SITE IMPROVEMENTS AGREEMENT
(3520 11TH AVENUE REDEVELOPMENT PLAN)

THIS AGREEMENT is entered into between the City of Evans, a Colorado home rule municipality ("the City") and 3520Evans, LLC, a Limited Liability Company ("the Developer") effective the 19th day of April, 2022.

WHEREAS, the Developer is the owner of the real property decribed on Exhibit A, attached, (hereinafter referred to as "the Property");

WHEREAS, the City has approved the Redevelopment Plan for the Property in accordance with the provisions of the Evans City Code as found in Exhibit B (the "Redevelopment Plan").

WHEREAS, the Developer intends to develop the Property, the effect of which will be to directly impact and generate the need for on-site and off-site improvements. The Developer acknowledges that the exactions set forth herein are reasonably attributable to the special impacts which will be generated by the proposed uses of the Property, and that the terms and conditions set forth in this Agreement are necessary, reasonable and appropriate;

WHEREAS, the parties desire to provide for the construction of the improvements described in the Exhibit B and Exhibit C that are required to serve the Property (the "Improvements") as set forth herein.

NOW, THEREFORE, in consideration of the premises, the Parties here to agree as follows:

1. Improvements Required

Developer agrees to make, construct and install (or cause to be made, constructed or installed) the improvements set forth in Exhibit B and C attached hereto and incorporated herein by reference (the "Developer Improvements"). Such improvements shall be made, constructed and installed in accordance with the Redevelopment Plan. Any and all costs of City inspection of improvements shall be borne solely by the Developer. The extent of the Developer's compliance with this Agreement shall be determined solely by the City and its duly authorized agents and employees. Prior to commencement of work on the Property, the Developer shall obtain all necessary permits to complete the Improvements. In addition, Developer shall fully comply with all terms and conditions of any such permits.

2. Performance Guarantee

The Developer shall furnish the City in a form and substance acceptable to the City, a performance warranty, or other security deemed acceptable by the City (the "Performance Guarantee"), in an amount not less than one hundred fifteen percent (115%) of the total estimated cost of the improvements, as certified to the City by the Developer and as accepted by the City and as set forth in Exhibit C which have not been completed as of the date on which such security is provided to the City. The security is included in Exhibit D.

The Performance Guarantee shall be subject to the following terms and conditions:

a. The Developer providing the Performance Guarantee shall have no direct or indirect ownership or managerial control over the entity issuing any Performance Guarantee.

b. In the event that prior to City acceptance of the Improvements, the Performance Guarantee should expire or the entity issuing the Performance Guarantee becomes non-qualifying, or the cost of improvements construction is reasonably determined by the City to be greater than the amount of the security provided, then the City shall furnish the Developer with written notice of such condition, and within fifteen (15) days of receipt of such notice the Developer shall provide the City with a substituted qualifying Performance Guarantee, or augment the deficient security to achieve one hundred fifteen percent (115%) of the cost of improvements completion. If such Performance Guarantee is not timely furnished, then development activities including but not limited to the issuance of building permits and certificates of occupancy and the extension of utility services, may be suspended by the City pending compliance herewith.

c. The Developer shall ensure that all contractors and/or subcontractors employed in connection with construction or installation of the Improvements shall be licensed, to the extent such licensing is required, before any work on the Improvements is commenced.

3. Completion of Improvements

All improvements described in this Agreement shall be completed as specified in the Phasing Plan attached hereto as Exhibit C-3. The time for completion of the improvements may be extended by mutual agreement of the parties, particularly when the need for such extension is caused by persons or matters over which the Developer has no control.

4. Completion of Improvements by City

In the event the Developer fails to complete the Improvements in compliance with this Agreement, the City may, but shall not be obligated to, proceed with restoring or completing some or all of the remaining portions of the Improvements to a condition satisfactory, in the sole discretion of the City Council, to the health, safety and welfare of the City. The City shall be entitled to draw on the letter of credit or security in order to accomplish such restoration and/or completion. The City must give the Developer at least Thirty (30) days prior written notice of its intent to draw on the letter of credit or security in order to restore or complete all or any portion of the Project. If the City completes some or all of the Improvements, then the City Council shall have full discretion to determine the rules and regulations governing use of the Improvements and any fees to be charged for or associated with such use.

