sidewalk	\$104,446
Sanitary Sewer	\$80,941
Watermain	\$29,990
Storm Sewer	\$12,572
Street Signs and Traffic Control Signs	\$1,000
Monuments	\$200
TOTAL ESTIMATED CONSTRUCTION COST	\$229,149
SECURITY ADD-ON	x 125%
TOTAL PROJECT SECURITIES REQUIRED:	\$286,436.00

This breakdown is for historical reference; it is not a restriction on the use of the Security. The escrow shall be held by United Prairie Bank. The City may draw down the Security for any violation of the terms of this Agreement that is not cured within thirty (30) days after notice thereof to the Developer from the City by presenting the escrow agent with a written demand or an affidavit signed by the City Administrator or the City Administrator's designee attesting to the City's right to draw down and receive funds under the Security. If the Security is drawn down, the proceeds shall be used to cure the default. Upon receipt of proof satisfactory to the City Engineer that work has been completed and financial obligations to the City have been satisfied, with City Engineer approval, the Security may be reduced from time to time by ninety percent (90%) of the financial obligations that have been satisfied. Ten percent (10%) of the amounts certified by the

Developer's engineer shall be retained as Security until: a) all Improvements have been completed, b) iron monuments for lot corners have been installed, c) all financial obligations to the City have been satisfied, d) the required "record" plans have been received by the City, e) a warranty security is provided as specified herein above, f) the public improvements are accepted by the City Engineer, and g) if required by the City Administrator or Code, a title insurance policy indicating that the improvements are free and clear of any and all liens and encumbrances. The City standard specifications for utilities and street construction outline procedures for Security reductions, and reductions in the Letter of Credit, cash escrow or a combination thereof, shall be considered only after underground utilities are tested and found to be satisfactory and again after the base bituminous layer has been placed.

32. **SUMMARY OF CASH REQUIREMENTS.** The following is a summary of the cash requirements under this Agreement which must be furnished at the time of approval of this Agreement, as applicable. The Developer shall not proceed with any Improvements until these cash requirements have been paid to the City:

Street Light Operating Fee	\$ 436
City Engineering Construction Observation (7%)	\$15,956
City Engineering Administration (2.5%)	\$ 5,699
City Legal Expenses (0.5%)	\$ 1,140
Sanitary Sewer Availability Charge	\$45,887
Water Availability Charge	<u>\$16,739</u>
TOTAL CASH REQUIREMENTS	<u>\$85,857</u>

Payments by City to Developer:

Sanitary Sewer Trunk Payment	\$58,746
Watermain Trunk Oversize Payment	\$ 6,930

33. **NOTICES.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: Maple Brook, LLC, c/o Schrom Construction, Inc., 704 Parkway Avenue, Eagle Lake, MN 56024. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator, or mailed to the City by

certified mail in care of the City Administrator at the following address: Northfield City Hall, 801 Washington Street, Northfield, MN 55057-2565.

34. **CONSTRUCTION MANAGEMENT.** During construction of the Improvements and the Project, the Developer and its contractors and subcontractors shall minimize impacts from construction on the surrounding neighborhood, as follows:

- a. **Definition of Construction Area.** The limits of the Project Area shall be as shown in the City approved Grading, Drainage and Erosion Control Plan. Any grading, construction or other work outside this area requires approval by the City Engineer and the affected property owner.
- b. **Parking and Storage of Materials.** Adequate on-site parking for construction vehicles and workers must be provided or provisions must be made to have workers park off site and be shuttled to the Project Area. No fill, excavating material or construction materials shall be stored in the public right-of-way, except the Maple Street extension area.
- c. **Hours of Construction.** Hours of construction, including moving of equipment shall be limited to the hours between 7 a.m. and 9 p.m. on weekdays and 8 a.m. and 9 p.m. on weekends or as otherwise provided in City Code.
- d. **Site Maintenance.** Developer shall ensure that its contractor maintains a clean work site. Measures shall be taken to prevent debris, refuse or other materials from leaving the site. Construction debris and other refuse generated from the Project shall be removed from the site in a timely fashion and/or upon the request by the City Engineer. After Developer has received at least forty-eight (48) hour verbal notice, the City may complete or contract to complete the site maintenance work at Developer's expense.
- e. **Project Identification Signage.** Project identification signs shall comply with City Code.

