

DESIGN AND ESCROW AGREEMENT

THIS DESIGN AND ESCROW AGREEMENT (the “Agreement”) is entered into as of the 2nd day of March, 2021, by and between the City of Northfield, a Minnesota municipal corporation (the “City”), and Bluff View LLC, a limited liability company under the laws of the State of Minnesota (“Developer”); (collectively, the “parties”).

RECITALS

WHEREAS, Developer intends to develop real property located within the City and legally described on the proposed plat attached hereto and incorporated herein as Exhibit A (the “Property”) for residential use (the “Project”); and

WHEREAS, development of the Property will include construction and installation of certain public improvements, specifically: (i) streets, (ii) sidewalks, (iii) trails, (iv) water main, (v) sanitary sewer, and (vi) storm sewer (the “Improvements”); and

WHEREAS, Developer has requested, and City has agreed, that City shall design, prepare and revise the plans (the “Plans”) for the Improvements at Developer’s sole cost and expense; and

WHEREAS, the cost of designing, preparing and revising Plans for the Improvements (the “Design Costs”) is estimated to be Forty-Two Thousand Two Hundred Eighteen and No/100ths (\$42,218.00) using the Proposal for 2018 Bluff View Subdivision - Phase 1 dated February 19, 2021 from Bolton & Menk; and

WHEREAS, the parties have agreed that Developer shall provide cash security/escrow to cover 100 percent of the estimated and actual Design Costs, which sum shall be deposited with the City and thereafter released according to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the Parties contained herein, each does hereby covenant and agree with the other 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.
2. City Design Work. Subject to the terms of this Agreement, City and its engineering staff and/or consultants (“City Engineering”) shall design, prepare and revise as needed the Plans for the Improvements at Developer’s sole cost and expense.
3. Developer Cost Reimbursement. Developer agrees to fully pay and reimburse the City for the actual Design Costs incurred by the City for City Engineering, including any Design Costs that exceed the above estimate, for the work to draft the design Plans for

the Improvements. Within fifteen (15) business days of receipt by City, City shall send Developer a copy of each invoice from City Engineering for work performed on the Plans for the Project Improvements. On a monthly basis, City shall send Developer a summary of actual Design Costs for work performed by City Engineering incurred by the City during the previous month for the Plans for this Project.

4. Security Funds. Contemporaneously with execution of this Agreement, Developer shall provide the City a check payable to the City in the amount of the estimated Design Costs (the "Security Funds"), which shall be deposited in a City account and held and later released by the City in accordance with the terms of this Agreement.
5. Revisions. The parties acknowledge and agree that, as development progresses, circumstances and events may necessitate revision of the Plans ("Revisions"). In the event City, in its sole judgment and discretion, determines that Revisions are necessary:
 - a. City shall notify Developer in writing of the Revisions in advance of beginning work on the revisions, the circumstances that necessitate the Revisions, and the anticipated effect of the Revisions on the Design Costs (the "Written Notice").
 - b. Developer shall:
 - i. Deliver to City written acknowledgement of receipt of City's Written Notice and acceptance thereof.
 - ii. If the Written Notice states that the Revisions are anticipated to increase the Design Costs, the Developer shall, within three (3) business days, deposit additional cash with the City to increase the Security Funds to cover 100 percent of the estimated Design Costs. City shall not be obligated to proceed with designing and preparing and revising the Plans for the Improvements until such deposit is received.
6. Release of Security Funds. The City agrees that the Security Funds shall be held by the City, and that the City shall only release the Security Funds to the Developer pursuant to this Section 6. The City and Developer each agree to the following requirements applicable to the Security Funds:
 - a. The timely deposit of the Security Funds as provided herein with the City is required for the City to proceed with preparing the Plans for the Improvements and shall be made by the Developer to ensure that adequate Developer funds are available and accessible to the City to draw upon for payment of all of the City's Design Costs incurred by the City. The Security Funds shall not be used or pledged by the Developer for any other purpose. In order to reimburse itself for Design Costs incurred, the City may draw directly upon the Security Funds in the event of default by the Developer or other non-performance by the Developer of this Agreement, the required City/Developer development agreement or any other City/Developer agreement, or otherwise, related to the final development and

special assessment of the total costs of the Improvements, including the Design Costs, upon the Property.

- b. Except as otherwise provided in subsection j. of this Section 6, the City shall release the Security Funds to the Developer following completion/satisfaction of all the following conditions:
 - i. The parties shall execute a development agreement for the Project, including the Improvements, in a form acceptable to the City and adopted by the City Council; and
 - ii. The parties shall execute an agreement for the waiver and release of any objection and appeal rights the Developer may have, now or later, to any subsequent special assessment of the Property of the costs of the Improvements, including the Design Costs, in a form acceptable to the City; and
 - iii. Final completion of construction and installation of the Improvements in accordance with the above-referenced development agreement and acceptance of the same by the City; and
 - iv. Final adoption by the City Council of the assessment roll for the special assessment of the costs of the Improvements, including the Design Costs, upon the Property; transmittal and certification of the same with the Rice County Auditor, and the expiration of the appeal period provided in Minnesota Statutes, section 429.081, for the Property owner or otherwise challenging such special assessment upon the Property.
- c. Following release of the Security Funds to the Developer pursuant to subsection b above, the actual costs of the Improvements, which shall include the actual Design Costs, shall be assessed against the Property along with the costs of the Improvements, and paid by the Developer pursuant to the City Council adopted special assessment resolution and certification of the adopted assessment roll on the Property with the Rice County Auditor.
- d. In the event the Developer fails to satisfy all of the conditions listed in subsection b above within two (2) years of the date of this Agreement, the City may immediately and without further action release and draw upon the Security Funds to itself as payment for the actual Design Costs incurred by the City. Thereafter, the City shall issue the Developer an invoice listing the actual Design Costs (the "Invoice"), and (i) if the Security Funds exceed the Design Costs, the City shall cause the balance to be refunded to Developer, or (ii) if the Design Costs exceed the Security Funds, Developer shall pay the shortfall to the City within thirty (30) days after receipt of the City invoice for the same. The parties agree that in the event the Developer fails to timely pay the actual Design Costs exceeding the deposited Security Funds, the same shall constitute a lien on the Property and the amount may be assessed upon the Property and certified to the County Auditor for collection in like manner as property taxes upon the Property.