5. Development Standards and Procedures

a. Engineering Services

The Developer shall at its sole expense procure all engineering and landscaping services necessary and appropriate in conjunction with the development of the Property, which shall fully conform to the City's applicable ordinances, standards

and specifications. Professional services shall be performed by engineers, surveyors, architects or other professionals duly licensed by the State of Colorado as may be appropriate. Landscaping services shall be performed by persons trained in landscape architecture or horticultural design.

b. Review

The Redevelopment Plan as found in Exhibit B and has been conditionally approved by the City.

c. Testing

The Developer, at its sole expense, shall employ a professionally qualified, independent testing company acceptable to the City to perform all testing of materials or construction that may reasonably be required by the City to ensure compliance with applicable standards and specifications. Developer shall furnish the City with certified copies of test results, and agrees to release and authorize full access by the City and its designated representatives to all work-up materials, procedures and documents used in preparing the test results as requested by the City.

d. Inspection

At all times during construction of the Improvements, and until final acceptance thereof by the City, the City shall have the right, but not the duty, to inspect materials and workmanship in order to ascertain conformance with the Construction Drawings and all applicable standards and specifications. Developer shall reasonably cooperate and assist the City to gain appropriate access to the areas designated for inspection. It shall also be the duty of the Developer to notify the City upon discovery of any nonconformance with the said plans, standards and specifications. Inspection and acceptance of work by City personnel shall not relieve the Developer of any responsibility.

e. Street access

Developer shall, at its own expense, be responsible for keeping on-site streets, off-site streets used as construction routes, and rights-of-way clean of mud, rocks, and debris at all times during said construction. All work shall conform to the requirements for erosion control as described in statutes, ordinances, or regulations. Should the Developer fail to meet said requirements, the City may take corrective action and invoice the Developer at the City's prevailing rate.

f. Initial acceptance of improvements

The Developer shall submit a Request For Initial Acceptance, including Certification of Completion, "as built" drawings of the Improvements and certified cost estimates of Public Improvements, to the City upon completion of the Improvements. Said Certification shall be submitted upon written oath or

affirmation of the Developer that the Improvements have been fully paid for and Developer has fully paid all persons or entities having furnished labor or materials for the design, construction and installation of such Improvements. The City, however, shall not be deemed to have accepted any payment responsibility or liability in conjunction with the ascertainment of such payment. The City shall inspect such Improvements within ten (10) working days of the City's receipt of the Developer's request for Initial Acceptance, unless unable to do so due to inclement weather or other natural conditions or conditions beyond the City's control. Upon a finding of satisfactory completion of the Improvements in compliance herewith and all applicable ordinances and standards of the City, the City shall issue a Certificate of Initial Acceptance to the Developer, for the completed improvements. Following the issuance of the Certificate of Initial Acceptance, the City shall, upon request by the Developer, release the Performance Guarantee, provided a Warranty Guarantee meeting the requirements of subsection (g) below has been executed and delivered to the City, and provided no mechanics lien statements have been filed with respect to the project.

Upon the issuance of the Certificate of Initial Acceptance with respect to the Improvements consisting of water and sewer lines and facilities, the Developer shall convey such lines and facilities to the City by bill of sale.

g. Warranty

(1) For a period of two (2) years from the date of initial acceptance or the date of repair for repairs made during the initial warranty period, Developer warrants that all improvements hereunder will be free from defects, including but not limited to defects in materials, workmanship, design, construction and installation, and that the Improvements otherwise fully comply with all applicable standards and specifications.