35. **EXPIRATION OF AGREEMENT.** This Agreement shall remain in effect until such time as the Developer shall have fully performed all of its duties and obligations under this Agreement. Upon the written request of the Developer and upon the adoption of a resolution by the City Council finding that the Developer has fully complied with all the terms of this Agreement and finding that the Developer has completed performance of all Developer's duties mandated by this Agreement, the City shall issue to the Developer on behalf of the City an

appropriate Certificate of Compliance/Completion. Upon issuance of the Certificate of Compliance/Completion by the City, this Agreement shall terminate.

36. TERMINATION; CONDITIONS PRECEDENT.

- a. If Developer fails to: a) acquire fee simple title to all of the Development Property, and b) record this Agreement and the Plat in the office of the Rice County Recorder, as applicable and as provided herein, within one (1) year after approval of this Agreement, as applicable, by the City Council, this Agreement shall terminate and shall be null and void, subject to the following:
 - i. All costs, fees and other amounts previously paid to the City in connection with the Project Improvements, this Agreement and the Project shall belong to and be retained by the City;
 - ii. The obligations of the Developer for costs incurred shall survive such termination and continue with respect to unpaid costs, fees and expenses incurred prior to such termination;
 - iii. The indemnifications of Developer shall survive and continue after such termination; and
 - iv. The parties shall be released from all other obligations and liabilities under this Agreement not specified above.
- b. The City shall have no obligation to construct the Improvements and Developer shall have no right to construct the Improvements or construct the Project on the Development Property unless the Developer acquires fee simple title to the Development Property and records this Agreement and the Plat in the office of the Rice County Recorder as required herein within one (1) year after approval of this Agreement by the City Council.
- c. In the event of the termination of this Agreement, the parties agree, if requested by the other party, to execute and deliver to the other party a written termination acknowledgment in a form reasonably satisfactory to both parties.
- d. Developer's right to construct the Improvements is contingent upon its (i) successful Closing on its purchase of Development Property, and (ii) obtaining a building permit from the City following submission of a complete and valid application for same. Nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, for Developer to close on its purchase of the

Development Property, commence the development of the Development Property as set forth herein, or sell or lease homes constructed and located on the Development Property.

37. **ADOPTED BY REFERENCE.** The provisions of the City's Code, Chapter 34 are hereby adopted by reference in their entirety, unless specifically excepted, modified, or varied by the terms of this Agreement. In the event that a provision of this Agreement is inconsistent with or in conflict with the City's Code, the City Code shall govern.

38. Whenever the City's consent or approval is required under this Agreement or the Escrow Agreement, such consent or approval shall not be unreasonably withheld, delayed or conditioned

[Remainder of page left intentionally blank.]

CITY OF NORTHFIELD

BY: _____
Rhonda Pownell, Its Mayor

(SEAL)

AND _____
Deb Little, Its City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Rhonda Pownell and by Deb Little, the Mayor and City Clerk of the City of Northfield, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

City of Northfield
Community Development Department
Northfield City Hall
801 Washington Street
Northfield, MN 55057
507-645-8833

**MORTGAGEE CONSENT
TO
DEVELOPMENT AGREEMENT**

_____, which holds a mortgage on the subject Development Property, the development of which is governed by the foregoing Development Agreement, agrees that the Development Agreement shall remain in full force and effect even if it forecloses on its mortgage.

Dated this ____ day of _____, 20_____.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2____, by
_____.

NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

City of Northfield
Community Development Department
Northfield City Hall
801 Washington Street
Northfield, MN 55057
507-645-8833

**EXHIBIT A
TO
DEVELOPMENT AGREEMENT**

Legal Description of Development Property

Outlot A, Southbridge 1st Addition (PID: 22.07.3.01.069)

**EXHIBIT B
TO
DEVELOPMENT AGREEMENT**

AFFIDAVITS

Pursuant to the Development Agreement, prior to acceptance of the improvements by the City, the Developer must complete and furnish the following affidavits:

- Contractor's Certificate;
- Engineer's Certificate;
- Land Surveyor's Certificate; and
- Developer's Certificate;

in substantially the form provided herein, certifying that all construction has been completed in accordance with the terms of the Development Agreement.

**EXHIBIT C
TO
DEVELOPMENT AGREEMENT**

INTENTIONALLY OMITTED

**EXHIBIT D
TO
DEVELOPMENT AGREEMENT**

ESCROW AGREEMENT

This Escrow Agreement (“Escrow Agreement”) is made and entered into this _____ day of _____, 20____, by and between the CITY OF NORTHFIELD, a Minnesota municipal corporation (the “City”), whose address is 801 Washington Street, Northfield, MN 55057; MAPLE BROOK, LLC, a Minnesota limited liability company under the laws of the State of Minnesota (the “Developer”), whose address is c/o Schrom Construction, Inc., 704 Parkway Avenue, Eagle Lake, MN 56024; and UNITED PRAIRIE BANK, 10 Firestone Drive, Suite 100, Mankato, MN 56001, Attn. Market President (the “Bank” or “Escrow Agent”), as Escrow Agent in connection with the development of a 24-unit affordable townhome project known as Maple Brook Townhomes (the “Project”) located at 521-621 Maple Brook Court, Northfield, Rice County, Minnesota.

RECITALS

WHEREAS, the Developer and City have also entered into that certain Development Agreement, dated _____, 20____, (the “Development Agreement”); and

WHEREAS, the Developer pursuant to Northfield City Code, the Development Agreement and other City approvals, at its own expense, is required to complete the construction of certain public improvements described in Section 32 of the Development Agreement (the “Improvements” or “work”) as part of the Project; and

WHEREAS the Parties to this Escrow Agreement wish to establish a mechanism to secure the obligations of the Developer for the work as set forth above and to provide the City a financial guarantee to assure the satisfactory completion of the required Improvements; and

WHEREAS, pursuant to Northfield City Code and the Development Agreement, the Developer must provide security for construction of the required Improvements and an Escrow Account is a permissible form of security; and

WHEREAS, the Developer desires to provide the required Improvements and has established an Escrow Account with the Bank for such purpose; and

WHEREAS, the Bank executes this Escrow Agreement solely in the capacity of Escrow Agent.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the Parties contained herein, each does hereby covenant and agree with the others as follows:

1. Incorporation of Recitals and Documents. The recitals set forth above are acknowledged by the Parties to be true and correct and are hereby incorporated herein by reference. The following documents referred to in this Escrow Agreement are hereby made a part hereof by reference:
 - a. Development Agreement; and
 - b. Northfield City Code, Chapter 34.

2. Escrow Account/Funds Amount. To guarantee compliance with the terms of the Development Agreement, the Developer has established an Escrow Account with the Bank and agrees to deposit cash escrow funds in U.S. Dollars into the established Escrow Account with the Bank in that amount required by the Development Agreement, which is \$286,436.00 (the “security”). The Developer shall obtain a letter from the Bank addressed to the City acknowledging Developer’s creation of the required Escrow Account in the name of the City as surety deposit for the Project and verifying that the Developer has deposited the cash escrow funds in the amount of the security required in the Development Agreement. The Developer shall submit the Bank’s letter to the City prior to any disbursement of funds from the Escrow Account.

