

**DEVELOPMENT AGREEMENT**

**between**

**CITY OF DULUTH**

**and**

**LONDON EAST LLC**

**Dated as of \_\_\_\_\_, 2020**

## **DEVELOPMENT AGREEMENT**

THIS AGREEMENT, effective as of the date of attestation hereof by the City Clerk, by and between the City of Duluth, a municipal corporation under the laws of the State of Minnesota ("City"), and LONDON EAST LLC, a limited liability company created and existing under the laws of the State of Minnesota ("Developer").

### **RECITALS**

WHEREAS, Developer proposed to replat and develop a 3.05-acre parcel of land located on the upper side of the 3700-3800 blocks of London Road in Duluth, Minnesota, with the complete legal description attached hereto as Exhibit A (the "Property"); and

WHEREAS, Developer desires to conduct site development activities and develop the Property for Thirteen (13) residential twin homes (26 dwelling units), as "twin homes" are defined in Chapter 50 of the Duluth City Code, 1959, as amended (the "UDC") with private streets accessed from two vehicular connections to London Road, a public sidewalk in the existing easement for London Road from 36<sup>th</sup> Avenue East to the northeasterly line of the below-described Plat, private storm water management facilities, public utilities, and certain other site improvements (the "Project"); and WHEREAS, in furtherance of the Development, Developer applied to City for approval of a preliminary plat and a final plat to divide the Property into 26 separate lots identified on the survey and final plat labeled LONDON EAST attached hereto as Exhibit B (the "Plat"); and

WHEREAS, on June 9, 2020, the City Planning Commission approved the Plat subject to certain conditions, one of which required Developer to enter into a Development Agreement with City; and

WHEREAS, Developer has agreed to dedicate to the public for public use the drainage and utility easements shown on the Plat, to construct the sidewalk as described in Paragraph 6 below and access to London Road improvements, and the stormwater facilities and the public utilities as described in the hereinafter-referenced MOU (all of which are hereinafter referred to as the "Required Improvements"); and

WHEREAS, Developer has agreed to make certain other improvements to the Property and contributions to the City as a condition attached to the City's approval of the Plat;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

### **AGREEMENT**

1. Developer's Duty and Compliance. Development of the lots created as part of the subdivision must be in compliance with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota. Developer shall be responsible for obtaining all approvals and permits of any kind required to implement the Project from any governmental agency having jurisdictions with regard thereto, including but not limited to roadway access permits, wetland permits, storm water management permits, utility construction permits, fill and grading permits, erosion and sediment control permits, and building permits.

2. Recording of Plat: Prior to the issuance of any permits needed to implement development of Lots 3 through 26 inclusive of the Property in the Plat as permitted under the Plat and prior to the commencement of any construction work of any kind, including but not limited to site work having the purpose of implementing the development of said Lots, Developer shall have caused to be recorded with the St. Louis County Recorder the fully-executed Plat and shall have provided to the City's Director of Planning and Economic Development (the "Director") and the City Engineer copies of Plat along with evidence of recording of the Plat. City agrees that when requested to execute the Plat in the form approved by the Planning Commission, it shall expeditiously so execute it.

3. Pre-conditions to Issuance of Building Permits: Developer agrees that prior to the issuance of any building permits for the construction of any structure on Lots 3

through 26 inclusive of the Property, the following shall have been completed:

A. Recording of Agreement: Developer shall have caused this Agreement to have been recorded against the Property in the Office of the County Recorder for St. Louis County, Minnesota and shall have caused evidence of such recording to have been presented to the Director.

B. Sidewalk in London Road: Developer shall have entered into an agreement in a form approved by the Director committing to maintain the sidewalk described in Section 6 below, including repair, replacement, cleaning and snow removal as necessary; provided, however, that if the City or the State of Minnesota replaces the sidewalk as part of a project to reconstruct street or sidewalk improvements adjacent to the Property, the HOA shall not be obligated to pay for the cost thereof. Developer further commits to include a requirement that the HOA, provided for in Section 3G below, include a provision in the HOA agreement committing the HOA to so maintain said sidewalk in perpetuity.

C. Tree Replacement Plan: A Tree Replacement Plan conforming to the requirements of Section 50-25.9 of the Code shall have been completed, filed with the Director and approved by the Director and the City Forester.

D. Storm Water Management Plan: A storm water management plan for the Property meeting the requirements of Section 50-18.1.E of the Code shall have been completed, filed with the Director and approved by the Director and the City Engineer.

E. MOU: Developer shall have entered into a Memorandum of Understanding (“MOU”) with the City Engineer in the form acceptable to the City Engineer committing to the design and construction of the Required Improvements as shown in the Plat, including but not limited to the design and construction of all work necessary to the implementation of the Storm Water Management Plan referenced in Subparagraph D above. Said MOU shall specifically provide that the City will not accept as “public” any of the Required Improvements or unless all such improvements described in the MOU have been completed to the satisfaction of the City Engineer.