(2) A Warranty Guarantee shall be equal to fifteen percent (15%) of the total cost of the Improvements, as certified to the City. The Warranty Guarantee shall be in the form of an Irrevocable Letter of Credit or other security acceptable to the City conforming to the requirements applicable to the Performance Guarantee set forth at Section 3 hereof. The Warranty Guarantee shall provide security for the costs which may be incurred in repairing and/or replacing improvements during a warranty period of two years following Initial Acceptance by the City.

(3) In the event that any substantial repair or replacement is required to any of the Improvements during the warranty period and such repair or replacement is not timely made upon notice of defect or in any event before the expiration of the warranty period, the City may elect, but shall not be obligated, to:

(a) call the Warranty Guarantee and secure repair or replacement of the nonconforming improvements, or

(b) order denial or suspension of building permits, utility services or certificates of occupancy outstanding until repair or replacement of any non-conforming Improvements have been performed.

(c) Take such other action as may be authorized in law or equity.

6. Procedure for Final Acceptance of Improvements

a. No earlier than sixty (60) days or later than thirty (30) days prior to the expiration of the warranty period, the Developer shall submit a written request for Final Acceptance of Improvements, and within ten (10) days of such request the City shall conduct a final inspection of the Improvements, unless precluded from doing so by weather or natural conditions. If the Improvements subject to the inspection request fully conform to this Agreement and all applicable standards and specifications, and/or all repairs, if any are needed, have been made to bring same into such conformance, then the City shall issue a Certificate of Completion and certify Final Acceptance of the Improvements to the Developer . After Final Acceptance the Developer may request, and the City shall release the Warranty Guarantee, and Developer shall have no further obligations or liabilities with respect to such Improvements.

b. If Developer fails to have Improvements finally accepted as provided in this Section 6, the Developer shall be in default of this Agreement and the City may exercise its rights to secure performance as provided by Section 4 hereof. In the event that the Developer has not requested Final Acceptance forty-five (45) days prior to the scheduled completion dates applicable, as may have been extended as herein provided, the City shall have the right, but not the obligation, to at any time thereafter conduct a final inspection of the Improvements. If pursuant to Final Inspection requested by the Developer or initiated by the City, any such Improvements are found to not conform to this Agreement, or applicable standards and specifications, the City shall have the rights set forth at Section 4, 5, and elsewhere herein.

Nothing herein shall be construed or deemed as requiring the City to finally accept and release from warranty any Improvements that are defective or damaged.

7. Liability Limitations

a. Indemnification

The Developer agrees to indemnify and hold harmless the City, and its officers, agents and employees, from and against all liability, claims, demands, and expenses, including court costs and attorney fees, on account of any injury, loss, or damage, which arises out of or is in any manner connected with the work to be

performed under this Agreement, if such injury, loss, or damage is caused in whole or in part by, the negligent act or omission, error, professional error, mistake, accident or other fault of the Developer, any Subcontractor of the Developer, or any officer, employee, or agent of the Developer, contractor or subcontractor. The obligations of this Section shall not apply to damages for which the City shall become liable by final judgment to pay a third party as a result of the negligent act or omission, error, professional error, mistake, accident, or other fault of the City.

b. Insurance

(1) The Developer agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following coverages: Commercial General or Business Liability Insurance with Minimum combined single limits of NineHundred Ninety Thousand Dollars ($990,000) for any one occurrence, with respect to each of the Developer's owned, hired or non-owned vehicles assigned to or used in performance of the services. In the event that the Developer's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of the Developer who utilizes an automobile in providing services to the City or the Developer under this Agreement.

(2) Developer shall insure that all contractors and subcontractors providing services provide Workers' Compensation as required by the Labor Code of the State of Colorado and Employers' Liability Insurance;

(3) If approved by the City in its sole discretion, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages.

(4) Developer shall at a minimum procure and maintain insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the Developer pursuant to retroactive dates, and extended reporting periods shall be procured to maintain such continuous coverage.

(5) A Certificate of Insurance shall be completed by the Developer's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the City prior to commencement of any services under this Agreement. The Certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City.

