

RIVERWEST ROAD
PROJECT AGREEMENT

City of Duluth

Spirit Valley Land Company LLC.

THIS AGREEMENT, effective as of the date of attestation thereto by the City Clerk, is entered into between the CITY OF DULUTH, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as “City”, and SPIRIT VALLEY LAND COMPANY, LLC., a limited liability company under the laws of the State of Minnesota, hereinafter referred to as “Owner”.

WHEREAS, Owner is the owner of the hereinafter-described property (the “Property”) which Owner is desirous of developing and are committed to finding a developer who will develop the Property, which development could include single family housing, residential condominium development, apartment development, similar residential uses permitted by applicable codes, hotel and convention hotel development and commercial and retail development; and

WHEREAS, Owner has requested that City include design and construction of the Utilities in the Road project in order to facilitate that development and has offered to pay the cost thereof as hereinafter provided for and to convey necessary easements for the Road across the Property to the City; and

WHEREAS, certain steps including those set forth in Paragraph 2 below need to be accomplished before City can make an unconditional commitment to construct the Road; and

WHEREAS, the parties hereto desire to memorialize those steps involving each other which are necessary to proceeding with the development of the Road and the Property.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

1. Definitions

For the purposes of this Agreement, the following words and phrases shall have the meanings hereinafter ascribed to them:

- A. Assess or Assessment Procedure: shall mean the act or process of collecting all or a portion of the cost of the Road and Utility improvements by collecting the same from the Owner of benefitted properties as provided for in Chapter IX of the Duluth City Charter and Article VII of Chapter 45 of the Duluth City Code, 1959, as amended.
- B. Assessment: shall mean the assessment of the Assessment Amount as provided for in under the Assessment Procedure and in the Assessment Agreement.
- C. Assessment Agreement: shall mean a binding agreement between the Owner and the City, running with the land, binding the Owner to accept the assessment of the Assessment Amount against the Property as herein provided for and waiving all procedural rights and appeal rights with regard thereto.
- D. Assessment Amount: shall mean the unpaid Eighty (80%) Percent of the Cost.
- E. Budget: shall mean the City's budget for the design and construction of the Road and Utilities.
- F. Consultant: shall mean MSA Professional Services, Inc.
- G. Contract: shall mean the construction contract for construction of the Road and Utilities.
- H. Cost: shall mean the combined total of the Road Cost and the Utility Cost less the amount of \$1,257,000.
- I. Easements: shall mean the Easement for RiverWest Drive as shown on the Plat. In addition, the term "Easements" shall include permanent easements along both sides of said RiverWest Drive for its entire length as shown on the Plat, a permanent easement for turn-around/parking area adjacent to the Burlington Northern Santa Fe Railroad Right-Of-Way, storm water utility easements below the Munger Trail and temporary construction easements over that portion of the Property related to the construction of the Road and related grading. All of the Easements referenced herein are generally shown on Exhibit A attached hereto and made a part hereof; the actual Easements, except for the Easement for RiverWest Drive as shown on the Plat, will be legally described in the Easements referenced in Paragraph 2 B below.
- J. Mass Grading Plan: shall mean the Mass Grading Plan for the entire Property, including but not limited to that portion of the Property upon which the

Road and the Utilities will be located, which Mass Grading Plan shall have been approved by the City's City Engineer prior to completion of Plans and Specifications.

K. Ordering In Resolution: shall mean that resolution approved by the City's City Council ordering construction of the Road in accordance with the requirements of Section 45-81 of the Duluth City Code, 1959, as amended.

L. Plans and Specifications: shall mean the construction plans and specifications for the construction of the Road and Utilities as defined herein conforming substantially to the plans and specifications prepared by the Consultant, entitled "Construction Plan for RiverWest Drive" bearing City of Duluth Project No. 1403 on file in the Office of the City of Duluth City Engineer.

M. Plat: shall mean the Plat of Kayak Bay as approved by the City of Duluth Planning Commission on July 10, 2018 platting the Property in accordance with the requirements of the City and of Statute.

N. Property: shall mean that property in St. Louis County, Minnesota legally described on the Plat of Kayak Bay on file in the office of County Recorder for St. Louis County, Minnesota.

