

AGREEMENT TO ACCEPT DEPOSIT FOR INSTALLATION OF STREETLIGHT

THIS AGREEMENT for streetlight deposit ("Agreement"), made this 22nd day of August, 2023 ("Effective Date") by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, whose address is 33 East Broadway Avenue, Meridian, Idaho, ("City") and EAGLE VIEW LANDING APARTMENTS, LLC, whose address is 2929 W. Navigator Drive Suite 400, Meridian, Idaho 83642 ("Property Owner").

WHEREAS, Property Owner is the owner of Eagle View Landing, located at Located at 1032 S. Silverstone Way, Meridian, Ada County, Idaho, described as Eagle View Landing Lots 15 & 16 Block 1, Rolling Hills Subdivision in the NW ¼ of the SE ¼ of Section 16, Township 3N, Range 1E; ("Subdivision").

WHEREAS, one of the site-specific conditions of approval of City's approval of LDIR-2022-0021/Conditions of Approval with attached record drawings, attached hereto as *Exhibit A*, is to install One (1) streetlight at the property entrance on S. Rolling Hills Drive on Subject Property.

WHEREAS, Unified Development Code ("UDC") section 11-5C-3(B) authorizes Property Owner to post a performance surety for such improvements that are needed;

WHEREAS, UDC section 11-5C-3(D) authorizes sureties in the form of a cash deposit; and,

WHEREAS, under UDC section 11-5C-4, if Property Owner fails to complete the public improvements in the time period required, the City Council may proceed to have such work completed at Property Owner's expense;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, and in consideration of the recitals above, which are incorporated herein, the Parties agree as follows:

I. COMMITMENTS BY PROPERTY OWNER.

- A. Deposit.** Property Owner shall pay a deposit to City in the amount of Twelve Thousand Dollars and Zero Cents (\$12,000.00).
- B. Installation.** Property Owner shall obtain all necessary permits, inspections, and plan approvals for the installation of the Streetlights, and install the Streetlights, by December 22, 2023. Property Owner shall comply with all applicable laws, including Meridian City Code and the City of Meridian Improvement Standards for Street Lighting.

- C. Demand for return of Deposit.** Within thirty (30) days of Property Owner's installation of the Streetlights and completion of all necessary inspections in compliance with applicable codes, Property Owner shall provide to City a written demand for the return of the Deposit.
- D. Consent to entry.** Property Owner shall, and hereby does, provide to the City perpetual consent and access to enter the Subject Property for the purpose of inspecting or installing Streetlights and related infrastructure. Except in the event of an imminent or realized threat to the public health, safety, or welfare, City shall provide Property Owner at least twenty-four (24) hours prior notice of such entry. Such notice may be verbal, written, or be posted at the Subject Property.
- E. Additional expense for installation.** If Property Owner forfeits the Deposit due to failure to comply with this Agreement, and City installs the Streetlights, Property Owner shall be responsible for paying to City any amount exceeding the Deposit within thirty (30) days of City's invoice therefor.

II. COMMITMENTS BY CITY.

- A. Recordation.** City shall record this Agreement, and shall submit proof of such recording to Property Owner.
- B. Hold Deposit.** City shall hold Property Owner's Deposit until Property Owner installs Streetlights as required by this Agreement.
- C. Return of Deposit.** Within thirty (30) days of Property Owner's installation of the Streetlights, completion of all necessary inspections in compliance with applicable codes, and City's receipt of Property Owner's written demand for the return of the Deposit, City shall return the Deposit to Property Owner.
- D. Default.** If Property Owner fails to install the Streetlights before the Due Date, Property Owner shall forfeit the Deposit to City, and City shall install the Streetlight at Property Owner's sole expense.

III. GENERAL PROVISIONS.

- A. Default.** Any failure to perform the terms and conditions of this Agreement, or any portion thereof, shall be a default hereunder.
- B. Remedies.** In the event of Property Owner's default, in addition to other remedies specified herein, the City may withhold building, electrical, plumbing permits, certificates of zoning compliance, or certificates of occupancy for the Subject Property or improvements thereon, if Streetlights have not been installed as required.
- C. Enforcement.** This Agreement shall be enforceable in any court of competent jurisdiction by either City or Property Owner, or any respective successor(s) in interest thereof. An

action at law or in equity, as appropriate, shall lie to secure specific performance of any covenant, agreement, condition, commitment, and/or obligation set forth herein. In addition, remedies available to City shall include, but shall not be limited to, a lien on the property, collections, or revocation of land use approvals and/or certificates of occupancy for buildings on the Subject Property.