(6) Failure on the part of the Developer to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material Breach of Agreement and, if said breach is not cured within ten (10) days of written notice by City to Developer, City may immediately terminate this Agreement, or at its discretion, City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith and all monies so paid by City shall be repaid by the Developer to City upon demand, or City may offset the cost of the premiums against any monies due to Developer from City, or the City may cease to issue building permits or certificates of occupancy, or to provide utility services until the defect has been remedied.

(7) The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto. Developer agrees to execute any and all documents necessary to allow the City access to any and all insurance policies and endorsements pertaining to this particular job.

(8) The parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (currently $330,000 per person and $990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the City, its officers, agents or employees.

c. Nonliability

Developer acknowledges that the City's review and approval of plans for the development of the Property is done in furtherance of the general public health, safety and welfare, and that no specific relationship with, or duty of care to the Developer or third parties is created or assumed by such review approval, or is any immunity waived, as is more specifically set forth at Section 24-10-101, et seq. C.R.S., Colorado Governmental Immunity Act.

No one, individually or otherwise, other than the parties hereto, shall acquire, as a result of this Agreement, any rights, claims or obligations from or against the City, its agents, employees or officers. Actions by the City against Developer to enforce any provision of this Agreement shall be at the sole discretion of the City Council of the City. No third parties shall have any right to require any action by the City pursuant to this Agreement; and this Agreement shall not create a liability on the part of or be a cause of action against the City for any personal or property damage that may result to any third parties from the failure of Developer to perform or construct the improvements herein specified.

8. Enforcement and Remedies

a. Breach of Agreement

In the event the Developer fails to timely comply with any of the terms, conditions, covenants and undertakings hereof, and if such noncompliance is not cured and brought into compliance within thirty (30) days of written notice of breach to the Developer by the City, unless the City in writing designates a longer cure period reasonably requested by the Developer, then the City may call for payment of the Performance or Warranty Guarantee. The City may also during the cure period withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services. Nothing hereunder shall be construed to limit the City from pursuing any other remedy at law or in equity which may be appropriate under the statutes and ordinances, and applicable laws and legal standards of the State of Colorado or the United States, before any court of competent jurisdiction. Such remedies shall be cumulative. Notice by the City to the Developer shall specify the conditions of default.

b. Non-Waiver

The failure of the City to take timely action with respect to any breach of any term, covenant or condition hereof shall not be deemed to be a waiver of such performance by Developer, or a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.

9. Binding Effect

This Agreement shall be binding on the parties hereto, their respective successors and assigns, and shall be deemed to constitute a covenant running with the land. The Developer and any such successor and assign shall be jointly and severally liable for performance of this Agreement; provided, however, that no individual lot that has been sold to an individual lot owner shall have any obligation or liability of any kind under this Agreement.

10. Entire Agreement

This Agreement shall constitute the entire agreement between the parties. No subsequent amendment hereto shall be valid unless made in writing and properly executed by the parties hereto.

11. Notice

Any notice given under the terms of this Agreement shall be made in writing, and shall be deemed made upon personal service or upon mailing by United States Mail, postage prepaid, to the other, and unless amended by written notice, to the following:

City Manager
City of Evans
1100 31st Street
Evans, Colorado 80620

3520Evans, LLC

3069 Littleleaf Ln
Boulder, CO 80304

12. Applicable Law, Jurisdiction, Venue and Severability

This Agreement is to be governed and construed according to the laws of the State of Colorado. Any action or claim filed to enforce this Agreement or relating directly or indirectly to the provisions, performance or enforcement of this Agreement shall be filed in the District Court of Weld County, State of Colorado. In the event that any provision of this Agreement is held to be in violation of the City's ordinances or the laws of the State of Colorado or the United States and thereby rendered unenforceable, such unenforceable provision shall be ineffective without invalidating the remaining provisions of this Agreement.

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement the parties have set their hands below on the dates indicated.