O. Road: shall mean a Twenty-eight (28') foot wide bituminous roadway located on the Easement for RiverWest Drive as shown on the Plat from Grand Avenue to the Burlington Northern Santa Fe Railroad Right-Of-Way and the traffic signal at the intersection of Grand Avenue and RiverWest Drive and shall include a combined parking area and turn-around adjacent to said Right-Of-Way as shown on Exhibit A attached hereto and made a part hereof, all constructed to City of Duluth Engineering Design Standards.

P. Road Cost: shall mean all costs of designing and constructing the Road to the elevations shown on the Plans and Specifications. Such Road Costs shall be calculated in accordance with normal practices and shall specifically include the costs of wetland mitigation, the purchase of wetlands credits, grading costs including any grading costs as described in Paragraph 2. E below and recording fees for recording the Easements.

Q. Utilities: shall mean the following public utilities: an eight (8") inch waterline; a two (2") inch natural gas main; an eight (8") inch sanitary sewer line; and storm drainage facilities, all as show on the Plans and Specifications approved by the City Engineer and constructed to standard City Specification.

R. Utility Cost: shall mean the cost of designing and constructing the Utilities to the elevations shown on the Plans and Specification. Utility Cost shall specifically include the costs of wetland mitigation, the purchase of wetland credits, grading costs including any grading costs as described in Paragraph 2.E below and recording fees for recording the Easements.

2. Pre-conditions to Road & Utilities Construction-Owner

Prior to the commencement of advertising for bids for the construction of the Road and Utilities by City, Owner shall have performed the following obligations:

A. Plans and Specifications

Owner shall have the right to review and comment on the Plans and Specifications and to request changes thereto but the final approval of all such portions of the Plans and Specifications shall be solely that of the City's City Engineer. City and Owner agree to work together to develop Plans and Specifications which reflect the most cost effective design practical.

B. Grant of Easements

Owner shall have granted the Easements, including the Easement for RiverWest Drive, to the City, at no cost. The form of the grants of Easements shall be subject to the reasonable approval of the City's City Attorney.

C. Payment of 20% of Cost

Prior to the approval of the Ordering In Resolution, Owner shall have paid to City an amount equal to Twenty (20%) Percent of the Cost plus the amount of \$13,278.70 for prior utility work done for the benefit of Owner.

D. Assessment Agreement

At the time the Ordering In Resolution is approved Owner shall enter into an Assessment Agreement in the form of that attached hereto and made a part hereof as Exhibit B agreeing to allow the Assessment Amount to be assessed against the Property. Owner agrees that the Assessment Agreement shall provide for the Assessment Amount to be assessed against those parcels identified to be assessed in Exhibit C in the percentage of the Assessment Amount as identified in association with each such parcel on said Exhibit C.

E. Owner Grading As of the date of the approval of this Agreement by City, Developer has submitted the final Mass Grading Plan for the grading of the

Property, which Plan has been approved by the City Engineer in writing and is on file in the Office of the City Engineer. Prior to the commencement of construction of the Road and Utilities by City, Owner shall have completed grading of the Property in conformance with the Mass Grading Plan. In the event that Owner has failed to completed the grading of the Property in conformance with the Mass Grading Plan by the time the City's contractor commences construction of the Road and Utilities as provided for herein and the City incurs any additional costs for construction of the Road and Utilities resulting from such failure, Owner agrees that the cost thereof shall be deemed to be a Road Cost which may be assessed against the Property as provided for herein. City agrees to use its best efforts to provide Owner with its best estimate of the quantity of Excess Soils, as described in Subparagraph G. below, to be deposited by City's contractor on the Property by September 1, 2020.

F. Plat

The Plat has been recorded prior to the execution of this Agreement with the St. Louis County Recorder's Office.

G. Excess Soils

In the event that the construction of the Road results in the generation of soils materials which would otherwise need to be removed from project site by the City's contractor, Owner hereby grants permission to City to have its contractor dispose of such materials on the Property at a location designated and staked by the Owner within five (5) working days upon notice by the City, at no cost to City, and grants City and its contractor access across the Property to such location by earth hauling equipment. City's only obligation with regard to placement of the materials on the Property will be to deposit them at the designated location. City's sole responsibility with regard to the deposit of such materials will be to haul them to the location designated by Owner; City will not be responsible for any grading, erosion control, or stockpile stabilization. Owner will be solely responsible for securing any permits or other authorization required by law to have the materials deposited on the Property, to design and perform any relocation of the materials on the Property and to design and implement all necessary erosion controls related to the placement of the materials in accordance with applicable laws, rules and regulations including the requirements of the City's MS4 Permit.