3. Disbursements from Escrow Account.

- a. The City agrees that the Escrow Account funds on deposit with the Bank shall be deposited in an interest bearing account and shall only be disbursed and used as payment for the required Improvements pursuant to the process and requirements contained in the Development Agreement and this Escrow Agreement. All interest shall accrue to the Developer at such times as the Bank pays interest, but shall remain in Trust with the Bank.
- b. The deposit of the Escrow Account funds by the Developer will be made to ensure that Developer funds are available to the City for withdrawal by the City in the event it becomes necessary for the City, in the City's judgment, to withdraw the funds in order to complete satisfactory construction of the required Improvements in accordance with the Development Agreement.
- c. The Escrow Account funds shall not be used or pledged by the Developer for any other purpose during the period the Escrow Account is in effect. Upon satisfactory completion of the portions of the required public Improvements, as shall be reasonably determined by the City Engineer or his designee in writing, money in the Escrow Account, plus any accrued interest, shall be released to the Developer in accordance with the requirements contained in the Development Agreement taking into consideration the required warranty period.
- d. In the judgment of the City, in the event the Developer defaults as the same is defined in the Development Agreement, or otherwise fails to comply with the terms of the Development Agreement, or otherwise fails to complete the required public Improvements to the satisfaction of the City Engineer in accordance with the terms of the Development Agreement and City approved plans and specifications, after expiration of applicable notice and cure periods for any of the foregoing, upon notice by the City to the Bank, the Escrow Account Funds shall be immediately, without further action, paid over to the City, in the amount requisitioned by the City, for use by the City in completion of the required public Improvements and/or to reimburse the City for any costs or expenses incurred by the City therefore.
- e. The City will also promptly submit to the Developer a copy of such notice as it files with the Bank. The consent of the Developer to payments by the Bank to the City shall not be required or solicited. The Bank shall incur no liability to the Developer on account of making such payment to the City, nor shall the Bank be required to inquire into the propriety of any claim by the City of default on the part of the Developer or into the use of such funds by the City in completing such Improvements. The Bank shall not refuse or delay to make such payments to the City when requested by the City by an appropriate notice, and the Developer will not interfere with, object to or otherwise hinder such payments by the Bank to the City.
- f. Any work to be performed by the City pursuant hereto shall be let on a contractual basis as required by governing law, or on a time and material basis or shall be performed by the City with its own personnel and equipment or shall be accomplished in such a manner as in the judgment of the City shall accomplish the work expeditiously and economically.
- g. The City shall be the sole beneficiary of the Escrow Account and shall have sole power to draw upon funds from the Escrow Account in accordance with the terms of the Development Agreement and this Escrow Agreement but the City agrees to authorize such disbursement to Developer as portions of the Improvements are completed..
- h. Nothing herein shall relieve the Developer from the obligation to pay any additional costs, if actual costs exceed the above-stated cost. Nothing herein shall relieve the Developer from the obligation to pay any additional costs, if actual costs exceed the amount retained in the Escrow Account, after the time of completion.
- i. All disbursements under this Escrow Agreement from the Escrow Account shall be made by and through the Escrow Agent in accordance with the terms of the Development Agreement and this Escrow Agreement.
- j. If monies are released by the Bank to the City pursuant to this Escrow Agreement and it shall later develop that a portion of the released monies are surplus to the City's needs, any such surplus shall be returned by the City to

the Bank to be held and distributed by the Bank pursuant to the terms of the Development Agreement and this Escrow Agreement.

- k. In the event that the Developer furnishes the City with an Irrevocable Letter of Credit, in a form and substance satisfactory to the City, as replacement security for the funds escrowed hereunder, and the City concludes that it is beneficial to the City to do so, the City may release all or a portion of the funds escrowed by this Escrow Agreement and accept the Irrevocable Letter of Credit, provided the Bank reconfirms, in writing its commitment to the terms and conditions contained herein.