CITY OF EVANS

By: _____
Mark C. Clark, Mayor

3520Evans, LLC

By: _____
Belén Diez Blázquez, Manager

ATTEST:

_____
Julie Kamka, City Clerk

STATE OF COLORADO)
) ss
COUNTY OF Boulder)

Acknowledged before me this 7th day of April, 2022 by Belen Diez Blazquez as Manager, of 3520 Evans LLC a LLC.

Witness my hand and official seal.

My commission expires: Nov. 12, 2022

(Seal)

WILLIAM H LACERT III
Notary Public
State of Colorado
Notary ID # 20054022881
My Commission Expires 11-12-2022

_____
Notary Public

Exhibit Cover Sheet

Exhibit A – Legal Description

Exhibit B – Redevelopment Plan

Exhibit C – Developer's Improvements

1. C-1 Listing of Improvements
2. C-2 Cost Estimate of Improvements
3. C-3 Schedule of Improvement Implementation

Exhibit D – Performance Guarentee

Exhibit E – Explaination of Water Rights

EXHIBIT A: LEGAL DESCRIPTION

Lots one (1), two (2), three (3), four (4), five (5), six (60, seven (7), fifteen (15), sixteen (16), seventeen (17), eighteen (18), in Block 163, City of Evans, County of Weld, State of Colorado;
Together with all of the vacated alley lying between and abutting Lots 1, 2, 3, 4, 15, 16, 17, and 18.
And also together with the east half (E 12) of the vacated alley abutting Lots 5, 6, and 7, as vacated as ordinance No. 134, recorded April 10th, 1961, in
Book 1582 at page 152.
And also together with the West 10 feet of St. Vrain Street, adjacent to lots 1 through 7, inclusive as vacated by ordinance No. 417-79, recorded September 19, 1979, in Book 882 under Reception No. 1803730, Weld County Records.
Except that portion conveyed to the City of Evans by Deed recorded September 19, 1979 at Reception No. 1803732.

The property is located at 3520 11th Avenue.

EXHIBIT B: REDEVELOPMENT PLAN

Redevelopment Plan has been recorded with the Weld County Clerk and Recorder at reception _____ and is also on file with the City of Evans.

EXHIBIT C: DEVELOPER IMPROVEMENTS

C-1 – Description of Improvements to be made pursuant to the Site Improvement Agreement

C-2 – Engineer's estimate of probable costs of Improvements

C-3 – Schedule of completion of Improvements

EXHIBIT C-1 Description of Improvements

Right-of-way Improvements and Dedications: Developer has dedicated appropriate right-of-way for all public streets in and adjacent to this devleopment in accordance with the most current City standards for the same and agree to pay for the site improvements shown on the approved public improvements plans, landscaping, irrigation, and walkways.

1. Fencing Improvements and maintenance: The Developer, the owners of the property, their successors in interest and/or assigns, are responsible for implementation and maintenance of the new privacy fencing located in the northeast section of the site and all existing fencing on the property. The parties specifically understand and agree that the City is not responsible for any maintenance or upkeep of the same.

2. Grease Interceptor Installation: The Developer shall be responsible for the installation of the grease interceptor under an appropriate sink in the building.

3. Landscape and Irrigation improvements and maintenance: The Developer, the owners of the property, their successors in interest and/or assigns, are responsible for implementation and maintenance of the landscaping and irrigation on the site as well as the Right-of-way landscaping. The parties specifically understand and agree that the City is not responsible for any maintenance or upkeep of the same.

4. Water Curbstop: The Developer, the owners of the property, their successors in interest and/or assigns, are responsible for installation and maintenance of the curb stop box with a traffic rated cover.

5. Sidewalks: Developer shall install the ADA improvments to the sidewalk along 11th Avenue as it approaches both access drives at 11th Avenue. The sidewalk shall be widened to include the accessibility route with no more than 2% cross slope abutting the drive lanes.

