

EXHIBIT A

Legal Description
Summit Street Subdivision

SUMMIT STREET SUBDIVISION

BEING A SUBDIVISION IN THE EAST HALF OF THE NORTHWEST QUARTER SECTION OF SECTION 15, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

P.I.N.S: 05-15-126-007
05-15-126-008
05-15-126-009
05-15-126-010
05-15-126-011
05-15-126-012
05-15-126-013
05-15-126-014
05-15-126-015
05-15-126-016
05-15-126-017

SUMMIT STREET SUBDIVISION
DEVELOPMENT / SUBDIVISION IMPROVEMENT
AGREEMENT

THIS AGREEMENT made and entered into this 3rd day of May, 2021 by and between the **City of Wheaton**, an Illinois Municipal Corporation, and having its office at 303 West Wesley Street, Wheaton, Illinois hereinafter called "**City**" and CALC Holdings LLC a Limited Liability Company hereinafter referred to as "**Developer**".

WITNESSTH:

WHEREAS, the Developer has fee simple title in itself to the real estate described as follows, and herein after referred to as 05-15-126-007, 05-15-126-008, 05-15-126-009, 05-15-126-010, 05-15-126-011, 05-15-126-012, 05-15-126-013, 05-15-126-014, 05-15-126-015, 05-15-126-016, and 05-15-126-017 "**Property**":

Being a subdivision in the east half of the northwest quarter of section 15, township 39 N, Range 10, East of the third principal meridian, in DuPage County Illinois.

WHEREAS, the Developer has submitted a final plat for a subdivision of the Property by Plat of subdivision approved by the Corporate Authorities of the City by Resolution Number R-2021- 34 on date 5/3/21; and

WHEREAS, the City has approved said subdivision plat strictly subject to the completion of the public and required improvements in accordance with its ordinances, resolutions, good engineering practices, and this Agreement, and as a condition to the issuance of occupancy permits for any buildings to be constructed on the property.

NOW THEREFORE, City and Developer agree as follows:

REQUIRED IMPROVEMENTS

1. The Developer at its sole cost and expense shall furnish all necessary materials, labor, and equipment to construct and complete the public improvements, stormwater management improvements, and other required improvements, collectively hereinafter “**Required Improvements**”, in conformance with the annexation agreement, the Subdivision Control Ordinance of the City of Wheaton (Chapter 62 of the Wheaton City Code), this Agreement, good engineering practices, and any other requirements as may be set forth in ordinances or resolutions approving the subdivision. The Required Improvements shall include: survey monuments, sanitary services, storm sewer mains and services, water services, sidewalks, parkway trees, parkway landscaping, approved grading, including inspection, testing, construction supervision and final engineering record drawings. All the Required Improvements shall be in accordance with the standards, specifications, and requirements of the City of Wheaton. Such Required Improvements are purportedly indicated by the plans and specifications approved by the City of Wheaton, shown on Exhibit A attached hereto, which exhibit has been prepared by Webster, McGrath, and Ahlberg, LTD., who are registered professional engineers. Any Required Improvement required by ordinance, resolution or this Agreement, but omitted from Exhibit A, shall be constructed and completed as required. All public or private utility lines and services to be placed under the street shall be installed prior to paving.

DEVELOPMENT SECURITY FOR REQUIRED IMPROVEMENTS

Attached hereto and incorporated herein as if fully set forth as Exhibit B is a complete cost estimate prepared by a professional engineer, for the construction and completion of the Required Improvements. Prior to the execution of this Agreement, the Developer shall deposit 125% of the engineer's cost estimate for the Required Improvements, including all final lot staking, survey monuments, by irrevocable letter of credit. Until said letter of credit is established this agreement shall be ineffective and no permits shall issue.

Any letter of credit posted to guarantee the Required Improvements shall be subject to the approval of the City Attorney and Director of Engineering, with the City being the sole beneficiary of the letter of credit for purposes of constructing and completing the Required Improvements. Any amounts

drawn by the City from the letter of credit, exceeding the cost of the Required Improvements, shall be returned exclusively to the issuer.

CONSTRUCTION OBSERVATIONS

3. All work on the Required Improvements shall be subject to periodic observations by the Director of Engineering or his designated representative during the course of construction. The Director of Engineering or his designated representative shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Developer as necessary in order to make his observations. The Director of Engineering or his designated representative is not required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Required Improvements and their construction. The observations provided for in this section are not intended to supplement, modify, or eliminate the responsibility of the developer to use and provide, at his own expense, professional engineering and inspection services of a private consulting engineer or firm.

OBSERVATION FEES

4. The Developer shall pay the City a fee representing 2% of the total cost of the Required Improvements as a plan review and construction observation fee, as required by Ordinance. Payment shall be made within ten (10) days of the execution of this Agreement.

