SUBDIVISION CONSTRUCTION AGREEMENT

THIS AGREEMENT ("Agreement") is made between the City of Harrisburg, South Dakota (hereinafter referred to as "City") and Tiger Meadows LLC, its heirs, executors, administrators, successors, transferees, and assigns jointly and severally (hereinafter referred to as "Subdivider") and is effective upon signature of the Mayor of the City of Harrisburg.

Declarations

WHEREAS, the Subdivider wishes to subdivide certain lands within the jurisdiction of the City of Harrisburg, South Dakota; and

WHEREAS, the City wishes to prevent the use of public funds to complete private subdivisions; and

WHEREAS, the City requires the execution of this agreement as a prerequisite to approval of the Plat of the subdivision or the issuance of any required permit authorizing the commencement of construction activities; and

(Complete one or both of the sections shown below and check the appropriate box)

☒ WHEREAS, the Subdivider wishes to proceed with construction of the required Public Improvements before platting and has submitted and the City has approved construction documents for the subdivision identified as Tiger Meadows Subdivision, which are hereby attached to and made part of this agreement. Also attached and hereby made part of this agreement is a draft of the unrecorded Plat(s) identifying the property to which this Agreement applies; or

☐ WHEREAS, the Subdivider wishes to proceed with platting prior to installation of the required Public improvements for the subdivision identified as Tiger Meadows Subdivision of which the unrecorded Plat(s) are hereby attached to and made part of this agreement. The Subdivider has submitted and the City has approved Engineering Submittals and Construction documents identified as Tiger Meadows Subdivision, which are hereby attached to and made part of this agreement. The Subdivider will have approved construction documents prior to issuance of a construction permit.

NOW, THEREFORE, in consideration of the above, the City and Subdivider hereby agree as follows:

1. Definitions - The Definitions Set Forth Herein Shall Apply Solely To This Agreement.

a. Acceptance – Adoption of a Resolution of Acceptance of Improvements by the City Council to accept Public Improvements for maintenance.

b. Authorized Official – The Planning & Zoning Administrator of the City of Harrisburg.

c. Certificate of Final Completion - The written notice from the City Engineer verifying that all required Public Improvements for the subdivision or a phase thereof are complete according to the approved plans, specifications, and standards.

d. City Engineer - The City Engineer for the City of Harrisburg or his or her authorized representative.

e. City Ordinance - Codified Ordinances of Harrisburg, SD, as adopted and as amended from time to time.

f. Construction Permit - The permit required prior to the installation of Public Improvements; including, but not limited to, street grading, roadway base, curb and gutter, asphalt or concrete surfacing, drainage and flood control, water and sanitary sewer, sump pump collection, or other such improvements in proposed subdivisions or which connect proposed subdivisions.

g. Contractor – A person, partnership, or entity hired by the Subdivider to construct public improvements.

h. Grading Permit - The permit required to be issued prior to the commencement of earthwork in proposed subdivisions.

i. Performance Security - The financial security as provided for herein to ensure that all Public Improvements are completed by the Subdivider or as provided herein.

j. Plat - The Plat approved by the City pursuant to Subdivision Regulations of the City of Harrisburg.

k. Public Improvements - Those improvements which will be accepted for operation and maintenance by the City of Harrisburg and shall include, but not be limited to, street grading, roadway base, curb and gutter, asphalt or concrete surfacing, drainage and flood control facilities, water and sanitary sewer mains and appurtenances, sump pump collection systems, traffic and street signage, roadway lighting, paths or trails, parks, playground equipment, or other such improvements in proposed subdivisions.

l. Subdivider - The owner of land proposed to be subdivided or his authorized agent who shall have express written authority to act on behalf of the owner.

m. Warranty Period - The two-year period from the date of adoption of the Resolution of Acceptance of Improvements by the City Council as set forth in Section 6 hereof.

n. Warranty Security - The financial security to warrant all Public Improvements by the Subdivider or security provider as more fully provided for herein.

2. Time Period for Construction.

The Subdivider shall complete construction of all Public Improvements in accordance with the approved plans, specifications, and standards within two years of the date of this Agreement. At the Subdivider's request, the Authorized Official may extend the time period in which to complete the construction for one additional year. The Authorized Official may allow for an additional extension in cases of extreme hardship as set forth in Section 6 herein.

