

EXHIBIT A

SIDEWALK MAINTENANCE 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 Homeowners Association, Inc., a nonprofit corporation which has been created pursuant to Chapter 317A of the laws of the state of Minnesota and Minnesota Statutes Section 515B.3-101, ("Association") and LONDON EAST LLC, a limited liability company created and existing under the laws of the State of Minnesota ("Developer").

RECITALS

WHEREAS, Developer has replatted and is in the process of developing 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 is developing the Property for Thirteen (13) residential twin homes (26 dwelling units), as "twin homes", which development will include a public sidewalk in the existing easement for London Road from 36th Avenue East to the northeasterly line of the plat of LONDON EAST (the "Sidewalk") as contained in City Planning Commission File number PL20-058 and as shown on the "Construction Plans for :London Road Utility Extensions 37th to 39 Avenue East Project No. 1927" prepared by MSA Professional Services Inc., approved by the City Engineer on July 8, 2020 and on file in the office of the City's City Engineer (the "Plans"); and

WHEREAS, pursuant to the Development Agreement between City and the Developer , a copy of which is on file and of record in the office of the County Recorder for St. Louis County Minnesota as Document No, 01399447 (the "Development Agreement"), Developer is obligated to agree to maintain the Sidewalk as hereinafter set

forth and to include a requirement for such maintenance in the below-referenced Declaration; and

WHEREAS, pursuant to the Declaration pertaining to Common Interest Community No. 148, which is filed and of record in the office of the County Recorder for St. Louis County, Minnesota (the "Declaration"), the Association is perpetually responsible for the maintenance, repair or replacement of the Sidewalk; and

WHEREAS, the parties desire to enter into this Sidewalk Maintenance Agreement to fulfill their above obligations;

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. Sidewalk Maintenance . Pursuant to its respective obligations under the Development Agreement the Developer hereby agrees that, except as provided in Paragraph 2 below, Developer will maintain the Sidewalk in perpetuity. Said maintenance obligation shall require that it be maintained to the specifications of the City Engineer and shall include repair, replacement, cleaning and snow removal.

2. Exception. In the event that City or the State of Minnesota Department of Transportation shall determine to replace the Sidewalk in the course of constructing or reconstructing the adjacent portion of London Road, the cost of such replacement or reconstruction of the Sidewalk shall be at no charge to Developer.

3. Maintenance by City.
 - A. Notice and Performance by City. In the event that Developer shall fail to maintain the Sidewalk in accordance with the requirements of Paragraph 1. above, City shall have the right but not the obligation to notify Developer of such failure as provided for in Paragraph 9 below, and Developer shall thereafter cause all required maintenance work to be performed within ten (10) days of the

giving of such notice. In the event that Developer shall fail to so perform such maintenance, City shall have the right but not the obligation to cause such maintenance work to be performed and to charge Developer for the cost thereof. Upon being invoiced for the cost of such maintenance work performed by the City, Developer shall promptly pay for the cost thereof.

- B. Benefits of and Payment for the Project Developer agrees that any maintenance of the Sidewalk by City under Subparagraph A above (the "Project") constitute public improvements which confer special benefits accruing to the Property which equals or exceeds the Cost thereof. Developer agrees that the City shall have the right to assess the costs thereof against the Property in accordance with the provisions of Article IX of the Duluth City Charter. It is hereby stipulated and agreed that value of the benefits conferred upon the Property will be equal to or exceed the amounts to be assessed against Property, without reference to any benefits conferred upon other benefitted properties.
 - C. Developer Agrees to Assessment. Because the Developer agrees that the value of the benefits to the Property arising out of the construction of Project equals or exceeds the anticipated Cost thereof, Developer agrees to accept and to pay an assessment in the amount of costs incurred by the City pursuant to Subparagraph A above against the Property by City to defray the costs of said improvements. The term of such assessment shall be determined by the City Council by resolution and the interest rate applicable to said special assessment shall be the City's standardized rate for special assessments then in effect at the time thereof.
 - D. Waiver of Defenses. Developer, for itself and its successors and assigns and for any other affected party, specifically waives, without limitation, all defenses of any kind whatsoever, including, but not limited to, procedural defenses to the assessments to be levied pursuant to this Paragraph and agrees that Developer and its successors and assigns, if any, shall be bound thereby.
4. Developer's Default. In the event Developer fails to comply with or perform any terms, conditions, undertakings, or obligations under this Agreement, City shall have the following rights:

- A. Damages. Bring an action to collect damages for all damages, loss or costs of any kind suffered by or incurred by City as a result of the Developer's default of its obligations under this Agreement.
- B. Assessment Assess against the Property all costs incurred by City as a result of its exercise of its rights under this Agreement.
- C. Specific Performance. Bring an action in equity to compel Developer's performance of its obligations under this Agreement.
- D. Other Remedies Exercise any other remedy available to the City in law or in equity. No remedy conferred in this Sidewalk Maintenance 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.

5. Developer Insurance. Until assignment of this Agreement to Association as provided for in Section 13 below, Developer agrees to purchase and maintain, during the term of this Agreement, insurance in the form of Workers Compensation, if required by Minnesota law and Employers Liability, and Commercial General Liability covering operations associated with the real and personal property interests at or near the Property, with the following

limits:

Workers' Compensation	Statutory (MN)
Employers' Liability	\$1,000,000
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

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.

6. Association Insurance. Upon assignment of this Agreement to Association as provided for in Section 13 below, Association agrees to purchase and maintain, during the term of this Agreement, insurance in the form of, and Commercial General Liability covering operations associated with the real and personal property interests at or near the Property, with the following limits:

Commercial General Liability (including Contractual Liability)	
Each Occurrence	\$2,000,000
Property Insurance in the amount of the replacement cost of the Project	

Association 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.

7. 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.

8. Obey all Laws. Developer agrees that it will obey all laws, rules and regulations of the government of the United State of America, the State of Minnesota and the City of Duluth applicable to the Property and to its operations.

9. 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 Public Works & Utilities
411 West First Street, Room 160
Duluth, MN 55802

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

In the case of Association: London East Homeowner's Association, Inc.
Attn: Ted Stocke, President
717 Creekside Cir.
Duluth, MN 55811

10. **Binding Effect.** This Agreement shall be deemed to run with the land. The terms of the Agreement shall inure to the benefit of the parties hereto and to their successors and assigns except as provided for in Section 12 below.

11. **Term.** The term of this Agreement shall be perpetual.

12. **Assignment.** Developer may not assign this Agreement without the written approval of the City except as provided for in Section 13 below.

13. **Assignment to Association** Upon the completion of the construction of Sidewalk, all to the reasonable satisfaction of the City Engineer and the City Attorney, Developer shall have the right to assign, transfer and convey all of its rights and obligations under this Agreement to the Association. Upon the acceptance of such assignment by, transfer to or conveyance to Association and its explicit assumption of all of Developer's obligations hereunder, City agrees to release Developer from any of its obligations arising under this Agreement and to look only to Association to be obligated therefore; provided, however, nothing herein shall be deemed to release Developer from any liability of Developer hereunder arising prior to the assumption by Association of Developer's obligations hereunder.

14. 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.

15. 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.

16. 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.

26. 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.

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EXHIBIT A

Existing Legal Description

LOTS 1 THROUGH 26, INCLUSIVE, BLOCK 1, Plat of LONDON EAST, ACCORDING TO THE PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE COUNTY RECORDER IN AND FOR ST. LOUIS COUNTY, MINNESOTA.