INSURANCE

5. Prior to commencement of any work provided for herein, the Developer and its contractors shall furnish the City with certificates of insurance providing for workmen's compensation and commercial liability insurance, including occupational disease coverage and comprehensive liability to cover said work as follows:

- (a) Workmen's compensation (statutory limits)
- (b) Comprehensive Commercial liability coverage, by one or more policies, with combined limits of 1,000,000/ 3,000,000, including collapse and explosion coverage.
- (c) Vehicle liability coverage with limits of \$500,000/ 1,000,000.

- (d) Minimum liability coverage of One Hundred Thousand (\$100,000) Dollars for property damage.

The foregoing coverages shall be the required minimums.

Except for the Workmen's Compensation coverage, all certificates of insurance shall name the City as an additionally insured with respect to the provisions of said policy related to the Required Improvements. All policies of insurance shall be occurrence policies. Claims made policies are unacceptable. All policies shall be primary and no policy shall require contribution from the City's insurance. All carriers providing insurance shall be authorized to do business in the State of Illinois and shall be subject to the reasonable approval of the City Attorney. Certificates of insurance for the foregoing coverage shall be filed with the Director of Engineering prior to the issuance of any permits.

In addition, by its execution of this Agreement, the Developer hereby agrees to the greatest extent allowable under Illinois law to defend, indemnify and hold harmless the City, its elected and appointed officials and employees, agents and assigns and each of them, against any and all claims, actions, losses, damages, attorney's fees or expenses which they may sustain or become liable for on account of injury or death of persons, or damage to or destruction of property resulting from acts or omissions in the performance of work related to the Required Improvements by the Developer or his contractors or any employee or subcontractor of any of them, or by the City its agents or employees in furtherance of construction of the Required Improvements, or due to the condition of the premises or other property of the Developer upon, about, or in connection with which any work incident to the performance of the terms of this Agreement.

ACCEPTANCE AND GUARANTEE

6. The Developer guarantees that the design, workmanship and material furnished in the Required Improvements will be designed, furnished and performed in accordance with well known established practice and standards recognized by professional engineers and in the construction trades. All such Required Improvements shall be new and of the best grade of their respective kinds for the purpose. All materials and workmanship will be guaranteed by the Developer and his escrow agent for a period of one year from the date of final acceptance by the City, except for those projects which contain

special environmental management areas, such as wetlands and/or floodplains, or naturalized detention facilities that may contain longer guarantee periods as stipulated by the appropriate ordinance or permitting agency.

Prior to requesting final acceptance, the Developer shall provide the City with documentation and certification prepared by the Developer's registered design professional that the Required Improvements material and work meets the plans and specifications. The Developer shall cause its registered design professional to correct the drawings to show work as constructed, including stormwater detention volume summaries, and shall deliver a set of record drawings to the City. The City shall then inspect the Required Improvements and provide a list of deficiencies to the Developer.

The Developer shall cause all deficiencies to be repaired and/or corrected within 60 days of receipt of the list of deficiencies or the City shall have the right to make or cause the repairs to be made and draw on the Irrevocable Letter of Credit, described in Paragraph 2 of this Agreement, to insure compliance with this Agreement. Failure to complete the deficiencies within 60 days may also require a re-inspection by the City at the Developer's expense. Any re-inspections by the City shall be paid for by the Developer based on time and material costs as actually incurred by the City.

The City shall retain ten percent (10%) of the total amount of the development's security for the Required Improvements for one year after final acceptance of the Required Improvements to secure the Developer's guarantee that the workmanship and materials furnished are first class and as above provided, and that the Required Improvements are and will remain in good and sound condition for and during the guarantee period.

The Developer shall make or cause to be made at its own expense, any and all repairs that may become necessary by virtue of this guarantee, and shall leave the Required Improvements in good and sound condition, satisfactory to the Director of Engineering, at the expiration of the guarantee. In said event, and at the expiration of such guarantee period, the amount retained as a guarantee, less any and all necessary expenses which may have been incurred by the City in connection with the maintenance of the Required Improvements, shall be paid over, or released as the case may be, in conformance with Paragraph 2 of this Agreement.

Further, if during said guarantee period, the improvement shall in the opinion of the Director of Engineering, require any repairs or renewals, the Developer shall upon notification by the Director of Engineering of necessity for such repair or renewals make such repairs or renewals, at its own cost and expense. Should the Developer fail to make such repairs, renewals, within a reasonable time after notification as herein provided, the City may cause such work to be done, either by contract or otherwise, and the entire cost and expense thereof shall be paid and deducted from the amount retained as a guarantee. Should such cost and expense exceed the amount retained or remaining in the guarantee fund, the Developer shall pay such amount of excess to the City.

TIME LIMIT

7. The Developer shall cause said Required Improvements as herein described to be completed within five (5) years of the date of recording the final plat. If the required improvements are not completed within the time prescribed herein, then the City shall have the right, but not the obligation to complete said Required Improvements in whole or in part as determined by the City, and draw on the letter of credit as provided in Paragraph 2 of this Agreement, to cover the expenses incurred by the City to complete the Required Improvements.