3. Construction Permit.

Prior to the start of work, the Subdivider shall obtain a Construction Permit from the City allowing the Subdivider to begin construction within the specified subdivision. The Construction Permit shall be kept valid for the term and any extension of this Agreement. Should the Construction Permit terminate for any reason, before continuing work the Subdivider will be required to revise the plans to meet the current City standards and obtain a new Construction Permit.

4. Performance Security.

The Subdivider understands and agrees that the City will not approve any Plat within the identified subdivision until all Public Improvements are completed and accepted in accordance with this Agreement, unless prior to the approval of any Plat, the Subdivider executes a Performance Security in favor of the City in the amount of one hundred and ten percent of the Engineer's Estimate to construct the Public Improvements not yet installed and accepted by the Engineer.

The Subdivider shall use the Performance Security form and/or criteria approved by the City Attorney. The Performance Security shall be secured in favor of the City by one of the following methods:

a. Escrow account.

b. Letter of irrevocable credit.

c. A bond issued by a Corporate surety licensed and authorized to do business in the State of South Dakota as surety and subject to written approval by the City Attorney which approval shall be at its sole discretion.

Any facilities that will be or have been furnished and/or installed by the City and have not been paid for must also be included in the Engineer's Estimate and Performance Security prior to acceptance of the Plat.

The Subdivider shall utilize the form provided by the City relative to the escrow account, irrevocable letter of credit, or bond method of security. Said agreement(s) must be elected and signed at the inception of this Agreement.

5. Performance Security Reductions.

A Performance Security may be reduced by the City Council prior to Acceptance of all required Public Improvements. To qualify for a Performance Security reduction, the installed Public Improvements must be completed in compliance with the approved plans, specifications, and standards as determined by the City Engineer.

Each reduction allowed will be in the amount of the estimated cost, prepared and certified by the Subdivider's engineer, of the part of the subdivision improvements acknowledged in writing by the City Engineer. In no event shall the Performance Security be reduced to less than ten percent of the Engineer's Estimate for all subdivision improvements until all Public Improvements are completed, accepted by the City Council, and the Warranty Security is in place.

A request for reduction in the Performance Security may be made no more frequently than every thirty days. Upon receipt of a reduction request, the City Engineer will respond to the Subdivider within seven working days concerning the request and have the request placed on the next available City Council meeting agenda. The City Council, at such meeting, shall act to approve or deny the request.

6. Acceptance and Warranty of Improvements.

a. When the installation of all required Public Improvements is complete, the Subdivider shall submit a request for a final inspection to the City Engineer. The Subdivider shall include with this request, or before this request is made, a recording of the video camera inspection of each sanitary sewer main. Within seven working days of the request, the City Engineer will complete an inspection; and notify the Subdivider in writing of all particulars in which the inspection reveals that the work is incomplete or defective. The Subdivider shall immediately take such actions as are necessary to complete such work or remedy such deficiencies. After the Subdivider has, in the opinion of the City Engineer, satisfactorily completed the installation of all required Public Improvements in accordance with the approved plans, specifications, and standards, including those corrections identified during the final inspection, the City Engineer shall issue a Certificate of Final Completion to the Subdivider.

   Upon issuance of the Certificate of Final Completion to the Subdivider and execution of applicable warranty securities, as set forth in Section 7 of this

Agreement, the Authorized Official shall prepare a Resolution of Acceptance of Improvements for the City Council to accept the installed Public Improvements and to begin the warranty period. The Authorized Official shall place the adoption of said Resolution on the next available City Council meeting agenda for Council action.

b. Exceptions for Extreme Hardship:

(1) Extreme Hardship

The Subdivider may submit a written request to the Authorized Official requesting an exception to the installation of the required Public Improvements within the specified timeframe when installation of said improvements will create an extreme hardship for the Subdivider. The Authorized Official will have sole discretion in determining if an extreme hardship exists. If the Authorized Official determines an extreme hardship exists, the Authorized Official will determine the length of time the installation of the improvements will be allowed to be delayed up to a maximum of two years from the date of such determination. The Authorized Official may require a Performance Security be provided for an amount of up to one hundred percent of the cost of the improvements not completed plus projected inflationary costs for said Public Improvements.