- D. Notices.** Any notice desired by the Parties or required by this Agreement shall be deemed delivered after deposit in the United States Mail, postage prepaid, addressed as follows:

If to City:

City of Meridian

City Clerk

33 E. Broadway Ave.

Meridian, Idaho 83642

If to Property Owner:

Eagle View Landing Apartments LLC

2929 W. Navigator Dr. Suite 400

Meridian, ID 83642

Either Party may change its address for the purpose of this section by delivering to the other Party written notification of such change, establishing a new address for noticing purposes, in accordance with the requirements of this section.

- E. Time is of the essence.** The Parties acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach and default hereunder by the Party so failing to perform.
- F. Binding upon successors.** Except as otherwise specifically provided herein, this Agreement shall be binding upon any and all owners of the Subject Property, any and all subsequent owners thereof, and each and every other person acquiring an interest in the Subject Property. Nothing herein shall, or shall be construed to, in any way prevent the sale or alienation of the Subject Property, or any portion thereof, except that any sale or alienation shall occur subject to the provisions of this Agreement, and any successive owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.
- G. Severability.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any other provision or provisions contained herein.
- H. Attorney fees.** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney fees as determined by such court. This provision shall be deemed to be a separate contract between the Parties and shall survive, *inter alia*, any default, termination, or forfeiture of this Agreement.
- I. Final Agreement.** This Agreement sets forth all promises, inducements, agreements, conditions, and understandings between City and Property Owner relative to the subject matter hereof, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between City and Property Owner, other than as are

stated herein. Except as otherwise specifically provided herein, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties unless set forth in writing and duly executed by both Parties or their successors in interest.

J. Non-waiver. Failure of either Party to promptly enforce the strict performance of any term of this Agreement shall not constitute a waiver or relinquishment of any Party's right to thereafter enforce such term, and any right or remedy hereunder may be asserted at any time after either party becomes entitled to the benefit thereof, notwithstanding delay in enforcement. All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

K. Compliance with laws. Throughout the course of this Agreement, the Parties shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian. The City's ordinances appertaining to streetlight installation and maintenance, and any prospective amendments to and/or recodifications thereof, are specifically and without limitation incorporated into this Agreement as if set forth fully herein.

L. Advice of attorney. Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorney or the opportunity to seek such advice.

M. Approval Required: This Agreement shall not become effective or binding until approved by the City Council of the City of Meridian.

IN WITNESS WHEREOF, the parties shall cause this Agreement to be executed by their duly authorized officers the day and year first above written.

Property Owner:

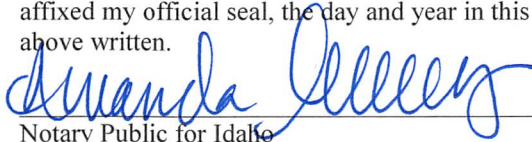

Eagle View Landing Apartments, LLC
John Gabrielsen, Manager



STATE OF IDAHO)
) ss:
County of Ada)

I HEREBY CERTIFY that on this 25th day of Aug., 2023, before the undersigned, a Notary Public in the State of Idaho, personally appeared John Gabrielsen, proven to me to be the person who executed the said instrument, and acknowledged to me that such person executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.


Notary Public for Idaho

Residing at Star, Idaho, Idaho

My Commission Expires: 4/15/2029

CITY OF MERIDIAN:

Robert E. Simison
Mayor

Attest: _____
Chris Johnson
City Clerk

STATE OF IDAHO)
 : ss
County of Ada)

I HEREBY CERTIFY that on this _____ day of _____, 2023, before the undersigned, personally appeared ROBERT E. SIMISON and CHRIS JOHNSON, known or identified to me to be the Mayor and City Clerk, respectively, of the City of Meridian, who executed the instrument on behalf of the City of Meridian, and acknowledged to me that the City of Meridian executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho

Residing at _____, Idaho

My Commission Expires: _____