- e. Any work to be performed by the City pursuant to this Agreement shall be accomplished in such a manner as in the judgment of the City shall accomplish the work expeditiously and economically.
 - f. The City shall be the sole beneficiary of the Security Funds and shall have sole power to release the funds in accordance with the terms of this Agreement. Any release of the Security Funds shall be made by the City in accordance with the terms of this Agreement.
 - g. Nothing herein shall relieve the Developer from the obligation to pay any additional costs if actual costs exceed the Design Costs. Nothing herein shall relieve the Developer from the obligation to pay any additional costs, if actual costs exceed the amount of the Security Funds.
 - h. If all or part of the Security Funds are released by the City to itself pursuant to this Agreement and it shall later develop that a portion of the released monies are surplus to the City's needs, any such surplus Security Funds shall be refunded by the City to the Developer.
 - i. Any interest that may accrue on the Security Funds while the same are being held by the City pursuant to this Agreement shall accrue solely to the benefit of the City, and the Developer waives any claim it may have now or in the future to any such interest.
 - j. In the event that the Developer furnishes the City with an Irrevocable Letter of Credit, Cash Escrow Agreement, or a combination of the two, in a form and substance satisfactory to the City, as replacement security for the Security Funds provided as security hereunder, and the City concludes that it is beneficial to the City to do so, the City may cause to be released all or a portion of the Security funds provided as security by this Agreement and accept the Irrevocable Letter of Credit, Cash Escrow Agreement, or a combination of the two.
7. Indemnification.
- a. 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 Agreement, except any such loss, damage or liability incurred by reason of the negligence or willful misconduct of the City.
 - b. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement.
8. Notices. Any notice provided for or permitted under this 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) business 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 section.

- a. If to the Developer, at:

Bluff View LLC
c/o Matt Reiland
616 Hwy. 3 S
P.O. Box 220
Dundas, MN 555019

- b. If to the City, at:

Public Works Director/City Engineer
City of Northfield
801 Washington Street
Northfield, MN 55057

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) above.

9. Termination. This Agreement shall terminate and be of no force or effect upon the completion of the terms and conditions contained herein.

10. Required Approval. Developer acknowledges and agrees that:

- a. Developer's plans for development of the Property (the "Development Plans") are subject to approval by the City and are subject to the requirements and procedures of the City's Land Development Code;
- b. the City's creation of the Plans does not constitute approval of Development Plans, insofar as the Plans are incorporated into Development Plans or otherwise submitted for City approval;
- c. Developer's obligation to pay the City under this Agreement is not contingent upon approval of Development Plans by the City;
- d. this Agreement or the performance thereof by one or both parties shall not affect the City's review and consideration of Development Plans; and
- e. Developer may incur additional Design Costs if City requires revision of Development Plans or the Plans.

11. General Terms.

- a. *Voluntary and Knowing Action.* The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this 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 (i) the persons signing this Agreement are authorized signatories for the entities represented, and (ii) no further approvals, actions or ratifications are needed for the full enforceability of this 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 Agreement may not be assigned by the Developer without the prior written consent of the City. This 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 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 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 Agreement without regard to its choice of law or conflict of laws principles.
- f. *Data Practices.* The parties acknowledge that this 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 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 Agreement of any condition or of any breach of any provision of this 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 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 Agreement.

- i. *Headings and Captions.* Headings and captions contained in this 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 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 Agreement.
- k. *No joint venture or partnership.* The parties hereto agree that they will be independent contractors in performing their respective obligations under this Agreement. This 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 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 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. *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.
- n. *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.
- o. *Execution.* This 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.

[Signature pages to follow]

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

DEVELOPER:

BLUFF VIEW LLC

By: _____
Matt Reiland, Its Manager

ACKNOWLEDGMENT OF DEVELOPER

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Matt Reiland, as Manager of Bluff View LLC, a limited liability company under the laws of the State of Minnesota, on behalf of the company.

Notary Public

CITY:

CITY OF NORTHFIELD

By: _____
Rhonda Pownell, Its: Mayor

By: _____
Lynette Peterson, Its: City Clerk

ACKNOWLEDGMENT OF CITY

STATE OF MINNESOTA)
) ss.
COUNTY OF RICE)

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

Notary Public

EXHIBIT A

Legal Description of the Property