(2) Extension of Warranty Periods

Warranty Security in the amount of ten percent of the original Engineer's Estimate for all the work will be required to remain in place until all warranty periods, including delayed installation improvements, have been completed with the following exception: if the original Warranty Periods have expired and the cost of the delayed installation improvements are less than the Warranty Security, then the Warranty Security for the delayed installation warranty security may be reduced to one hundred percent of the cost of the delayed installation improvements.

7. Warranty Security.

The Subdivider understands and agrees that the City will not accept, and therefore, will not maintain any Public Improvements within the identified Subdivision until said Public Improvements are found free of defects for the required Warranty Period, unless prior to any platting the Subdivider executes a Warranty Security in favor of the City for ten percent of the Engineer's Estimate for the duration of the Warranty Period. The Subdivider shall use the Warranty Security form approved by the City Attorney. Each Warranty Security required by this Agreement shall be secured in favor of the City by one of the following methods:

a. Escrow account,

b. Letter of irrevocable credit, or

c. A bond from a corporate surety licensed and authorized to do business in the State of South Dakota as surety and subject to written approval by the City Engineer which approval shall be at its sole discretion.

The Subdivider is not required to provide a warranty for any facilities furnished and installed by the City. However, the cost of the same shall be used for purposes of calculating the ten percent Warranty Security as set forth herein.

8. Warranty Inspections.

Prior to the end of the Warranty Period, the City Engineer and City Maintenance Supervisor will conduct a warranty inspection. A written list of warranty repairs will be prepared and presented to the Subdivider by the City Engineer. The Subdivider will be responsible to notify the City Engineer in writing when the warranty repairs have been completed and the City Engineer shall inspect the same within ten business days of such notice. The City Engineer will verify the warranty repairs have been completed, provide written notice acknowledging acceptance of the warranty repairs to the Subdivider, and notify the City Council of his recommendation to release the Warranty Security. The Warranty Security will remain until released by the City Council.

9. Engineer's Estimate.

The engineer retained by the Subdivider ("Subdivider's Engineer") shall prepare and provide an itemized estimate ("Engineer's Estimate") to construct the Public Improvements. The Subdivider's Engineer shall be a professional engineer licensed to work in the State of South Dakota. The Engineer's Estimate shall be itemized to clearly indicate the value of the improvements proposed. The Engineer's Estimate will be subject to the approval of the City Engineer. In the event there will be oversizing or material reimbursement payments made by the City to the Subdivider, said payment may be shown as a credit in arriving at the Engineer's Estimate.

10. Facilities by Others.

In addition to the cost of all other Public Improvements, the Engineer's Estimate shall include the cost anticipated by private utility companies or the City. All such charges shall be itemized in the estimate.

11. Authority of the City Engineer.

As the representative of the City, the City Engineer is in charge of engineering details and administration of the Public Improvements. Work shall be performed to the satisfaction of the City Engineer. The City Engineer will decide questions which may arise as to the quality and acceptability of materials furnished, work performed, all

questions which may arise as to the interpretation of documents, and all questions as to the acceptable fulfillment of this Agreement on the part of the Subdivider. The City Engineer has the authority to reject defective material and work.

The City Engineer will have the authority to suspend the work wholly or in part, by written suspension order, for failure to carry out conditions of this agreement, for failure to carry out orders, for conditions considered unsuitable for the prosecution of the work, or for other conditions or reasons determined by the City to be in the public interest. The City Engineer's decision shall be final but shall be subject to appeal pursuant to the City's Subdivision Regulations.

12. Coordination of Documents.

The construction documents are hereby made a part of this Agreement in their entirety. The coordination of these documents is an essential part of the Agreement. A requirement occurring in one is as binding as though occurring in all. They are intended to be complimentary and to describe and provide for a complete work. For discrepancies, the items shall prevail, or govern, in the following descending order:

a. Subdivision Construction Agreement.

b. City of Harrisburg Design Standards.

c. Construction Documents.