F. Improvement Security: Developer shall have provided financial security in

the form of an irrevocable Letter of Credit, cash escrow, or such other form as is acceptable to the Director in the amount of not less than \$185,000 to guarantee completion of construction of the Required Improvements in conformance with the requirements of this Agreement, and authorizing the Director to exercise said security and to use the proceeds to complete said construction.

G. CIC Declaration: Developer shall present to the Director the CIC Declaration conforming to the requirements of Minnesota Statutes Chapter 515B including all necessary provisions to implement conditions of the Final Plat approved by the Planning Commission, the Tree Replacement Plan, and the Wetland Replacement Plan. Said Declaration shall include the requirement for a Home Owners' Association to manage the Property and a requirement that any changes to the Declaration which could affect the obligations to the City under this Agreement shall require the prior written approval of the Director. Upon the Directors written approval of said Declaration, Developer shall have caused the CIC Declaration to have been recorded against the Property in the Office of the County Recorder for St. Louis County, Minnesota and shall have caused evidence of such recording to have been presented to the Director.

4. Developer's Duty and Compliance. Development of the lots created as part of the subdivision must be in compliance with all applicable ordinances, rules, regulations and laws of the City and State of Minnesota. Developer shall be responsible for obtaining all relevant governmental approvals and building permits required.

5. Financing. Developer assumes all risks and agrees to bear all costs and fees related to the design and construction of all roads, sidewalks, utilities including implementation of the storm water management plan, pathways and other public improvements as shown on the Plat.

6. Sidewalk Construction: No later than September 31, 2021, the Developer shall have constructed a paved sidewalk at least five feet wide inside of and adjacent to the northwesterly right-of-way line of London Road from the easternmost point of the Plat

to 36<sup>th</sup> Avenue East in conformance with plans and specifications approved by the City Engineer.

7. Inspections. All Required Improvements shall be made in accordance with City construction design standards and specifications and shall be subject to the inspection by and approval of the City. Developer hereby grants City, its agents, employees and contractors a license to enter the Property and perform all inspections deemed appropriate by the City in connection with this Agreement.

8. Developer's Default. In the event Developer fails to comply with or perform any terms, conditions, undertakings, or obligations under this Agreement, the parties hereto agree that no award of damages to City could constitute an adequate remedy for such default, Therefore, City may, in addition to and not in lieu of any other remedies or rights available to it by law or equity:

- A. Institute an action for specific enforcement to compel Developer to perform of any or all of its obligations under this Agreement. Developer acknowledges that the rights of City to performance of the obligations of Developer pursuant to this Agreement are special and unique, and that, in the event Developer violates, fails or refuses to perform any condition, agreement or provision herein, City may be without an adequate remedy at law.
- B. At its option, draw on the security described in Section 3F above and construct the Required Improvements, provided the Developer is first given written notice of the default not less than seven (7) days in advance. This Agreement is a license for the City to enter onto any portion of the Property necessary to perform said work, and it shall not be necessary for the City to seek a Court order for permission to enter the land.
- C. Refuse to issue building permits for construction on the Project.

D. Exercise any other remedy available to the City in law or in equity. No remedy conferred in this Development Agreement is intended to be exclusive. The election of any one or more remedies shall not constitute a waiver of any other remedy. City may, but is not obligated to, exercise any of the remedies referred to in this paragraph.

9. Insurance. Developer agrees to purchase and maintain, during the term of this Agreement, insurance in the form of Workers Compensation and Employers Liability, Commercial General Liability and Automobile Liability covering operations associated with the Required Improvements and the Project, and Property insurance covering real and personal property interests at or near the Property, with the following limits:

Workers' Compensation	Statutory (MN)
Employers' Liability	\$1,000,000
Auto Liability (owned, hired and non-owned)	\$1,500,000
Commercial General Liability (including Contractual Liability)	
Each Occurrence	\$2,000,000
Aggregate	\$4,000,000
Property Insurance	To Replacement Value
Umbrella or Excess Liability	\$10,000,000
Environmental Liability	\$1,000,000

Prior to commencement of construction, Developer agrees to deliver to the City a Certificate of Insurance, naming the City as an Additional Insured, as evidence that the above coverages are in full force and effect.

10. General Indemnity. Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including agents or employees of City or Developer, by reason of death of or injury to person or persons or the loss of or damage to property arising out of

Developer's performance of its obligations under this Agreement. On ten (10) days written notice from City, Developer will appear and defend all lawsuits against City relating to or arising from such injuries or damage.

11. Environmental Indemnity. Developer agrees that it shall defend, indemnify and hold harmless City and its officers, agents, servants and employees from and against any liability, loss, damage, fine, judgment, penalty, fee, cost, interest, or expense arising out of any condition existing on the Property prior to commencement of construction of the Required Improvements or the Project relating in any way to the environment, preservation or reclamation of natural resources, the presence, management, release or threatened release of any Hazardous Material (any and all explosive or radioactive substances or wastes and hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any environmental law) or to health and safety matters.