3. Pre-conditions to Road Construction-City

Prior to the commencement of construction of the Road, the following shall have occurred:

A. Property Rights, Permits and Consents

City shall have received the Easements, property rights, consents and permits deemed necessary by the City from all other property owners owning or controlling property that will be affected by the construction of the Road and from governmental agencies having jurisdiction of any property affected by the construction of the Road or having any authority or jurisdiction over necessary permitting or other authorization related to the construction of the Road to construct the Road. In addition, the Owner shall have completed grading of the Property as provided for in Paragraph 2 E. above.

B. Budget and Scheduling—Information

City agrees that it will invite Owner to all construction meetings during the construction of the Project and that it will periodically update Owner on budget issues. Budget changes prior to Ordering In Resolution shall be subject to dialogue between City and Owner. City agrees to work in good faith to include Owner in budget decision-making processes prior to the award of the construction contract. Budget changes subsequent to the Ordering in Resolution shall follow City procurement policy. .

4. Construction

Upon completion of the Pre-conditions to Road Construction-Owner and the Pre-conditions to road Construction-City as provided for above, City shall bid out, award and enter into the Contract. In addition, upon completion of the construction covered by the Contract, the City will complete the Assessment process provided for herein. Notwithstanding the foregoing, it is understood that if the Cost as established by the lowest responsible bid exceeds the Budget amount therefore arrived at pursuant to Subparagraph B above by Fifteen (15%) Percent or more, the Owner shall have the right to withdraw its consent to assessment and to terminate this Agreement in its entirety. If Owner so withdraws its consent to assessment and terminates this Agreement, this Agreement shall be terminated and neither party shall thereafter have any obligation to the other party hereunder, except that any engineering or prior construction costs will be deducted from the deposit.

5. Owner Search

Upon the effective date of this Agreement, Owner agrees to use its best efforts to locate and enter into a development agreement with a developer or developers desirous and capable of developing the Property in a manner contemplated by this Agreement as described above. The parties agree to work together cooperatively to insure that the development of the Property will be in substantial conformance, the City's Comprehensive Land Use Plan, the Riverside Small Area Plan and the principals of the St. Louis River Corridor Initiative. The development shall also reasonably accommodate safety consideration related to intersection of the development of the Property and the Munger trail. Provided that said development shall be required to conform to the requirements of all statutes, ordinances, laws, rules and regulations applicable to all elements of said development. The City agrees to explore the possibility of public assistance to such Developers when deemed appropriate in the judgment of the City.

6. Time

Subject to the occurrence of Force Majeure event or events, it is the intention of the parties that construction of the Road shall have been completed as soon as practical but in any case it shall be completed prior to the end of the 2022 construction season. Owner agrees to have completed its Mass Grading of the Property by May 15, 2021. City agrees to commence construction of the road as soon thereafter as reasonably practical consonant with competitive bidding requirements and good engineering and construction practices and to complete the road as soon thereafter as practical; provided that City agrees that the road will be completed to "passable" condition for purposes of construction activity on the Property by Owner no later than December 31, 2021.

7. Provision Against Liens, Assignments and Transfers

A. Provision Against Liens

The Owner shall not create or permit or allow any mortgage, encumbrance or lien to be placed against the Property or any part thereof which would materially or adversely affect the City's interest in this Agreement during the term of this Agreement or which would prevent or negatively affect the City's ability to levy and perfect the Assessment against the Property as provided for herein, provided that if Owner shall first notify City of its intention to do so and post such security as City reasonably deems necessary, Owner may, in good faith, contest any such mechanic's or other liens filed or established as long as City does not deem its interest or rights

in this Agreement to be subject to foreclosure by reason of such context. Provided further that nothing in this Paragraph shall be deemed to prevent Owner from placing a mortgage against the Property for the sole purpose of securing funding used by Owner to fund the performance of its obligations under this Agreement as long as the Mortgagor, Mortgagee and any successor in interest thereto commit and agree to subordinate any such mortgage to an assessment against the Property and any portion thereof levied by the City pursuant to this Agreement and the Assessment Agreement, whether levied prior to or subsequent to the recording of such mortgage.