Nothing contained herein shall relieve the Subdivider of complying with other requirements imposed by Harrisburg City Ordinance or as otherwise legally or contractually required.

13. Cooperation by Subdivider.

The Subdivider shall give the work the constant attention necessary to facilitate the progress and shall cooperate with the City Engineer and City Inspectors ("Inspector(s)"). The Subdivider shall not take advantage of apparent errors or omissions in the plans and specifications. If the Subdivider discovers an error or omission, the City Engineer shall be immediately notified in writing or via email. The City Engineer will make corrections and interpretations as necessary to fulfill the intent of the plans and specifications.

14. Duties of the Inspector.

City Inspectors are under the direction of the City Engineer or City Maintenance Supervisor and are authorized to inspect work and materials furnished by the Subdivider. Inspection may extend to any part of the work, preparation, fabrication, or manufacture of the materials to be used. The Inspector is not authorized to alter or waive the conditions of this Agreement. The Inspector is not authorized to issue

instructions contrary to the plans and specifications or to act in a supervisory capacity for the Subdivider. The Inspector will have the authority to reject work or materials until any questions at issue can be referred to and decided by the City Engineer.

Neither the City's authority to inspect all work nor any actual inspections performed by the City during the course of construction shall constitute an acceptance of work performed or operate to relieve the Subdivider and/or Contractor's obligation to construct the project in compliance with the plans and specifications.

15. Inspection of Work.

Materials and details of the work shall be subject to inspection by the City Engineer. The City Engineer shall be allowed to enter upon Subdivider's property and have access to the work site to inspect during regular business hours and shall be furnished with such information and assistance by the Subdivider as is required to make a complete and detailed inspection.

16. Materials.

All materials and equipment furnished under this Agreement shall be new unless approved in writing by the City Engineer. Materials used shall conform to requirements of the approved plans, specifications, and standards. The City retains the right to perform any and all record testing which may be deemed necessary or advisable by the City Engineer. To expedite the inspection and testing of materials, the Subdivider may notify the City Engineer of proposed sources of materials prior to delivery. Work in which unapproved materials are used shall be performed at the Subdivider's risk and are subject to inspection, testing, or rejection. Copies of tests will be furnished to the Subdivider's representative when requested.

Samples taken and tests made will be in accordance with the most recent standard or tentative standard methods of AASHTO, ASTM, and the "South Dakota Department of Transportation, Materials Manual-Sampling and Testing Procedures." Samples will be taken and tests made by a representative of the City and at the City's expense except as otherwise stipulated.

If a discrepancy exists, the order of precedence is as follows:

a. Department's Materials Manual.

b. AASHTO.

c. ASTM.

17. Conformity with Plans and/or Specifications.

Work performed and materials furnished shall conform to the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown on the plans, specifications, or other documents.

If the City Engineer finds the materials furnished, work performed, or the finished product is not in full conformity with the plans and specifications, resulting in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or corrected by and at the expense of the Subdivider.

If the City Engineer finds the materials furnished, work performed, or the finished product is not in full conformity with the plans and specifications but that reasonably acceptable work has been produced, he shall then determine if the work shall be accepted and remain in place. If acceptable, the City Engineer will document the basis of acceptance and provide an amount of compensation to become due to the City for allowing the work to remain in place and the same shall be signed by the Subdivider and may be taken from the Performance Security. Should the Subdivider not agree, the work or materials shall be removed and replaced or corrected by and at the expense of the Subdivider. Items of work that may have an impact on public use or public safety that are accomplished contrary to specifications shall be corrected immediately.

18. Remedies for Substandard Work and/or Materials.

Work which does not conform to the requirements of the plans and specifications will be considered as unacceptable, unless otherwise determined acceptable under the provisions of Section 17. Unacceptable work, whether the result of poor workmanship, use of defective materials, or damage through carelessness or other cause, shall be removed immediately and replaced in an acceptable manner.

19. Acceptance Limitation.

The acceptance of a Public Improvement shall in no way constitute an assumption by the City of liability for defects in the improvement. By accepting the improvement, the City does not warrant or guarantee the Public Improvement has been properly designed or constructed, or waive any claims relating thereto. Any errors or omission of the Subdivider, their Engineer, or the Contractor shall not be the responsibility of the City.