ORDINANCES

8. Notwithstanding this Improvement Agreement, in the event a valid ordinance of the City was overlooked at the date hereof, the Developer upon notice from the City and prior to acceptance of the subdivision shall install or perform the improvement or work so required; further, any law or ordinance which shall be passed after the date of this Agreement, which is a law or ordinance directed to the health, safety or welfare of the public, shall apply to the Property as of the effective date of said law or ordinance.

LIEN WAIVERS

9. The Developer shall furnish the City with a contractor's affidavit and lien waivers showing all subcontractors and material suppliers and all persons who have done work, or have furnished material under this Agreement, and are entitled to a lien therefore under any laws of the State of Illinois, have been fully paid.

OCCUPANCY PERMITS

10. It is agreed that no occupancy permits shall be issued for any building in said subdivision until all Required Improvements required by this Agreement have been completed, except for final road surface course, public sidewalks, and parkway trees. Parkway trees shall be installed within six months from the issuance of an occupancy permit, as weather permits.

MAINTENANCE

11. The Developer shall be responsible for the maintenance of the required improvements until such time as they are accepted by the City. This maintenance shall include routine maintenance such as snow removal, pruning and watering of parkway trees, landscaping and street sweeping as well as emergency maintenance such as sewer blockages. If the Developer requests and the City elects, at the time of the execution of this Agreement, to have the City perform this maintenance, the Developer hereby agree to reimburse the City its cost for the performance of this maintenance upon the receipt of an invoice from the City setting forth said expense of the City. Any payments not made pursuant to this requirement may be taken by the City, in its sole discretion, from the security posted in accordance with Paragraph 2 of this Agreement. If a deduction taken by the City from the security results in a shortfall of the required amount of the security the Developer shall replenish the security in the amount of the deficiency within seven calendar days of the City's request. Any failure of the Developer to replenish the security within seven days of the City's request shall constitute a material breach of this Agreement authorizing the City to assert control over the deposited security.

TEMPORARY CONSTRUCTION EASEMENT

12. The Developer, by execution of this Agreement, grants the City a temporary easement which authorizes, but does not obligate, the City to access the Property to perform or complete any act or work the Director of Engineering is required to do by the Stormwater Management Certification or applicable ordinances which may include; (i) the construction of any Required Improvements; (ii) restoration and/or Mitigation of natural areas, Wetlands and Buffers; (iii) installation and Maintenance of soil erosion control; (iv) planting or removal of vegetation; and (v) any other maintenance or monitoring. The term for such easements shall be of sufficient duration as necessary to allow the City to perform and satisfactorily complete any activity or work for which the Developer/certificate holder has posted security

under this Agreement; however, such term shall not exceed final acceptance of the subdivision by the City.

BINDING EFFECT

13. This Agreement shall be binding upon all parties, their successors and assigns and grantees.

INTEGRATION

14. This Agreement cancels and supersedes any agreements heretofore entered into between the parties which are in conflict with the provision hereof. All aspects of the parties negotiations related to this Agreement are fully integrated herein and there are no other understandings or agreements, oral or written, related to the provisions of this Agreement or any ordinances or resolutions adopted in conjunction herewith.

AMENDMENTS

15. Any amendments to this Agreement requested by the developer, shall be in writing and approved by the City. City Ordinance provisions in effect at the time of the request for an amendment shall apply.

NO THIRD PARTY BENEFICIARIES

16. There are no third party beneficiaries of this Agreement.

CITY'S LITIGATION EXPENSES

17. Should the Developer bring any claim or litigation against the City or any of its employees in their professional or personal capacity in consequence of this Agreement, or should the City bring any action to enforce all or any portion of this Agreement, and should the Developer lose all or a portion of said litigation, the Developer shall reimburse the City or its employees their reasonable attorneys fees, expert witness fees and costs: in the full amount if it loses the whole of the litigation or; in a case where it loses a portion of the litigation those reasonable attorneys fees, expert witness fees and costs attributable to that portion of the litigation.

EXCLUSIVE JURISDICTION

18. Exclusive jurisdiction for any litigation related to this Agreement shall be in the 18th Judicial Court, DuPage County, Illinois.

(Signatures are on following page of Agreement)

IN WITNESS WHEREOF, the City has caused this agreement to be executed by its Mayor and attested by its Clerk and the Developer has executed this agreement, all as of the date first above written.

CITY OF WHEATON, an Illinois
Municipal Corporation

BY Philip J. Swier
Mayor

ATTEST:

Sharon Bruntt Hagen
City Clerk

DEVELOPER:

Craig Henninger
BY CRAIG HENNINGER

ATTEST:

John Swider
JOHN SWIDER