4. Bank as Escrow Agent.

- a. As Escrow Agent hereunder, the Bank, acting in such capacity, shall have no duties or responsibilities except for those expressly set forth herein.
- b. The Parties agree that the Escrow Agent shall be a financial institution or title company licensed and registered to operate in the State of Minnesota and shall be acceptable to the City.
- c. The Developer shall indemnify and hold harmless the Bank against any loss, damage or liability, including, without limitation, attorney's fees which may be incurred by the Bank in connection with this Escrow Agreement, except any such loss, damage or liability incurred by reason of the negligence or willful misconduct of the Bank. It is further understood by the Developer that if, as the result of any disagreement between it and any other party or adverse demands and claims being made by it or anyone else upon the Bank, or if the Bank otherwise shall become involved in litigation with respect to this Escrow Agreement, the Developer agrees that it shall reimburse the Bank on demand for all costs and expenses, including, without limitation, attorney's fees, the Bank shall incur or be compelled to pay by reason of such dispute or litigation, including reasonable compensation for time expended in connection with any such dispute or litigation.
- d. The Developer shall indemnify and hold harmless the City against any claim, loss, damage or liability, including, without limitation, attorney's fees, which may be incurred by or brought against the City in connection with this Escrow Agreement, except any such loss, damage or liability incurred by reason of the negligence or willful misconduct of the City.
- e. All indemnification obligations shall survive termination, expiration or cancellation of this Escrow Agreement.
- f. The Bank, acting as such, shall not be liable to anyone by reason of an error or judgment, a mistake of law or fact, or for any act done or step taken or omitted in good faith, and this provision shall survive the termination of this Escrow Agreement.
- g. At the time the last of the escrowed funds are released and disbursed by the Bank in accordance with this Escrow Agreement, the Bank shall be discharged from any obligation under this Escrow Agreement.
- h. In accordance with the provisions above, the Bank may rely upon and shall be protected in acting upon any statement, instrument, opinion, notice, request, order, approval or document believed by the Bank to be genuine and to have been signed or presented by the proper party or parties.
- i. The Escrow Agent shall keep records of all requests and transactions made from the Escrow Account, which records may be inspected by the Developer and the City Engineer, respectively, immediately upon request by either Party to the Escrow Agent.
- j. The Developer is responsible for all costs and fees payable to the Escrow Agent for service rendered by the Bank in accordance with this Escrow Agreement.

- 5. Substitution or Resignation of Bank. The Bank reserves the right to withdraw from this Escrow Agreement and cease serving as Escrow Agent hereunder at any time by giving thirty (30) days written notice thereof to the Developer and City. Upon notice of resignation by the Bank, the Developer agrees to find within ten (10) days of such notice a replacement Escrow Agent acceptable to the City. The Bank agrees to deliver the escrowed funds then held by the Bank

to such replacement escrow holder and notify all parties hereto. The Bank shall thereupon be released from any and all responsibility or liability to the Parties hereto. If the Developer fails to appoint a replacement escrow agent within such ten (10) day period, the Bank shall petition any court having jurisdiction for the appointment of a successor escrow agent or for instructions as to the disposition of the documents and moneys held by it under this Escrow Agreement. In any event such court appoints a successor escrow agent, the Bank shall deliver the escrowed funds then held pursuant to this Escrow Agreement, and all records and other documents held by it under this Escrow Agreement, upon payment of all fees and expense reimbursements due to the Bank, to such successor escrow agent and the Bank shall thereby be released from any and all responsibility or liability to the Parties hereto. Pending such appointment or instructions, the Bank shall continue to be bound by the terms of this Escrow Agreement.

6. Notices. Any notice provided for or permitted under this Escrow Agreement, unless otherwise provided herein, will be treated as having been received (a) when delivered personally, (b) when sent by confirmed facsimile or (c) three (3) days following when sent by certified mail, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this paragraph (except that the Escrow Agent shall not be bound by or required to act upon any notice unless and until actually received by it).

- a. If to the Developer, at:

Maple Brook, LLC
c/o Schrom Construction, Inc.,
704 Parkway Avenue
Eagle Lake, MN 56024

- b. If to the City, at:

City of Northfield
801 Washington Street
Northfield, MN 55057

- c. If to the Escrow Agent, at:

UNITED PRAIRIE BANK
10 Firestone Drive, Suite 100
Mankato, MN 56001

Such notice will be treated as having been received upon actual receipt if actual receipt occurs earlier than as provided in clauses (a) through (c) hereof. Notwithstanding the foregoing, no notice to the Escrow Agent shall be deemed given to or received by the Escrow Agent unless delivered to an officer of the Escrow Agent having responsibility under this Agreement.