20. Revisions to the Approved Construction Documents.

The Subdivider may revise the approved construction documents as necessary to complete the subdivision improvements, provided the changes are reviewed and approved per the City's standard processes. If the revisions result in increased liability to the City, the City Engineer may withhold performance security reductions or require

increases in the Performance Security until such work is completed and accepted by the City. If the revisions result in a liability decrease, the performance security may be reduced in accordance with Section 5 of this agreement.

21. Subdivider and/or Contractor Employees, Methods, and Equipment.

a. Workers:

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Any person employed by the Subdivider and/or by any Contractor who does not perform assigned work in a proper and skillful manner, or who is intemperate or disorderly, shall be removed from the project forthwith by the Subdivider upon written order of the City Engineer and shall not be employed again on any portion of the work without the City Engineer's consent. Should the Subdivider fail to remove such person or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the City Engineer may suspend the work until the Subdivider has complied with the order(s).

b. Methods and Equipment:

(1) The methods and equipment used by the Subdivider and/or Contractor shall produce a satisfactory quality of work. Equipment used on any portion of the project shall be such, and its use so regulated, that no serious or irreparable damage to the roadway, adjacent property, or other streets or highways will result from its use. If damage does occur to these areas, suitable repairs shall be made at the Subdivider's expense.

(2) When the methods and equipment to be used by the Subdivider and/or Contractor in accomplishing the construction are not prescribed in the plans, specifications, or standards, the Subdivider and/or Contractor is free to use any methods or equipment that will accomplish the work in full conformity with the requirements of the approved plans, specifications, and standards, as demonstrated to the satisfaction of the City Engineer.

22. Maintenance of Traffic and the Premises.

Unless otherwise specified, the Subdivider shall be solely responsible for maintaining the premises being subdivided in a safe condition and for keeping the project secured from public use. Measures to adequately restrict public access must be used and maintained by the Subdivider. If the requirements call for public access, the Subdivider shall install and maintain appropriate controls as required. The Subdivider shall be responsible for installation and maintenance of any barricades or warning signs required until Final Acceptance is granted and permanent signage is in place. The Subdivider shall notify the City Engineer ten business days prior to the need for permanent signage. Until Final Acceptance is granted, the Subdivider shall be responsible for maintaining traffic throughout the subdivision.

23. Maintenance of Improvements.

The Subdivider will be responsible for maintaining all improvements, including snow removal and street sweeping, prior to acceptance by the City Council. Any damage to improvements caused by Developer's maintenance, or lack thereof, shall be subject to repair or replacement. The Subdivider may contract separately from this Agreement with the City to provide snow removal and/or street sweeping services.

In the case of an emergency repair where, in the judgment of the City, delay would cause serious loss or damage, repairs may be made without notice being sent to the Subdivider, and the Subdivider shall pay the cost thereof.

24. Transfer of Responsibility.

In the event of the sale, conveyance, or transfer of the Subdivision or any portion thereof, the City will not release the Subdivider from its obligations under this Agreement and will continue to hold the Subdivider responsible for all Public Improvements until a successor in interest to the Subdivider has posted a suitable Performance Security and/or Warranty Security, as applicable, and entered into a Subdivision Construction Agreement with the City. The Subdivider may also assign over its Performance Security with the written consent of the City, which consent shall not be unreasonably withheld to cover said Public Improvements.

25. Failure to Complete the Required Improvements.

In the event the Subdivider shall fail or neglect to fulfill the obligations under this Agreement, the City shall have the right to construct or cause to be constructed the Public Improvements specified herein, as shown on the Plat and in the construction documents as approved, and the Subdivider shall be liable to pay to and indemnify the City, the total cost to the City thereof, including, but not limited to, engineering, construction administration, attorney fees, and contingent costs together with any damages, either direct or consequential, which the City may sustain on account of the failure of the Subdivider to carry out and execute all of the provisions of this Agreement and any agreements referenced herein. The City shall have the unconditional right to call upon the Performance or Warranty Security for the purposes specified and in the amounts enumerated herein.