B. Provision Against Assignments, Transfers or Change in Identity of Owner

The parties hereto acknowledge that City is relying upon the qualifications and identify of Owner to develop the Property and is relying on its position as a first secured party to ensure that the objectives of this Agreement are met. Therefore, Owner represents and agrees for itself, its successors and assigns that it has not made or created, and will not make or create or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Property, the Owner, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder during the term of this Agreement. Nor will Owner not make or create or suffer to be made any such transfer of Owner's rights hereunder without the prior approval of City, not to be unreasonably withheld with respect to a specific development.

8. Force Majeure

Under the terms of this Agreement, neither the City nor Owner shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this

Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

9. Future Development

The parties acknowledge and agree that the original concept plan for the Developer's development contemplated extending the Road across the Burlington Northern Santa Fe Railroad right-of-way to the St. Louis River and the development of a public park along the river front, which plan was frustrated for the immediate future by circumstances beyond the control of the parties. The parties agree to work together cooperatively and in good faith in the future to pursue implementation of the concept plan in a form to be determined, subject to future land use considerations and available funding, to fulfill the goals of the concept plan.

10. Obey All Laws

Owner will conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the United States and the several states thereof and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested by Owner in good faith through proper legal action provided that such protest shall in no way affect Owner's title to the Property.

11. Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of City:

City of Duluth
Room 418 City Hall
411 West First Street
Duluth, MN 55802

In the case of Owner:

Spirit Valley Land Company LLC
P.O. Box 235
Chanhasen, MN 55317

With a copy to:

William M. Burns
Hanft Fride, A Professional Assn.
1000 U.S. Bank Place
130 West Superior Street
Duluth, MN 55802-2094

12. Applicable Law

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREAS, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH, a Minnesota
Municipal Corporation

SPIRIT VALLEY LAND
COMPANY LLC, a Minnesota
Limited Liability Company

By: _____

Emily Larson

Its: Mayor

By: _____

Its: _____

Attest:

By: _____

Its: City Clerk

Date: _____

Approved:

Countersigned:

Asst. City Attorney

Auditor

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Emily Larson and Chelsea Helmer, the Mayor and City Clerk, respectively, of the City of Duluth, Minnesota, a municipal corporation under the laws of the State of Minnesota.

Notary Public

STATE OF MINNESOTA)

) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____., of Spirit Valley Land Company LLC , a Minnesota limited liability company on behalf of the company.

Notary Public

This Instrument Drafted by:

Robert E. Asleson
Assistant City Attorney
City of Duluth, Minnesota
411 West First Street
Room 440 City Hall
Duluth, Minnesota 55802
(218) 730-5490

