

## EAGLE TREE RIDGE SUBDIVISION IMPROVEMENT AGREEMENT

THIS EAGLE TREE RIDGE SUBDIVISION IMPROVEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2023 by and between the **CITY OF MOBERLY, MISSOURI** a third-class city and a Missouri municipal corporation having a principal office at 101 West Reed Street, Moberly, Missouri 65270 (the “**City**”) and the **ADAIR HATHAWAY**, an individual (“**Hathaway**” and together with the City the “**Parties**”).

### **RECITALS**

A. Sections 70.210 through 70.320 of the Revised Statutes of Missouri, as amended, authorize Missouri municipalities to contract with any private person, firm, association or corporation for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service, provided, that the subject and purposes of any such contract or cooperative action are within the scope of the powers of such municipality.

B. Hathaway is in the process of developing a housing project called Eagle Tree Ridge (the “development”) as further depicted on the attached Eagle Tree Ridge Preliminary Plat, (Exhibit #1) and has requested that the city waive the requirement that all public improvements in the development be completed and dedicated to the city prior to the signing of the final plat and permit a Subdivision Improvement Agreement be approved pursuant to city code.

C. The Parties desire to enter into this Agreement to allow the signing and recording of the final subdivision plat.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

**1. The Project.** Hathaway agreed to construct a Stormwater Detention Basin (“Detention”) in the subdivision which exceeds the capacity required of Hathaway’s development which will result in the loss of at least one lot which could be used for housing and will increase the cost of the Detention construction in exchange for the city paying \$33,000.00 upon completion of the Detention. Hathaway, due to unavailability of parts, has been unable to complete water connections necessary to finish the public improvements necessary to obtain a signed final plat from the city.

**2. City Code Section 38-149.** Section 38-149 (b) of the city code allows the city council to waive the requirement that a developer complete and dedicate all public improvements prior to the signing of the final plat and permit the developer to enter into a Subdivision Improvement Agreement whereby the developer agrees that within two years the public improvements will be completed. The

developer must also post cash security to ensure that the improvements are complete. Hathaway covenants to complete all the required public improvements no later than two (2) years from the date of this agreement. Hathaway further agrees that the \$33,000.00 owed to him by the city for completion of the Detention will be held by the city as security for the public improvements. If the public improvements are not completed, then the cash security held by the city will be applied to the costs of completing the public improvements as provided in Sec. 38.150. If the public improvements are completed by Hathaway within 2 years the cash security will be returned to him as provided in Sec. 38-150.

**3. No Waiver of Sovereign Immunity; Limited Public Liability; No Personal Liability.**

Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's sovereign immunity. The parties hereto agree that in no event shall the City or any of its officials, agents, attorneys, employees, or representatives have any liability in damages or any other monetary liability to Hathaway or any successor, assign, heir or personal representative of the Foundation in respect of any suit, claim, or cause of action arising out of this Agreement and Hathaway hereby waives any such claim. No official, officer, agent, attorney, employee, or representative of the City shall be personally liable to Hathaway or the successors, assigns, heirs or personal representatives of Hathaway in the event of any default or breach by any party under this Agreement.

**4. Notices.** Any Notice required by this Agreement shall be deemed given if deposited in the United States Mail, first class, postage prepaid and addressed as hereinafter specified.

If to the City:                      City of Moberly  
   101 West Reed Street – City Hall  
   Moberly, Missouri 65270  
   Attn: City Manager

If to Hathaway:

Each party shall have the right to specify that notice is to be addressed to another address by giving to the other party Ten (10) days written notice thereof.

**5. Entire Agreement; Amendment.**                      The parties agree that this Agreement constitutes the entire agreement between them and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties and when authorized and approved by the Moberly City Council.

**6. Relationship of the Parties; No Third Party Right.**                      Nothing contained in this Agreement nor any act of Hathaway or the City shall be deemed or construed to create a partnership or agency relationship between the parties, or their agents or representatives and this Agreement is and shall be limited to the specific purposes set out in this Agreement. Other than as expressly provided in this Agreement, no party shall be the agent of, or have any rights to create any obligations or liabilities binding on, the other party. The parties do not intend to confer any benefit under this Agreement on any person or entity other than the named parties hereto.

**7. Severability.** In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

**8. Binding Effect.** Except as otherwise expressly provided in this Agreement, the covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of Hathaway, the City, and their respective successors and permitted assigns.

**9. Choice of Law; Venue.** This Agreement and its performance shall be governed by and construed by the laws of the State of Missouri applicable to contracts made and to be performed wholly within such state, without regard to choice or conflict of laws provisions. The parties hereto agree that any action at law, suite in equity, or other judicial proceeding arising out of this Agreement shall be instituted only in the Circuit Court of Randolph County, Missouri or in the Federal District Court for the Eastern District of Missouri and waive any objections based upon venue or *forum non conveniens* or otherwise.

**11. Execution; Counterparts.** Each person executing this Agreement in a representative capacity warrants and represents that he or she has authority to do so, and upon request by the other party, proof of such authority will be furnished to the requesting party. This Agreement may be executed at different times and in two or more counterparts, and all counterparts so executed shall for all purposes constitute one and the same instrument, binding on the parties hereto, notwithstanding that both parties may not have executed the same counterpart. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement is sought.

IN WITNESS WHEREOF, the City and Hathaway have each caused this Agreement to be executed in multiple original counterparts in their respective names and attested to as of the date first above written.

**CITY OF MOBERLY, MISSOURI**  
(the "City")

By: \_\_\_\_\_  
Tim Brubaker, Mayor

ATTEST:

By: \_\_\_\_\_  
Shannon Hance, City Clerk

STATE OF MISSOURI            )  
  )  
COUNTY OF RANDOLPH        )

On this \_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned Notary Public, personally appeared Tim Brubaker, to me personally known, who by me being duly sworn, did say he is the Mayor of the City of Moberly, Missouri, a municipal corporation, and that this Agreement was signed and sealed on behalf of the said corporation by authority of its City Council, and the said Tim Brubaker acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by Notarial Seal at my office in Randolph County, Missouri the day and year first above written.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**EAGLE TREE RIDGE SUBDIVISION**

\_\_\_\_\_  
Adair Hathaway

STATE OF MISSOURI            )  
  )  
COUNTY OF RANDOLPH        )

On this \_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned Notary Public, personally appeared Adair Hathaway, to me personally known, who by me being duly sworn, did say that he owns Eagle Tree Ridge subdivision, and that this Agreement was signed by him upon authority given him as the owner of Eagle Tree Ridge subdivision and acknowledged that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Randolph County, Missouri, the day and year last above written.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_