6. Overhead Utilities & Streetlights: All overhead utilities shall be placed underground along 11th Avenue at the time in which the utility company or the city initiates the improvements for the 11th Avenue Right-of-way. The Developer shall contribute their financial share of $12,500 for the undergrounding improvements. The City of Evans shall install streetlights within the City Right-of-way along the 11th Avenue frontage as indicated on the approved Redevelopment Plan at the time when overhead utilities are undergrounded along 11th Avenue.

7. Non-potable Water System and Raw Water Dedication: The Developer and the City agree the Development will be served by a non-potable water system for irrigation at the time that a non-potable system is available for the property. Until non-potable water is available for the site, the landscaping shall be irrigated with potable water.

EXHIBIT C-2 Engineer's estimate of probable costs of Improvements

Description	Total Cost
Phase 1 Improvements	
1. Northeast Fencing Installation	$4,250.00
2. Undersink Grease Trap Installation	$1,250.00
3. Landscape/Irrigation Improvements	$7,500.00
4. Water Curb Stop Ironcast Cover	$1,000.00
Phase 1 Subtotal	**14,000.00**
Phase 2 Improvements	
5. ADA Sidewalk Improvement	$4,500.00
6. Undergrounding Utilities & Lighting Improvements	$12,500.00
Phase 2 Subtotal	**$17,000.00**
115% Performance Guarantee Due with Site Improvement Agreement	**$21,275.00**
Additional Cost to be provided by Development with Site Improvement Agreement	**$12,500.00**
TOTAL COST TO BE PROVIDED TO THE CITY	**$33,775.00**

The items listed in the table above are described in Exhibit C-1.

EXHIBIT C-3 Schedule of Improvements

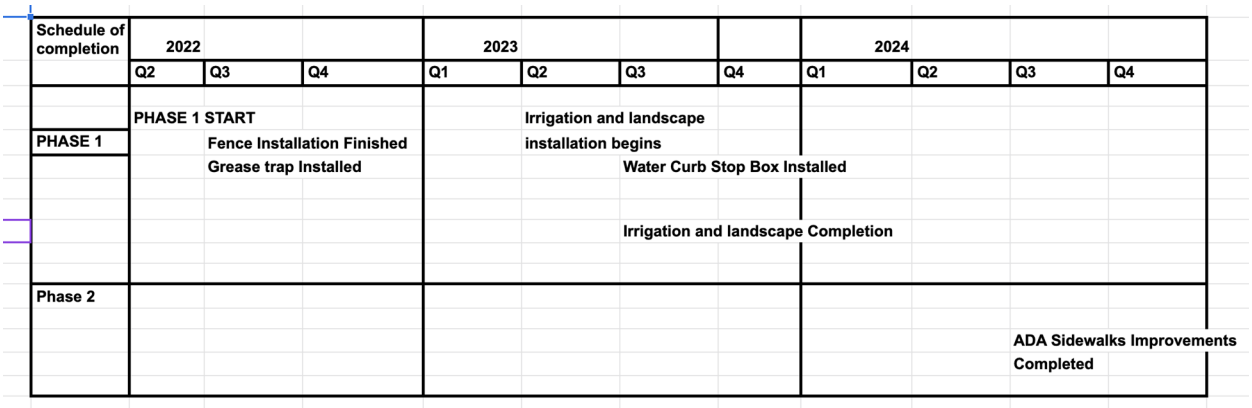

EXHIBIT D - Performance Guarantee

Check # 162 was received in the amount of $21,275.00 to be held in escrow by the City for the 115% Performance Guarantee.

Check # 163 was received in the amount of $12,500.00 to be held in escrow by the City for the developers financial share for the undergrounding of utilities.

EXHIBIT E – Water Dedication Statement

The site of the proposed Redevelopment Plan for 3520Evans, LLC at 3520 11th Avenue has been in business for several years under many names. The previous uses were mainly bar/restaurant combinations. The City has determined that water was previously dedicated to the site.

No additional increase in water consumption is proposed as a result of the plans associated with the Redevelopment Plan found in Exhibit B. Should future uses increase water consumption, additional water dedication to the City may be necessary.