7. Termination. This Escrow Agreement shall terminate and be of no force or effect upon the completion of the terms and conditions contained herein and completion of the retained security requirements (retainage) contained in the Development Agreement; provided however, that the security requirements for the warranty period required in the Development Agreement are otherwise provided for in a manner acceptable to the City and in accordance with the Development Agreement. Subject to the retainage requirements contained in the Development Agreement, in the event that the security requirements for the warranty period required in the Development Agreement are not otherwise provided for in an alternate manner acceptable to the City, this Escrow Agreement shall not terminate until the expiration of the required warranty period, except that the amount of the security remaining in the Escrow Account for the warranty period shall be as provided in the Development Agreement.

8. General Terms.

- a. Voluntary and Knowing Action. The parties, by executing this Agreement, state that they have carefully read this Escrow Agreement and understand fully the contents thereof; that in executing this Escrow Agreement they voluntarily accept all terms described in this Escrow Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

- b. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this Escrow Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Escrow Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.
- c. Successors and Assigns. This Escrow Agreement may not be assigned by the Developer or Bank without the prior written consent of the City. This Escrow Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No other person has any rights, interest, or claims hereunder or is entitled to any benefits under or on account of this Escrow Agreement as a third-party beneficiary or otherwise.
- d. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the parties.
- e. Governing Law. This Escrow Agreement shall be deemed to have been made and accepted in Rice County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of this Escrow Agreement without regard to its choice of law or conflict of laws principles.
- f. Data Practices. The parties acknowledge that this Escrow Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 et seq.
- g. No Waiver. Nothing in this Escrow Agreement shall be construed to waive any immunities or limitations to which the City is entitled under Minn. Stat. Chapter 466 or otherwise. No waiver by any party to this Escrow Agreement of any condition or of any breach of any provision of this Escrow Agreement will be effective unless in writing. No waiver by any party of any such condition or breach, in any one instance, will be deemed to be a further or continuing waiver of any such condition or breach or a waiver of any other condition or breach of any other provision contained in this Escrow Agreement.
- h. Entire Agreement. These terms and conditions constitute the entire agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Escrow Agreement.
- i. Headings and Captions. Headings and captions contained in this Escrow Agreement are for convenience only and are not intended to alter any of the provisions of this agreement and shall not be used for the interpretation of the validity of the agreement or any provision hereof.
- j. Cooperation. The parties hereto agree to cooperate with one another in the performance of their respective obligations and responsibilities set forth in this Escrow Agreement. The parties further agree to execute and deliver such other and additional documents and instruments as may be reasonably necessary to accomplish the purposes of this Escrow Agreement.
- k. No joint venture or partnership. The parties hereto agree that they will be independent contractors in performing their respective obligations under this Escrow Agreement. This Escrow Agreement is not intended to create nor does it create, a relationship of partners or joint ventures between the parties hereto.
- l. Severability. The invalidity or unenforceability of any provision of this Escrow Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Escrow Agreement shall be construed and enforced as if the agreement did not contain that particular provision to the extent of its invalidity or unenforceability.
- m. Force Majeure. Escrow Agent shall not be liable to the undersigned for any loss or damage arising out of any acts of God, strikes, equipment, or transmission failure, war, terrorism, or any other act or circumstance beyond the reasonable control of Escrow Agent.

- n. Compliance with Laws. The parties hereto shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to the subject matter hereof.
- o. Non-Discrimination. The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.
- p. Execution. This Escrow Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart, facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing party.

(Remainder of page left intentionally blank.)

ACKNOWLEDGMENT OF CITY

STATE OF MINNESOTA)
) ss.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ and by _____, the Mayor and City _____ of the City of Northfield, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

ACKNOWLEDGMENT OF BANK

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ the _____ of Maple Brook, LLC, a limited liability company under the laws of the State of Minnesota, on behalf of the Company and pursuant to the authority granted by its officers.

NOTARY PUBLIC

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