If the Subdivider fails to or refuses to complete the Public Improvements under the terms of this Agreement by the dates required, the City may upon written notice to Subdivider at any time (or times) execute against the Performance or Warranty Security for those funds it deems necessary to complete the work - whether by the City, a private company, or a public agency - upon certifying that the Subdivider has not completed the Public Improvements. The certification shall be made by a notarized statement signed by the City Engineer or his/her designated agent.

If the City takes over the completion of the Public Improvements because of the Subdivider's failure or refusal to complete the same, and if the bond, escrow, or letter of credit posted is insufficient to complete the Public Improvements and cover the Warranty Security, the Subdivider shall be liable to the City upon demand for the additional funds necessary to complete or repair the Public Improvements according to the construction documents. The City reserves the right to recover such excess costs through a special assessment on the property within the subdivision (per SDCL 11-6-30).

If the City performs, or has performed on its behalf by a private company or a public agency, the Public Improvements specified in the plans and specifications, and if the final costs of the Public Improvements to the City including, but not limited to, administrative costs, is less than the amount drawn against the bond or letter of credit after withholding a sum sufficient to cover the Warranty Security, then the City shall refund the excess to the Subdivider or surety within thirty days from completion and acceptance of the Public Improvements.

26. Breach of Agreement.

a. The following noninclusive list shall constitute a breach of this Agreement:

(1) Failure by the Subdivider to complete the Public Improvements within the contract period or any extension thereof.

(2) Failure or refusal by the Subdivider to comply with an order of the City Engineer within a reasonable time.

(3) Subdivider's disregard of laws, ordinances, or instructions of the City Engineer.

(4) Failure or refusal by the Subdivider to remove rejected materials.

(5) Failure or refusal by the Subdivider to replace, perform anew, or correct any defective or unacceptable work.

(6) Bankruptcy or insolvency of the Subdivider, or the making of an assignment for the benefit of creditors by the Subdivider.

(7) Failure by the Subdivider to carry on the work in an acceptable manner.

(8) Any other breach of a material provision of this Agreement.

Upon Subdivider's breach, the City shall be entitled to give notice of default to the Subdivider and security provider, if any. The notice of default shall indicate how the Subdivider has breached and shall indicate what action the Subdivider must take to cure such breach. The Subdivider shall have fifteen days to take substantial action to cure such breach.

b. If the Subdivider does not, within the time for cure provided in the notice of default, take substantial action to cure such breach, the Subdivider shall, at the written direction of the City Attorney, relinquish possession and control of the work, and the City shall thereupon have full power and authority, to terminate the contract, to take over the completion of the work, to enter into agreements with others for the completion of said contract according to the terms and provisions thereof, or to use such other methods as in the City's opinion may be required for the performance of said contract, or completion of Public Improvements, in an acceptable manner.

c. The Subdivider and its security provider shall be liable for all outlay and expense incurred by the City, together with the costs of completing the Public Improvements, and such costs may be deducted from any monies due or which may become due to the Subdivider. In case such outlay and expense exceeds the sum that would have been payable under the Warranty Security, or to the extent said Warranty Security fails to make payments, the Subdivider shall be liable for and shall pay to the City the amount of said sums.

d. Neither the City, nor any officer, agent, nor employee thereof, shall be in any way liable or accountable to the Subdivider or the Subdivider's security provider for the method by which the completion of said Public Improvements, or any portion thereof, may be accomplished, or for the price paid therefore. Neither by taking over the work nor by declaring a default, shall the City forfeit the right to recover damages from the Subdivider for failure to complete the Public Improvements.

Subdivider:

By _____

STATE OF South Dakota)
: SS
COUNTY OF Minnehaha)

On this 3rd day of December, 2021, before me, the undersigned officer, personally appeared Norman Drake, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

_____

Notary Public—State of: South Dakota
(SEAL)

RACHEL WILSON
NOTARY PUBLIC
SOUTH DAKOTA
SEAL

My Commission Expires: 1/05/2024

City of Harrisburg:

_____ _____
Mayor Date

ATTEST:

_____
Finance Officer