EXHIBIT A

EASEMENTS TO BE DEDICATED

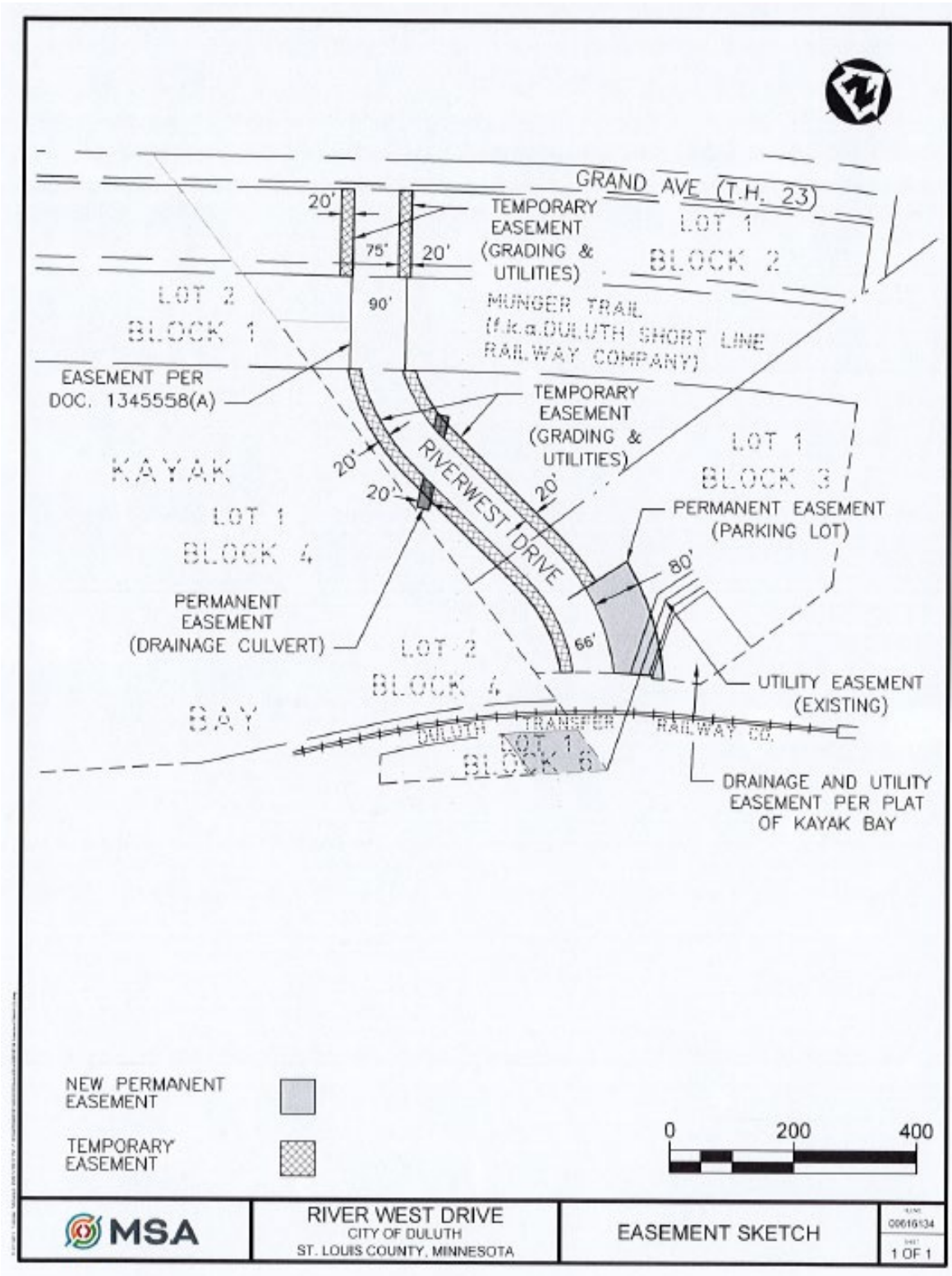


EXHIBIT B
ASSESSMENT AGREEMENT (Page 1 of 14)

RIVERWEST ROAD
DEVELOPMENT AND ASSESSMENT AGREEMENT

CITY PROJECT NO. _____

THIS AGREEMENT, effective as of the date of attestation thereto by the City Clerk, by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as “City” and SPIRIT VALLEY LAND COMPANY, LLC., a limited liability company under the laws of the State of Minnesota, hereinafter referred to as “Developer”.

WHEREAS, Developer is the Developer of certain property in the City of Duluth, County of St. Louis, State of Minnesota, which property is hereinafter referred to as the “Property” as is hereinafter legally described; and

WHEREAS, the Developer is desirous of developing the Property for commercial and residential purposes and is in need of the construction of the road, traffic signal and the utilities, as described in the hereinafter-defined Plans and hereinafter referred to as the “Improvements”, in order to develop the Property; and

WHEREAS, City has secured funding from various sources to defray \$1,257,000 of the costs of constructing the Improvements; and

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ASSESSMENT AGREEMENT (Page 2 of 14)

WHEREAS, the parties acknowledge that the cost of designing and constructing the Improvements will exceed \$1,257,000; and

WHEREAS, City is willing to construct the Improvements subject to Developer agreeing to be assessed for the City's costs of constructing and installing the Improvements in excess of \$1,257,000; and

WHEREAS, Developer is willing to agree to said installation and said assessment.

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto hereby agree as follows:

Article I.

Definitions

The following terms and phrases shall have the meanings hereinafter ascribed to them:

- A. Assess or Assessment Procedure: shall mean the act or process of collecting all or a portion of the cost of certain public improvements, including water service utility improvements and street improvements by collecting the same from the Developers of benefitted properties as provided for in Chapter IX of the Duluth City Charter.

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- B. Cost: shall mean the combined total of the Road Cost and the Utility Cost less the amount of \$1,257,000.
- C. Engineer: shall mean the Duluth City Engineer or such other person as he may have designated from time to time in writing.
- D. