



**City Council Work Session
Tuesday, May 7, 2024 at 6:00 PM
Public Meeting Room**

AGENDA

- 1. Call to Order**
- 2. Items for Discussion**
 - A. Twin Oaks Subdivision Development Agreement
- 3. Future Discussion**
- 4. Adjournment**

(The Council may meet as a group for dinner)

Please contact the City Administrator's Office if you need special accommodations while attending this meeting



Council Work Session Memorandum

TO: Mayor and City Council
THROUGH: Jessica Kinser, City Administrator
FROM: Mark DuChene, Director of Engineering (City Engineer)
MEETING DATE: May 7, 2024
SUBJECT: Twin Oaks Subdivision Development Agreement

Discussion:

The Rice County Housing and Redevelopment Authority (Developer) has received plat approval for a single family subdivision north of and adjacent to the Rice County Public Safety Center. As part of the plat and public improvement process, the Developer is required to enter into a Development Agreement with the City. Attached is a copy of the proposed development agreement which follows the City's standard subdivision development agreement format and requirements. The Developer is requesting that section 3.03L regarding Public Improvement Security Requirements be waived for the project. The Developer's provided reasoning for this request is that, since they are a governmental entity, they are not at risk of dissolving or not completing the project.

Staff is looking for direction from the City Council on whether to waive the financial security requirement or not. Pending direction from the council, the development agreement will be finalized and is scheduled to be placed on the May 14th City Council meeting agenda for formal approval.

Attachments:

1. DOCSOPEN-#947426-v5-
Development_Agreement_for_Twin_Oaks_Subdivision

**TWIN OAKS SUBDIVISION
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made this _____ day of _____, 2024, by and between the City of Faribault, a Minnesota municipal corporation (the "City"), and the Housing and Redevelopment Authority of Rice County, a political subdivision under the laws of the State of Minnesota (the "Developer").

RECITALS

- A. The Developer is the fee owner of certain real estate located in the city of Faribault, Rice County, Minnesota (the "Developer's Property"), legally described in *Exhibit A*.

(Hereinafter referred to as the "Property").

- B. The Developer shall plat the Property consistent with the preliminary plat and final plat of TWIN OAKS SUBDIVISION approved by the City Council in Resolution 2024-009 on January 9, 2024 (attached as *Exhibit B*). Said resolution (the "Authorizing Resolution") is incorporated by reference to this Agreement as if fully set forth herein. This Agreement is subject to the conditions and requirements of the Authorizing Resolution, the Faribault City Code, state statutes, and the City Attorney's plat opinion.
- C. The Developer desires to have certain utility improvements constructed to serve the Property (the "Public Improvements" or the "Project"). NOTE: "Public Improvements" are limited solely to sanitary sewer, watermain, utility service lines, storm sewer, roadway and trail improvements.

- D. Unless noted otherwise in this Agreement, the Developer must install the Public Improvements at the Developer's expense and per the City's requirements as outlined in this Agreement.
- E. The City may authorize the construction of the Public Improvements per the Developer's request without public notices or hearings.
- F. Pursuant to the assurances and covenants of this Agreement, the Developer must compensate all contracted parties with a contractual claim for installing said Public Improvements and ensure that the Public Improvements are free of any liens or claims before acceptance by the City.
- G. If not for the Agreement's assurances and covenants, the City would not authorize the construction of the Public Improvements at this time. The City's authorization of the Public Improvements is at the Developer's request and are to the benefit of both the City and the Developer.

TERMS OF THE AGREEMENT

In consideration of each Party's promises as outlined in this Agreement, the Parties mutually agree to the following:

ARTICLE ONE GENERAL PROVISIONS

- 1.01. Incorporation of Recitals and Exhibits.** This Agreement incorporates the recitals and exhibits in this Agreement as fully set forth herein.

ARTICLE TWO REPRESENTATIONS AND WARRANTIES

- 2.01. City Representations and Warranties.** The City makes the following representations related to its obligations in this Agreement:
- A. The City is a municipal corporation under the laws of Minnesota.
 - B. The City has the right, power, and authority to execute, deliver and perform its obligations under this Agreement.

2.02. City Obligations. The City agrees to:

- A. Work with the Developer as to the Plat.

2.03. Developer's Representations and Warranties. The Developer makes the following representations related to its obligations in this Agreement:

1. The Developer is a Minnesota political subdivision.
2. The Developer has the right, power, and authority to execute, deliver, and perform its obligations under this Agreement. The Developer assures the City that the individual who executes this Agreement is duly authorized to sign on behalf of the Developer and bind the Developer to this Agreement.
3. The Developer is not in default under any lease, contract, or agreement to which it is a party or by which it is bound, which would affect its performance under this Agreement. The Developer is not a party to or bound by any mortgage, lien, lease, agreement, instrument, order, judgment, or decree that would prohibit the Developer's execution, performance, or transactions provided for in this Agreement.
4. The Developer has complied with and will continue to comply with all applicable federal, state, and local statutes, laws, ordinances, and regulations, including any permits, licenses, and applicable zoning, environmental, or other laws, ordinances, or regulations affecting the Property and the Public Improvements. The Developer is not aware of any pending or threatened claim of any such violation. Including the above, the Developer expressly acknowledges and agrees that it has and must at all times comply with every provision of the City's subdivision, zoning, and other related municipal code regulations.
5. There is no suit, action, arbitration, legal or administrative proceeding, or other proceeding or governmental investigation pending or threatened against or affecting the Developer or the Property. The Developer is not in default for any order, writ, injunction, or decree of any federal, state, local or foreign court,

department, agency, or instrumentality.

6. The Developer must not make any untrue or misleading statement of material fact or omit any material fact to this Agreement or any written document that the Developer, or anyone on behalf of the Developer, will furnish.
7. The Developer has sufficient funds or has obtained a commitment to finance the construction of the Public Improvements and other work that the Developer may undertake in conjunction with the Public Improvements.

2.04. Developer's Obligations. The Developer agrees to:

- A. Reimburse the City for its fees within thirty (30) days of the City submitting an invoice to the Developer. The City shall invoice the Developer for eligible expenses no more than monthly.
- B. Work with the City as to the Plat.

**ARTICLE THREE
CONSTRUCTION OF SITE GRADING AND PUBLIC IMPROVEMENTS**

3.01. Designation of Site Grading and Public Improvements. The site grading and Public Improvements associated with this Plat are as follows:

- A. Site Grading and Public Improvements Plans. The site grading and Public Improvements (the "Project") are depicted in the plans (the "Plans") entitled "Twin Oaks Court Subdivision," prepared by Widseth, and dated December 8, 2023. The Plans are on file with the Faribault Engineering Department and are fully incorporated in this Agreement by reference.
- B. Potential Revisions to the Site Grading and Public Improvements Plans. The Parties to this Agreement acknowledge that revisions to the site grading and Public Improvements plans (the Plans) may be necessary. The Parties must cooperate regarding any reasonable requests made after the execution of this Agreement to revise or correct any errors in the Plans. The Parties must provide all additional documentation deemed necessary by either Party to

effectuate such revisions or corrections to the plans. The Developer must file a final copy of the site grading and Public Improvements plans (the Plans) with the City before constructing the Public Improvements, and the City Engineer must approve, in writing, any revisions to the Plans.

- C. Other Improvements Not Covered by this Agreement. This Agreement deems all improvements, other than the site grading and the Public Improvements described above, as private improvements not covered by this Agreement. The private improvements must comply with all applicable regulations and must receive all required permitting.

3.02. Site Grading Requirements. The Developer must grade the Project at the Developer's sole expense and per the Plans referenced in this Agreement. The Developer must provide the City with an as-built grading plan for the Project. An as-built Grading Plan for the Property shall be provided prior to issuance of any building permits, except for two lots which may be issued building permits provided the requirements of section 4.06 of this Agreement are satisfied. The as-built grading plan must identify building pad elevations, lot corner elevations, elevations and centerline grades for all right-of-way, surface drainage ways, common greenways, and open spaces. The as-built grading plan must have a maximum of two (2) foot contours and meet the requirements of the City's Code of Ordinance Chapter 28, Article VII Sec 28-230 and the City's Developer's Guide for Stormwater Management.

3.03. Public Improvements Requirements. All labor and work performed by the Developer in connection with construction of the Public Improvements must be performed in the best and most worker-like manner and in strict conformance with the Plans. Any substantial deviation from the Plans must be approved in writing by the City. Prior to initiating construction of the Public Improvements, the Developer must hold a pre-construction meeting with the City to review and resolve any issues involving the construction of the Public Improvements. The Developer must furnish and install the Public Improvements at the Developer's sole expense (subject to any reimbursement that the City may provide under the terms of this

Agreement for such items as oversizing utilities) according to the following terms and conditions:

- A. Street and Sidewalk Improvements. The Developer must construct urban street and sidewalk improvements per City standards and subject to the review and approval of the City Engineer. The improvements include, but are not limited to, the preparation, correction, and stabilization of the subgrade and the installation of the aggregate base, concrete curb and gutter, concrete sidewalk, and bituminous paving. The Developer must construct the street and trail improvements per the Plans referenced in this Agreement.
- B. Utility Improvements. The Developer must construct sanitary sewer, watermain, utility service lines and storm sewer per City standards and subject to the review and approval of the City Engineer. The Developer must construct the utility improvements per the Plans referenced in this Agreement.
- C. Storm Water Pollution Prevention Plan (SWPPP). The Developer must provide erosion and sediment control throughout the site grading work and the construction of the Public Improvements as follows:
 - 1. Provide erosion and sediment control per the Plans referenced in this Agreement.
 - 2. Provide erosion and sediment control per the requirements of the City's Code of Ordinances (in particular Chapter 28, Article VII and Appendix B, Section 15-300) and the Minnesota Pollution Control Agency (MPCA) National Pollutant Discharge Elimination System (NPDES) General Stormwater Permit for Construction Activity requirement.
 - 3. Address, to the City Engineer's satisfaction, failed erosion control structures (or the apparent need for additional erosion control measures) as required in the Minnesota Pollution Control Agencies Construction Stormwater General permit upon notification by the City. This Agreement grants the City the right to enter onto the Developer's Property to correct any erosion control failures that the Developer does not correct in

the period within the statutory period. The Developer must reimburse the City for reasonable costs incurred in performing under this clause on behalf of the Developer.

4. Inspect and, if necessary, clean all catch basins, sumps, and ponding areas of erosion and siltation and restore them to the original condition at the end of construction within this development. Remove all silt fences and other erosion control structures following the establishment of turf.

D. Groundcover. The Developer must provide groundcover on the property as follows:

1. Provide to all areas within the right-of-way.
2. Sod or seed and blanket drainage swales and emergency overflow swales as required by the City Engineer.
3. Sod or seed all other disturbed areas.
4. Guarantee the survivability or replacement of the sodded and seeded areas for one (1) year from the time of installation.

E. Street Maintenance. Until the Project is complete, the Developer must promptly remove excessive debris and soil on the public streets produced from the Project. If the Project causes street hazards, the Developer must place warning signs on the streets. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and directing attention to detours. If and when the street becomes impassible, such streets shall be barricaded and closed. In the event parcels are occupied or actively under construction prior to completing streets, the Developer shall maintain a smooth driving surface, adequate drainage, and provide snow and ice control on all incomplete streets which are occupied or actively under construction.

F. Damage Responsibilities. The Developer is financially responsible for repairing all damage done to the streets and public utilities

directly related to the development improvements.

- G. Street Name and Regulatory Signs. The City will supply and install necessary traffic control and street name signs. The Developer must reimburse the City the full cost of supplying and installing the signs. The estimated cost of said signage is \$500 and is not to exceed \$1,000 without prior notification and consent in writing by Developer.
- H. Street Lights. Pursuant to Resolution 2003-198, adopted by the Faribault City Council on November 10, 2003, the Developer is financially responsible for providing street lights in the Plat. Final street light design and locations shall be subject to the City Engineer's review and approval. The number of street lights for the plat are estimated to be three (3) street lights at \$4,500. The street light style must be approved by the City and must conform to the provisions of the City Code. The utility company will own, install, operate, and maintain the street lights. The Developer must pay the electric utility company for all components of the street lights and all installation costs that the electric utility company rate does not cover. The Developer must guarantee all street lighting costs as part of the Public Improvements security as outlined in this Agreement.
- I. Property Monumentation. The Developer must complete the following tasks:
 - 1. Furnish and install temporary property monumentation by, or under the direction of, a registered land surveyor before and during the construction of the Public Improvements as needed to ensure proper layout of the development.
 - 2. Furnish and install all permanent property monumentation within one (1) year of the Plat's recording. The City will not issue a building permit on any lot in the development that does not have permanent property monuments except as allowed in section 3.02.
 - 3. Provide the City Engineer with a certification of plat monumentation in the form attached to *Exhibit C* of this

Agreement.

4. Mark all monuments with a steel or fiberglass post to allow a City representative to verify the installation of the property monuments.
- J. Underground Utilities. Pursuant to Section 15-380 of Appendix B of the Unified Development Regulations of the City Code of Ordinances, the Developer must place all utilities underground unless the City Engineer determines that overhead utilities are required.
- K. Other Governmental Jurisdictions. The Developer must secure all necessary approvals and permits from all appropriate federal, state, regional, and local jurisdictions before beginning site grading or construction of the Public Improvements and must provide copies of all required permits to the City upon request.
- L. Public Improvements Security Requirements. The Developer's cost estimate for the Public Improvements and all other work identified as the Developer's responsibility is attached in *Exhibit D* of this Agreement. Before starting any construction activity, the Developer or its contractor must provide the City with a cash escrow, certified check, performance bond, or irrevocable letter of credit (collectively known as the "Security"), based on one hundred thirty percent (130%) of the total estimated cost of the Public Improvements and all other required work designated as the responsibility of the Developer which is 125% of the estimated construction costs plus 9% for City Engineering/Administration services. Based on the Developer's cost estimate, the Developer must provide the City with a Security of \$889,600.00. A copy of the Security, approved by the City Attorney, is included in *Exhibit E*.

The Security is for the exclusive use and benefit of the City of Faribault. It must guarantee and assure the Developer's performance of all terms and conditions of this Agreement and the construction of all required improvements per the ordinances and specifications of the City. The City may draw on the Security to guarantee the terms and conditions of this Agreement. The

Developer must renew or replace the Security no later than thirty (30) days before its expiration with a like Security.

- M. The Developer or its subcontractor may request a reduction of the Security based on prepayment or the value of the completed improvements at the time of the requested reduction. If requested, the City will evaluate the completed work without charge to the Developer once per month based on monthly payments to contractors. If additional evaluations are requested, the Developer will be responsible for the estimated costs incurred by the City for performing the additional evaluations. The City Engineer will determine the amount of reduction.
- N. Developer's Responsibilities for the Construction of the Public Improvements. The Developer must comply with the following:
1. Construct and install the materials and equipment of the Public Improvements per the plans and specifications approved by the City Engineer.
 2. Obtain written approval from the City Engineer for any significant deviation from the Public Improvements plans.
 3. Before initiating construction of the Public Improvements, hold a pre-construction meeting with the City to review and resolve any issues involving the construction of the Public Improvements.
 4. Perform and complete all labor and work connected with the construction of the Public Improvements in a workmanlike manner and strict conformance with the Public Improvements plans.
 5. Fully and faithfully comply with all terms and conditions of all contracts entered into by the Developer to install and construct all Public Improvements.
 6. Guarantee the quality of work and materials for two (2) years following the City's final acceptance of the Public Improvements.

3.04. Developer Responsibilities for Engineering Design and Construction Services.

The Developer's responsibilities for engineering design and construction services of the Public Improvements are as follows:

- A. Consulting Engineer. Retain a professional engineer (the "Consulting Engineer"), licensed in Minnesota, to provide complete design and construction document services for the Public Improvements.
- B. Construction Contractor. Contract with a construction contractor or contractors qualified and experienced in municipal utility and roadway construction (subject to the City's approval) to construct the Public Improvements.
- C. Construction Staking. Provide staking services for grading, municipal utilities, lot services, trail improvements, and roadway improvements, including curb elevations and centerline "blue-topping" for tolerancing subgrade and Class 5 aggregate base.
- D. Construction Inspection and Testing. Comply with the following:
 - 1. Require all contractors performing construction contract work to conduct testing per the governing specifications, including the latest MnDOT Standard Specifications for Construction, CEAM Standard Specifications, and the Project's special provisions. Provide the City with copies of all test results upon request.
 - 2. Ensure that the construction contract work includes access, coordination, and assistance with City personnel for other testing work done by the City.
 - 3. Ensure competent personnel currently certified by the Minnesota Department of Transportation perform the Developer's inspection and testing services for the Project's construction.
- E. Televising Sanitary Sewers. Televising all sanitary sewers installed as part of the Public Improvements. Provide the City Engineer with

a DVD copy of the recording.

- F. As-Built/Record Drawings. As soon as possible after the Project's construction, provide the City Engineer with complete as-built drawings of the Public Improvements, including ties to all service locations. Provide the as-built drawings in the form of reproducible originals and computer drawing files compatible with the City's software.
- G. Additional Responsibilities for the Construction of Public Improvements. The Developer must comply with the following:
 - 1. Construct and install the materials and equipment of the Public Improvements per the plans and specifications approved by the City Engineer.
 - 2. Obtain written approval from the City Engineer for any deviation from the Public Improvements plans.
 - 3. Before initiating construction of the Public Improvements, hold a pre-construction meeting with the City to review and resolve any issues involving the construction of the Public Improvements.
 - 4. Perform and complete all labor and work connected with the construction of the Public Improvements in a workmanlike manner and strict conformance with the Public Improvements plans.
 - 5. Fully and faithfully comply with all terms and conditions of all contracts entered into by the Developer to install and construct all Public Improvements.

3.05. City Responsibilities for Construction Engineering Services. The City is responsible for general engineering review and oversight of the Project. The City will provide inspection and testing services for the construction of the Public Improvements as follows:

- A. Construction Inspection and Testing. The City will perform the following inspection and testing services:

1. Review all pipe installation and backfilling operations;
 2. Conduct compaction/density testing;
 3. Witness pressure testing of sewer and water piping;
 4. Witness conductivity and disinfection testing of water piping;
 5. Approve preparation of the roadway and trail subgrade;
 6. Retain copies of all inspection/testing reports, which the City will provide to the Developer upon request;
 7. Collect and retain tickets for all bituminous mixtures delivered and placed on the Property; and
 8. Certify that the Developer installed all improvements per the approved plans and specifications.
- B. Materials Testing. The City will perform the following materials testing:
1. Gradations for Class 5 aggregate base, concrete aggregate, and bituminous mixture aggregate. The Developer must submit MnDOT certified mix designs for concrete and bituminous mixtures before construction;
 2. Extraction tests for bituminous mixtures;
 3. Concrete air, slump, and temperature tests; and
 4. Concrete cylinder breaks.

For those testing procedures that require the use of an outside firm (such as bituminous extraction and concrete cylinder breaks), the City will invoice the Developer for the cost of those outside services and the City's general engineering services. These services are estimated to be \$5,000 and are not to exceed \$10,000 without the prior written agreement of Developer.

3.06. The Developer's Financial Responsibilities for the City's

Engineering Services. The Developer must pay five percent (9%) of the total cost of the Public Improvements to the City for the City's engineering services provided as part of the Project. The Developer must make payment within thirty (30) days of being billed by the City for said services.

ARTICLE FOUR ADDITIONAL PROVISIONS

4.01. Platting Requirements. The City Council approved the final Plat of TWIN OAKS SUBDIVISION in Resolution No. 2024-009 on January 9, 2024, subject to the conditions and requirements contained in the Authorizing Resolution, the Faribault City Code, state statutes, the City Attorney's plat opinion attached hereto as *Exhibit F*, and this Agreement. Platting requirements include, but are not limited to, the following:

- A. **Title Work/Consent/Attorney Review.** Before recording the Plat with Rice County, the Developer must provide the City with an updated and certified Abstract of Title and/or Registered Property Abstract per Minnesota Statutes 505.03. Alternatively, the Developer must provide a Commitment for a Title Insurance Policy for the Property naming the City as the proposed insured in the amount of \$100,000. If the Developer does not record the Plat in the year 2024, the City may revise the above-referenced policy coverage amount based on the year in which the Plat is released for filing with the Rice County Recorder/Registrar.

The above-referenced title work shall identify any other entity with a legal interest in the Property, including but not limited to any entity with a mortgage interest, easement interest, or related interest. Before recording the Plat with Rice County, the Developer agrees to provide the City with a signed consent from any other entity with a legal interest in the Property, including but not limited to any entity with a mortgage interest. The City Council's approval of the Plat contemplated by the Authorizing Resolution and this Agreement is subject to the Developer's compliance with this provision.

The evidence of title shall be subject to the review and approval of

the City Attorney, and the issuance of the City Attorney's plat opinion attached hereto as *Exhibit F* and incorporated into this Agreement as if fully set forth herein, to determine what entities must execute the Plat and other documents to be recorded against the Property. In the event the Developer provides the City with a Commitment for a Title Insurance Policy, the Developer shall cause a Title Insurance Policy to be issued consistent with the Commitment for a Title Insurance Policy provided by the Developer and the requirements of the City Attorney and with an effective date on which the Plat is recorded (the City will not issue any building permits or certificates of occupancy until it is provided with said Title Insurance Policy unless explicitly allowed through a separate early start agreement). Further, Developer shall provide the City with evidence, which sufficiency shall be determined by the City, in its sole discretion, that all documents required to be recorded pursuant to this Agreement and by the City Attorney are recorded and all conditions for release of the Plat have been met prior to the City processing or approving any building permits or other permits applicable to the development of the Property unless explicitly allowed through a separate early start agreement.

The City Council's approval of the Plat contemplated by Resolution 2024-009 and this Agreement is subject to the Developer's compliance with this paragraph.

- B. Plat Revisions. The Parties to this Agreement acknowledge that revisions or corrections to the Plat may need to occur. The Developer agrees to undertake, assist with, and resolve such revisions or corrections as directed by the City. The Parties agree to cooperate regarding any reasonable requests to revise or correct any errors in the Plat and provide all additional documentation deemed necessary by either Party to effectuate such revisions or corrections to the Plat. The Developer is responsible for all application fees, development, and construction costs associated with such revisions.
- C. Deed or Deeds to the City. Before the City's acceptance of the Public Improvements and the City's release of the Security, the Developer must deed LOT 13, BLOCK 1 of TWIN OAKS

SUBDIVISION to the City pursuant to the Authorizing Resolutions approving the Plat. The form of deed or deeds are as set forth in Exhibit H and are subject to the review and approval of the City Attorney.

- D. Parkland Dedication. Instead of the required parkland dedication outlined in the City's Unified Development Ordinance, the Developer agrees to deed to the City LOT 13, BLOCK 1 of TWIN OAKS SUBDIVISION. However, a future subdivision of the Plat, or a change of use in the Plat that increases the demand for the City's parks, may require the Developer and/or Subdivider, or their successors or assigns, to provide the City with parkland dedication, or cash instead of parkland dedication, as outlined in the City's Unified Development Ordinance.
- E. Wetlands. According to the submitted plat documents there are no known wetlands within the platted area.
- F. Copies of the Plat. The Developer must provide the City Engineer with a reproducible signed Mylar copy and an electronic file of the Plat, in a format suitable to the City Engineer, after all signatures have been obtained.
- G. Deadline to Record Plat. The Developer shall record the Plat with the Rice County Recorder's Office within twelve (12) months following City Council approval, or the Plat shall be null and void unless the City Council extends the deadline to record the Plat.