12. Notices. Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of the City:                   City of Duluth  
                                                          Attn: Director of Planning and Economic Development  
                                                          411 West First Street, Room 160  
                                                          Duluth, MN 55802

In the case of Developer:               London East LLC  
                                                          Attn: Ted Stocke  
                                                          717 Creekside Cir.  
                                                          Duluth, MN 55812

13. Binding Effect. This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

14. Term. The term of this Agreement shall commence upon the date of attestation by the City Clerk and shall continue until the Director and City Engineer have certified in writing that all Public improvements required under this Agreement have been constructed in accordance with the requirements herein contained and Developer has conveyed such property and dedicated such easements as are required hereunder.

At Developer's request, City will issue a written certificate of completion in recordable form acknowledging that the Required Improvements have been completed. Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

15. Assignment. Developer may not assign this Agreement without the written approval of the City.

16. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, and all questions concerning the meaning, intention or validity of the terms of this Agreement, as well as the performance of the parties hereto, shall be determined and resolved in accordance therewith. The Parties agree to submit to the exclusive jurisdiction of the State and Federal Courts sitting in St. Louis County, Minnesota, and waive any objections to such location based on jurisdiction, venue or inconvenient forum.

17. Construction of Agreement. Developer and City have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

18. Severability. In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

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

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

CITY OF DULUTH,  
a Minnesota Municipal Corporation

LONDON EAST LLC,  
a Minnesota Limited Liability Company

By \_\_\_\_\_  
Emily Larson  
Its Mayor

By \_\_\_\_\_  
\_\_\_\_\_

Attest:

By \_\_\_\_\_  
Its City Clerk  
\_\_\_\_\_  
(date)

Countersigned:

\_\_\_\_\_  
Its Auditor

Approved:

\_\_\_\_\_  
Its Assistant City Attorney



EXHIBIT A

**Existing Legal Description**

LOTS 9 THROUGH 16, INCLUSIVE, BLOCK 32, INCLUDING THE EASTERLY HALF OF VACATED 38TH AVENUE EAST, ST. LOUIS COUNTY, MINNESOTA.  
ALL IN REARRANGEMENT OF PART OF EAST DULUTH AND OF FIRST ADDITION TO EAST DULUTH.

AND

LOTS 10 TO 18 INCLUSIVE BLOCK 33, INCLUDING THE WESTERLY HALF OF VACATED 38TH AVENUE EAST, EXCEPT THAT SOUTHEASTERLY 40 FEET OF LOTS 10 AND 18, BLOCK 33, PLAT OF RE-ARRANGEMENT OF PART OF EAST DULUTH AND OF FIRST ADDITION TO EAST DULUTH, ACCORDING TO THE PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER IN AND FOR ST. LOUIS COUNTY, MINNESOTA.

AND

LOT 16, BLOCK 34, RE-ARRANGEMENT OF PART OF EAST DULUTH AND OF FIRST ADDITION TO EAST DULUTH, ST. LOUIS COUNTY, MINNESOTA.

# EXHIBIT B – PLAT (PAGE 1 OF 3)

BEING PART OF BLOCKS 32, 33 AND 34, RE-ARRANGEMENT OF PART OF EAST DULUTH AND OF FIRST ADDITION TO EAST DULUTH, LOCATED IN SECTION 13,  
TOWNSHIP 59 NORTH, RANGE 14 WEST, AND SECTION 18, TOWNSHIP 59 NORTH, RANGE 13 WEST, COUNTY OF ST. LOUIS, MINNESOTA

OFFICIAL PLAT

## LONDON EAST

THIS PLAT IS PREPARED BY THE SURVEYOR, UNDER THE DIRECTION OF THE COMMISSIONER OF THE LANDS AND MINES, COUNTY OF ST. LOUIS, MINNESOTA, AND IS A CORRECT AND TRUE COPY OF THE ORIGINAL RECORDS OF THE SURVEY, AS THE SAME APPEAR IN THE OFFICE OF THE SURVEYOR, COUNTY OF ST. LOUIS, MINNESOTA.

AND THAT THE SURVEYOR HAS BEEN DULY QUALIFIED BY THE COMMISSIONER OF THE LANDS AND MINES, COUNTY OF ST. LOUIS, MINNESOTA, AND THAT HE IS A MEMBER OF THE SURVEYORS' ASSOCIATION OF MINNESOTA.

AND THAT THE SURVEYOR HAS BEEN DULY QUALIFIED BY THE COMMISSIONER OF THE LANDS AND MINES, COUNTY OF ST. LOUIS, MINNESOTA, AND THAT HE IS A MEMBER OF THE SURVEYORS' ASSOCIATION OF MINNESOTA.

THE SURVEYOR

NAME

NO. OF BLOCKS

ACRES

SECTION

TOWNSHIP

RANGE

COUNTY

STATE

DATE

BY

NAME

NO. OF BLOCKS

ACRES

SECTION

TOWNSHIP

RANGE

COUNTY

STATE

DATE

BY

NAME

NO. OF BLOCKS

ACRES

SECTION

TOWNSHIP

RANGE

COUNTY

STATE

DATE

BY

NAME

NO. OF BLOCKS

ACRES



SHEET 1 OF 3 SHEETS



