

UTILITY FACILITIES EASEMENT AGREEMENT

THIS UTILITY FACILITIES EASEMENT AGREEMENT (this "Easement Agreement") is made on _____, 2020 by and between **NADG/AA Arasan LP, a Delaware limited partnership** ("Owner"), and CITY OF SHAKOPEE, a Minnesota municipal corporation, ("City"), in accordance with the following:

1. **Ownership.** Owner is the fee owner of the property legally described on attached Exhibit A ("Property").

2. **Grant of Easement.** For valuable consideration, Owner conveys to the City an easement for Utility Facilities, as hereinafter defined, purposes over, under, and across the Property on the terms and conditions hereinafter set forth (the "Easement").

3. **Scope of Easement Rights.** The scope of the rights granted by the Easement are explicitly limited to the following rights of the City, its contractors, employees, agents and assigns:

- a. reasonable right of ingress and egress to those portions of the Property not containing any buildings to inspect Utility Facilities pursuant to, and in accordance with, Section 5 hereof;
- b. reasonable right of ingress and egress to those portions of the Property not containing any buildings to perform the Owner's Obligations upon default by Owner pursuant to, and in accordance with, Section 5 hereof;
- c. locate, construct, reconstruct, operate, maintain, inspect, alter and repair the Utility Facilities in accordance with Section 5 hereof; and
- d. cut, trim, or remove trees, shrubs, or other vegetation that in the City's judgment unreasonably interfere with the Utility Facilities.

4. **Owner's Obligations.** The Owner will construct its private water, sanitary sewer and stormwater facilities, which connect to the City's public facilities, in accordance with Exhibit B (the "Utility Facilities"), which is on file with the Shakopee City Engineer. The Owner will maintain the Utility Facilities. Maintenance includes at a minimum annual inspection, cleaning and repair of the Utility Facilities. Maintenance of the storm water Utility Facilities also includes removal of sediment and pollutants in all pre-treatment devices, the periodic removal of sedimentation within the storm water Utility Facilities, the removal of any material blockage and annual inspection, as necessary. If necessary, the work must include periodic removal of sedimentation and trash from the storm water Utility Facilities to substantially maintain original design, volumes and configurations as originally approved by the City. Annual inspections of approved stormwater Utility Facilities must be performed, and an annual report must be provided to the City of Shakopee Public Works Department October 1 of the same year as the inspection, using the form attached as Exhibit C. An apparent failure of any such stormwater Utility Facilities must also be corrected before submitting the annual report.

5. **Enforcement.**

5.1. Upon such advanced notice as may be reasonably possible under the circumstances, City may enter the Property (but not the building(s) on the Property) for the purposes of inspection of the Utility Facilities and enforcement of the obligations of Owner under this Easement Agreement. If Owner fails to perform its obligations under this Easement Agreement, the City must provide written notice of default to Owner before taking any corrective action. The City may take whatever actions it deems reasonably necessary in order to fulfill the obligations of Owner under this Easement Agreement if the failure continues for 30 days after the City's written notice, or such longer period as may be required if the failure cannot reasonably be cured within said thirty (30) days so long as Owner commences cure within said thirty (30) days and diligently pursues the cure to completion. In the event of an emergency, as determined in the City's reasonable discretion, the City may enter the Property to maintain or repair Utility Facilities without first giving such notice to the Owner, provided, the City gives the Owner such notice as is reasonably possible under the circumstances. Owner must reimburse the City for the reasonable out-of-pocket costs incurred by the City for its corrective action within 30 days after receipt by Owner of a written demand from the City accompanied by reasonable documentation of the expenses and work associated with such expenses. If Owner fails to reimburse the City within the 30-day period prescribed above, the City may recover its costs by assessing the amounts against the Property to be collected with property taxes; provided, however, the City hereby agrees to charge any such assessment over the longest period permitted by applicable law. Owner waives all rights that it might have to receive notice and a hearing or to contest any assessments for the out-of-pocket costs reasonably incurred by the City in connection with work performed on the Property by the City in accordance with the terms of this Agreement. The City shall otherwise comply with all legal requirements in connection with assessing such amounts (including, without limitation, only charging such interest as may be permitted by applicable law) and in connection with performing work that will be the subject of any assessment (including,

without limitation, obtaining appropriate bids for such work when required). Further, City and Owner may enforce the terms of this Easement Agreement by any proceeding in law or in equity to restrain violation, to compel compliance, or to recover damages, including attorneys' fees and costs of the enforcement actions. The Owner is not liable for the actions of any third party, other than its employees, agents, or contractors, that may violate the terms of this Easement Agreement unless the Owner, its employees, agents, or contractors had actual knowledge of the violation and failed to take reasonable action to stop the violation. Notwithstanding anything in this Easement Agreement to the contrary: (i) in no event may City damage, relocate, or remove any buildings upon the Property or require the relocation or removal of any buildings upon the Property; (ii) City shall promptly repair any damage to the Property, including any buildings located thereon, caused by City in the exercise of its rights contained in this Easement Agreement, and (iii) the geographic scope of the Easement shall not include the footprint of any building upon the Property and shall be limited to only those portions of the Property reasonably necessary for the exercise of the rights explicitly granted herein.

5.2. Failure to enforce any provision of this Easement Agreement upon a violation of it will not be deemed a waiver of the right to do so as to that or any subsequent violation.

5.3. Invalidity of any of the terms of this Easement Agreement will in no way affect any of the other terms, which will remain in full force and effect.

6. **Duration of Easements.** This Easement Agreement is permanent and remains in effect in perpetuity.

7. **Warranty of Grantor.** The Owner warrants that it is the owner of a fee simple interest in the Property, that it has the right to grant this Easement Agreement, and that the Property is free and clear of any lien, encumbrance, easement, restriction, covenant or condition, except for those filed of record with the County Recorder or Registrar of Titles for Scott County, Minnesota.

8. **Easement Runs with Land.** This Easement Agreement runs with the land and is binding on the Owner, its heirs, successors and assigns.

9. **Amendments.** This Easement Agreement may not be amended without the written approval of the City.

[Signature Pages Follow]

City of Shakopee,
a Minnesota municipal corporation

By: William Mars
Its: Mayor

By: William H. Reynolds
Its: City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of December, 2020, by William Mars, the Mayor and William H. Reynolds, the City Administrator of City of Shakopee, a Minnesota municipal corporation, on behalf of the municipal corporation.

Notary Public

NADG/AA ARASAN LP
a Delaware limited partnership

By: AA GP, LLC
a Minnesota limited liability company
It's: General Partner

Scott O'Brien
President

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by Scott O'Brien, the President of AA GP, LLC, a Minnesota limited liability company, the General Partner of NADG/AA Arasan LP, a Delaware limited partnership, on behalf of the limited partnership.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
City of Shakopee
Public Works Department
485 Gorman Street
Shakopee, MN 55379
(952) 233-9369

For City use only:
Planning File # _____
Date of Council approval _____

EXHIBIT A

Description of Parcel

Legal: Lot 2, Block 2, Powers Second Addition, Scott County, Minnesota.

County PID: 274960030

Address: 1620 Lusitano Street, Shakopee, MN 55379

Utility Facilities



EXHIBIT C

Annual Inspection Report

[see following page]

EXHIBIT C

Annual Inspection Report

Inspection Year: _____

Name of Site: _____ Address: _____
Inspector: _____ Company: _____
Signature: _____ Phone: _____

Send Report to: City of Shakopee, Public Works – Engineering,
485 Gorman Street, Shakopee 55379
phone: 952.233.9369 email: engineering@shakopeemn.gov

Bioretention/Filtration Facility No. 1 – Operation and Maintenance Checklist

Maintenance Item (frequency of inspections and maintenance)	Satisfactory / Unsatisfactory	Comments
1. Debris Cleanout (Monthly)		
Contributing drainage areas and facilities clean of litter and vegetative debris		
No dumping of yard waste into facility		
Bioretention area clean of litter and vegetative debris		
2. Vegetation (Monthly)		
Plant height taller than design water depth		
Fertilized per O & M plan		
Plant composition according to O & M plan		
Adequate vegetation density		
Undesirable vegetation removed		
Grass height less than 6 inches		
Mulch layer adequate		
No evidence of erosion		
3. Check Dams/Energy Dissipators/Sumps (Annually, After Major Storms)		
No evidence of sediment buildup		
Rip Rap in place and no missing rock		
Bioretention/Filtration Facility Operation, Maintenance, and Management Inspection Checklist		

Bioretention/Filtration Facility No. 1 – Operation and Maintenance Checklist (continued)

Maintenance Item (frequency of inspections and maintenance)	Satisfactory / Unsatisfactory	Comments
Sumps should not be more than 50% full of sediment		
No evidence of erosion at downstream toe of drop structure		
4. Dewatering (Monthly)		
Dewaterers between storms within 48 hours		
No evidence of standing water		
5. Sediment Deposition (Annually)		
Pretreatment areas clean of sediments		
Contributing drainage area stabilized and clear of erosion		
No evidence of surface clogging		
Winter sand deposition evacuated every spring		
6. Outlet/Overflow Spillway (Annually, After Major Storms)		
Good condition, no need for repair		
No evidence of erosion		
No evidence of any blockages		
7. Integrity of Filter Bed (Annually)		
Facility has not been blocked or filled inappropriately		
Comments:		
Actions to be taken:		
Bioretention/Filtration Facility Operation, Maintenance, and Management Inspection Checklist		