4.02. Access and Use of the Property During Construction. The City's right to access the Property and the Developer's responsibilities for parking, storage, and staging during construction are as follows:

- A. City Access. The Developer grants the City, its agents, employees, officials, and contractors a non-revocable license to enter the Property to perform all work, testing, and inspections deemed appropriate by the City related to the Project and the Property.
- B. Parking and Storage. The Developer must provide adequate parking and storage area for workers, equipment, construction

materials, or other items associated with the Project. To the extent possible, parking, storage, and staging must occur on the Developer's Property. The Developer must submit a plan to the City Engineer that adequately depicts and defines contractor parking and all construction staging areas. The Developer must delineate all construction staging areas with appropriate construction fencing.

4.03. Payment of City Costs. In addition to the City's Engineering fees outlined in this Agreement, the Developer shall reimburse the City for its actual costs related to this Project as follows:

- A. Developer's Cost to Process the Plat and this Agreement. Consistent with the City's adopted fee schedule for 2024 as outlined in City Resolution No. 2023-238, the Developer shall reimburse the City its actual costs regarding the following:
 - 1. The preparation and administration of this Agreement, the Plat, and other related documents, permits, and applications associated with the Project; and
 - 2. The fees and the costs of the City Attorney and other technical and professional assistance (including but not limited to the cost of City staff time) incurred or expended by the City on activities arising out of costs to plat, and Development Agreement review, the Public Improvements, and other related undertakings.
- B. City Attorney's Fees to Enforce the Agreement. If the City brings a suit or action against the Developer to enforce the terms of this Agreement, the Developer must pay the City's costs and expenses, including attorney fees.
- C. Remedy to Recover the City's Costs. If the City does not recover its costs under the provisions of this Agreement and for completing the Public Improvements, as an additional remedy, the City may then assess the Property in the manner provided by Minnesota Statutes, Chapter 429. The Developer consents to the levy of such special assessments without notice or hearing and waives its rights to appeal such assessments under Minnesota

Statutes, Section 429.081. The amount levied, together with the funds deposited with the City under this Agreement, must not exceed the expenses incurred by the City in the completion of the Public Improvements. Further, the City may recover incurred City expenses through service charges, per Minnesota Statutes, Section 415.01, 366.011 and 366.012. Finally, the Developer agrees all such unpaid amounts constitute charges for governmental services that the City may, at its option, collect as a first in priority lien on any unsold lots and on any other property the Developer may own in the state pursuant to Minnesota Statutes, section 514.67.

4.04. Completion of the Developer's Obligations after Recording the Plat and Related Documents. The Developer must complete some obligations outlined in this Agreement after the Plat and related documents have been signed and recorded. The City will not issue a final CO until the following is received and accepted by the City:

- A. Title Insurance Policy
- B. Certificate of Plat Monumentation
- C. Mylar Copy of the Signed Plat and Electronic Version of the Plat

4.05. City Ownership of Public Improvements and Documents. The Developer expressly acknowledges and agrees to City Ownership of the Public Improvements and documents as follows:

- A. City Ownership of the Sanitary Sewer, Watermain, Utility Service Lines, Public Roadway, Sidewalk Improvements and Storm Sewer. The Public Improvements, as defined in and all easements and other rights in the Property necessary and related to the City's ownership of the sanitary sewer, watermain, utility service lines and storm sewer, shall inure to the City upon the following:
 - 1. Developer's compliance with this Agreement;
 - 2. The City's acceptance of the Public Improvements; and
 - 3. The approval and recording of the final plat as outlined in the Faribault Code of Ordinances.

- B. City Ownership of Documents. The City will own the completed reports, drawings, plans, and specifications, but the Developer or the Consulting Engineer may retain reproductions of them in whole or in part.

4.06. Building Permits and Occupancy Permits. The City issuance of a building permit or an occupancy permit is contingent, in part, on the following:

1. Building Permit. City approval of the Plat approval does not include City approval of a building permit. The Developer or another party applying for a building permit is responsible for paying the required fees associated with a building permit and other deferred fees specified in this Agreement. The City may issue a building permit before the complete installation of utilities and grading. However, the City will not issue a building permit until this Agreement is signed and the financial assurances are in place.
 2. If the City issues a building permit before the completion and acceptance of the Public Improvements, the Developer assumes all liability and costs resulting in the delays in completion of the Public Improvements and damages resulting from nonconforming improvements or defect to the Public Improvements caused by the Developer, its subcontractors, material suppliers, employees, agents, or third parties.
- A. Occupancy Permit. Unless otherwise authorized in writing, the City will not issue an occupancy permit until the Developer has constructed and the City has accepted the Sanitary Sewer, Watermain, Utility Service Lines, Public Roadway, Trail Improvements and Storm Sewer. Requirements for issuance of an occupancy permit include, but are not limited to, the following:
1. The site grading is completed and approved by the City;
 2. All public utilities are tested, approved by the City, and in service;
 3. All curbing is installed and backfilled;

4. The first lift of bituminous is in place and approved by the City; and
5. All building permit fees are paid in full.

4.07. Indemnification. The City, its officials, agents, and employees are not liable or responsible to the Developer, the Developer's successors or assigns, the Developer's contractors or subcontractors, material suppliers, laborers, or any other person for any claim, demand, damage, or cause of action or character arising out of or because of the execution of this Agreement or the performance and completion of this Agreement and the Public Improvements. The Developer and the Developer's successors or assigns agree to protect, defend and save the City, and its officials, agents, and employees harmless from all such claims, demands, damages, and causes of action and the costs, disbursements, and expenses of defending the same, including but not limited to, attorney fees, consulting engineering services, and other technical, administrative or professional assistance. Nothing in this Agreement constitutes a waiver or limitation of any immunity or limitation on liability to which the City is entitled under Minnesota Statutes, Chapter 466, or otherwise.

4.08. Developer's Default. If the Developer defaults on any work or undertaking required by this Agreement, the City may perform the work as follows:

- A. Reimbursement. The Developer must promptly reimburse the City for any expense incurred by the City.
- B. License for City Action. This Agreement licenses the City to act. The City need not obtain a court order to enter the Property to perform any work on which the Developer defaults.
- C. Special Assessment and Cost Recoupment. The City may levy special assessments against the lots within the Plat to recover its costs for performing any work on which the Developer defaults. For this purpose, the Developer, for itself and its successors and assigns, expressly waives all procedural and substantive objections to the special assessments, including, but not limited to, hearing requirements and any claim that the assessments

exceed the benefit to the assessed land. For itself and its successors and assigns, the Developer also waives any appeal rights otherwise available under Minnesota Statutes Section 429.081.

If the City does not recover its costs under the provisions of this Agreement and for completing the Public Improvements, as an additional remedy, the City may then assess the Property in the manner provided by Minnesota Statutes, Chapter 429. The Developer consents to the levy of such special assessments without notice or hearing and waives its rights to appeal such assessments under Minnesota Statutes, Section 429.081. The amount levied, together with the funds deposited with the City under this Agreement, must not exceed the expenses incurred by the City in the completion of the Public Improvements. Further, the City may recover incurred City expenses through service charges, per Minnesota Statutes, Section 415.01, 366.011 and 366.012. Finally, the Developer agrees all such unpaid amounts constitute charges for governmental services that the City may, at its option, collect as a first in priority lien on any unsold lots and on any other property the Developer may own in the state pursuant to Minnesota Statutes, section 514.67.

4.09. Miscellaneous Provisions.

- A. Complete Understandings between the Parties. This Agreement and its exhibits constitute the complete and exclusive statement of all mutual understandings between the Parties to this Agreement. This Agreement supersedes all prior or contemporaneous proposals, communications, and understandings, whether oral or written, on the subject matter.
- B. Amendment. Any amendment to this Agreement must be in writing and signed by all Parties.
- C. Assignment. The Developer must not assign any of its obligations under this Agreement without the prior written consent of the City.
- D. Agreement to Run with the Land. The Developer must record this Agreement among the land records of Rice County, Minnesota.

This Agreement runs with the Property and binds the Developer and its assigns or successors in interest. Notwithstanding the preceding, no conveyance of the Property or any part of the Property relieves the Developer of its liability for the full performance of this Agreement unless the City releases the Developer in writing.

- E. Compliance with Laws and Regulations. The Developer represents to the City that the Project and the development of the Property, the subdivision, and the Plat comply with all city, county, state, and federal laws and regulations including, but not limited to, subdivision ordinances, zoning ordinances, and environmental regulations. If the City determines that the subdivision, the Plat, the Project, or the development of the Property does not comply with pertinent laws and regulations, the City may not allow work on the Property until there is compliance. Upon the City's demand, the Developer shall cease work until there is compliance.
- F. No Third-Party Recourse. Third parties shall have no recourse against the City or the Developer under this Agreement.
- G. Breach of Agreement Terms. Any material breach of the terms of this Agreement by the Developer are grounds for denial of building permits, including building permits associated with lots sold to third parties.
- H. Invalidation of a Provision. The provisions of this Agreement and related documents are understood to be valid under applicable law. If a court or other competent jurisdiction invalidates any provision, that provision will be ineffective only to the extent of such invalidity. It will not invalidate the remainder of the provision or the remaining provisions of this Agreement or related documents.
- I. Choice of Law and Venue. This Agreement is governed by and construed per the laws of the state of Minnesota. The state or federal courts in Minnesota will hear all disputes, controversies, or claims arising from this Agreement. All parties to this Agreement waive any objection to the jurisdiction of these courts.
- J. Amendments or Waivers to this Agreement. No failure by any

Party to enforce the strict performance of any covenant, duty, agreement, or condition of this Agreement, or to exercise any consequent right or remedy to a breach of this Agreement, constitutes a waiver of any such breach of any other covenant, agreement, term, or condition. No such failure implies that any Party may again waive such covenant, agreement, term, or condition.

The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. Binding amendments or waivers must be in writing and signed by the Parties. The City's failure to promptly take legal action to enforce this Agreement does not provide the Developer with a waiver or release.

- K. Remedies Not Exclusive. No remedy conferred by any provision of this Agreement is the Party's exclusive remedy. In addition to the rights and remedies in this Agreement, the Parties will have all other rights and remedies provided to them by applicable law, rule, exception, or other agreement.
- L. Disclaimer of Relationships. The Developer or any third party must not deem or construe this Agreement or any act by the City or the Developer to create any relationship of a third-party beneficiary, principal and agent, limited or general partner, or joint venture between the City and the Developer.
- M. Counterparts. The Parties to this Agreement may execute in any counterparts, each of which shall constitute the same instrument.
- N. Changes in Official Controls. For two (2) years from the date of this Agreement, no amendments to the City's Comprehensive Plan or official controls will apply to or affect the use, development density, lot size, lot layout, or dedications of the approved plat unless required by state or federal law or agreed to in writing by the Developer and the City. Thereafter, notwithstanding anything in this Agreement to the contrary, to the full extent permitted by state law, the City may require compliance with any amendments to the City's Comprehensive Plan, official controls, platting, or dedication requirements enacted after the date of this contract.

- O. Other Development Agreements. Any additional development agreements affecting the Property are incorporated in this Agreement by reference as fully included in this Agreement. If any such development agreements and this Agreement are inconsistent, the language of this Agreement will control.
- P. Administration of Data. The City will administer data provided to the Developer or received from the Developer under this Agreement per the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.
- Q. Additional Requirements. The Developer and Subdividers shall satisfy, complete, and abide by all requirements outlined in the Authorizing Resolution, the City Attorney's plat opinion, and all adopted City ordinances and resolutions affecting the Property, all of which are incorporated herein by reference as if fully outlined in this Agreement. In addition, the Developer shall adequately address all items as may be directed by the City Attorney, the City Engineer, or others with review and approval authority for the City.
- R. Certificate of Completion. Upon the Developer's compliance with the Agreement and recording of the Plat, the City agrees to execute and record a Certificate of Completion in the form attached hereto as Exhibit G.

4.10. Notices and Demands. Each Party must sufficiently give, personally deliver, or deliver by registered or certified mail, postage prepaid, return receipt requested, any notice, demand, or other communication under this Agreement as follows:

- A. As to the Developer: Housing and Redevelopment Authority of
 Rice County
 Attn: County Administrator
 320 Third Street NW
 Faribault, MN 55021
- B. As to the City: City of Faribault
 Attn: City Administrator

208 NW First Avenue
Faribault, MN 55021-5105

With a copy to:

Scott J. Riggs
Attorney at Law
Kennedy & Graven, Chartered
150 South Fifth Street, Suite 700
Minneapolis, MN 55402

Parties may designate another address for communications pursuant to the provisions of this Agreement.

- 4.11 Exchange of Deeds.** The Developer must deed LOT 13, BLOCK 1, of TWIN OAKS SUBDIVISION to the City pursuant to the Authorizing Resolutions approving the Plat. The form of the deeds is as set forth in Exhibit H and are subject to the review and approval of the City Attorney.

The remainder of this page is left intentionally blank.

IN WITNESS OF THE ABOVE, the Parties have caused this Agreement to be executed on the date and year written above.

CITY OF FARIBAULT

By: _____
Kevin F. Voracek
Mayor

By: _____
Jessica L. Kinser
City Administrator

STATE OF MINNESOTA)
) SS.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Kevin F. Voracek and Jessica L. Kinser, the Mayor and City Administrator, respectively, of the City of Faribault, a Minnesota municipal corporation, on behalf of the City.

By: _____
Notary Public

DEVELOPER

**Housing and Redevelopment
Authority of Rice County**

By: _____
Galen Malecha
Housing and Redevelopment Authority of
Rice County Board Chair

By: _____
Joy Watson
Rice County Director of Housing

STATE OF MINNESOTA)
) SS.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024, by Galen Malecha and Joy Watson, the Board Chair and Housing Director, respectively, of the Housing and Redevelopment Authority of Rice County, a political subdivision under the laws of the State of Minnesota, on behalf of the County.

By: _____
Notary Public

This document drafted by:

KENNEDY & GRAVEN, CHARTERED (SJR)
150 South 5th Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300

**EXHIBIT A
LEGAL DESCRIPTION**

Outlot B, CANNON RIVER VIEW, Rice County, Minnesota according to the recorded plat thereof on file in the Rice County Recorder's Office.

**EXHIBIT B
RESOLUTION NO. 2024-009**

This document is on file in the offices of the City of Faribault.

EXHIBIT C

CERTIFICATION OF PLAT MONUMENTATION



Certification of Plat Monumentation

Name of Plat/Subdivision: _____

Name of Developer: _____

Survey Company: _____

I hereby certify that I am a Minnesota licensed land surveyor, and that all required plat monuments (property irons) have been installed by me, or under my direct supervision, as shown on the recorded Final Plat of the plat/subdivision, in compliance with the terms of the Subdivision Agreement, and meeting the requirements of Minnesota State Statutes, Chapter 505.

Signature

Date

Name

License No.

EXHIBIT D

**DEVELOPER'S COST ESTIMATE FOR THE PUBLIC IMPROVEMENTS
AND ALL OTHER WORK IDENTIFIED AS THE DEVELOPER'S
RESPONSIBILITY**

Twin Oaks Court Subdivision (#9041818)

Owner: The Board of Rice County Housing & Redevelopment Authority (HRA)

Solicitor: Widseth Smith Nolting - Provider

04/11/2024 10:00 AM CDT

Line Item	Item Code	Item Description	UoFM	Quantity	Heselton Construction, LLC.	
					Unit Price	Extension
						\$673,955.50
1	2016.601	CONTRACTOR TESTING - DENSITY	L.S.	1	\$12,150.00	\$12,150.00
2	2021.501	MOBILIZATION	L.S.	1	\$16,000.00	\$16,000.00
3	2101.524	CLEARING & GRUBBING	ACRES	1	\$5,550.00	\$5,550.00
4	2104.503	SAWING BIT PAVEMENT (FULL DEPTH)	LIN FT	32	\$3.00	\$96.00
5	2105.607	COMMON EXCAVATION	CU YD	270	\$128.00	\$34,560.00
6	2105.607	COMMON EXCAVATION (SUBGRADE) (EV)	CU YD	500	\$12.50	\$6,250.00
7	2105.607	COMMON BORROW (LV)	CU YD	19500	\$7.25	\$141,375.00
8	2211.509	AGGREGATE BASE CLASS V (12")	TONS	2800	\$15.75	\$44,100.00
9	2360.509	TYPE SP 9.5 WEARING COURSE MIX (3,C) (1.5")	TON	269	\$94.65	\$25,460.85
10	2360.509	TYPE SP 12.5 NON-WEARING COURSE MIX (3,C) (2.5")	TON	448	\$82.25	\$36,848.00
11	2451.609	GRANULAR FOUNDATION AND/OR BEDDING	TON	630	\$0.01	\$6.30
12	2521.618	CONCRETE CURB RAMP WALK (6" CONC., 4" AGG.)	SQ FT	251	\$13.50	\$3,388.50
13	2501.502	21" RC PIPE APRON	EACH	1	\$1,630.00	\$1,630.00
14	2503.503	15" RC PIPE SEWER DES 3006 CL V	LIN FT	307	\$59.25	\$18,189.75
15	2503.503	18" RC PIPE SEWER DES 3006 CL III	LIN FT	146	\$65.00	\$9,490.00
16	2503.503	21" RC PIPE SEWER DES 3006 CL III	LIN FT	117	\$71.00	\$8,307.00
17	2503.602	CONNECT TO EXISTING SANITARY SEWER	EACH	1	\$575.00	\$575.00
18	2503.602	SANITARY SEWER SERVICE (4" PVC)	EACH	22	\$990.00	\$21,780.00
19	2503.602	8" X 4" PVC WYE	EACH	22	\$375.00	\$8,250.00
20	2503.603	SANITARY SEWER INSPECTION	LIN FT	713	\$4.50	\$3,208.50
21	2503.603	8" PVC PIPE SEWER (SDR 35)	LIN FT	713	\$34.00	\$24,242.00
22	2504.602	INSTALL WATER SERVICE SYSTEM (1")	EACH	22	\$1,925.00	\$42,350.00
23	2504.602	CONNECT TO EXISTING WATER MAIN	EACH	1	\$800.00	\$800.00
24	2504.602	HYDRANT	EACH	3	\$7,550.00	\$22,650.00
25	2504.602	ADJUST VALVE BOX	EACH	3	\$225.00	\$675.00
26	2504.602	6" GATE VALVE AND BOX	EACH	3	\$2,200.00	\$6,600.00
27	2504.603	6" PVC WATER MAIN	LIN FT	33	\$60.00	\$1,980.00
28	2504.603	8" PVC WATER MAIN	LIN FT	748	\$48.00	\$35,904.00
29	2504.608	DUCTILE IRON FITTINGS	LBS	350	\$12.50	\$4,375.00
30	2506.502	CONSTRUCT DRAINAGE STRUCTURE 2'X3'	EACH	3	\$3,200.00	\$9,600.00
31	2506.502	CONSTRUCT DRAINAGE STRUCTURE DESIGN 48-4020	EACH	3	\$3,725.00	\$11,175.00
32	2506.502	ADJUST FRAME & RING CASTING	EACH	6	\$925.00	\$5,550.00
33	2506.602	CONSTRUCT SANITARY MANHOLE	EACH	4	\$4,670.00	\$18,680.00
34	2506.602	CONSTRUCT SANITARY MANHOLE	LIN FT	6	\$210.00	\$1,260.00
35	2511.507	RANDOM RIPRAP CLASS III	CY	7	\$120.00	\$840.00
36	2531.503	CURB AND GUTTER DESIGN DRIVEOVER	LIN FT	1607	\$21.00	\$33,747.00
37	2531.503	CURB AND GUTTER DESIGN B624	LIN FT	88	\$35.00	\$3,080.00
38	2531.618	TRUNCATED DOMES	SQ FT	40	\$73.50	\$2,940.00
39	2563.601	TRAFFIC CONTROL	L.S.	1	\$985.00	\$985.00
40	2564.602	FURNISH AND INSTALL TYPE C SIGN	EACH	1	\$570.00	\$570.00
41	2564.602	FURNISH AND INSTALL TYPE D SIGN (STREET NAME SIGNS)	EACH	1	\$570.00	\$570.00
42	2565.603	4" NON-METALLIC CONDUIT	LIN FT	200	\$13.00	\$2,600.00
43	2573.502	STORM DRAIN INLET PROTECTION	EACH	6	\$250.00	\$1,500.00
44	2573.503	SILT FENCE, TYPE MS	LIN FT	1400	\$2.85	\$3,990.00
45	2573.503	BIOROLLS	LIN FT	230	\$3.10	\$713.00
46	2574.508	FERTILIZER TYPE 3	LB	1172	\$1.55	\$1,816.60
47	2575.504	EROSION CONTROL BLANKETS CATEGORY 30	SQ YD	2500	\$3.65	\$9,125.00
48	2575.504	SODDING TYPE LAWN	SQ YD	2131	\$8.00	\$17,048.00
49	2575.505	SEEDING (SEED MIXTURE 25-151)	ACRE	3.5	\$1,900.00	\$6,650.00
50	2575.509	MULCH MATERIAL TYPE 1	TON	7	\$675.00	\$4,725.00
						\$673,955.50

EXHIBIT E

COPY OF DEVELOPER'S SECURITY

**[Insert copy of Developer's Security – Must be provided prior
to the start of the public improvements]**

EXHIBIT F
CITY ATTORNEY'S PLAT OPINION
[Insert Plat Opinion]

EXHIBIT G

CERTIFICATE OF COMPLETION

FORM OF CERTIFICATE OF COMPLETION

WHEREAS, the City of Faribault, a Minnesota municipal corporation ("City"), and County of Rice, a political subdivision under the laws of the State of Minnesota (the "Developer") have entered into a certain Development Agreement (the "Agreement") dated the ____ day of _____, 2024, and recorded in the office of the County Recorder or Registrar in Rice County, Minnesota, as Document No. _____, which Agreement contained certain covenants and restrictions regarding completion of the Minimum Improvements, as defined in the Agreement; and

WHEREAS, the Developer has performed said covenants and conditions in a manner deemed sufficient by the City to permit the execution and recording of this certification.

NOW, THEREFORE, this is to certify that all construction of the Minimum Improvements specified to be done and made by the Developer has been completed and the covenants and conditions in the Agreement have been performed by the Developer, and the County Recorder in Rice County, Minnesota, is hereby authorized to accept for recording and to record the filing of this instrument, to be a conclusive determination of the satisfactory termination of the covenants and conditions relating to completion of the Minimum Improvements and the expiration of certain obligations contained in the Agreement to the extent expressly provided for therein. Unless otherwise expressly provided in the Agreement, Redeveloper shall be deemed to have satisfied its obligations under the Agreement.

Dated: _____.

CITY OF FARIBAUT

By: _____
Jessica L. Kinser
City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF RICE)

The foregoing instrument as acknowledged before me this _____ day of _____, 20____, by Jessica L. Kinser, the City Administrator of the City of Faribault, a Minnesota municipal corporation, on behalf of the City.

Notary Public

DRAFT 5.2.2024

**EXHIBIT H
FORM OF DEEDS**

[Insert Deed]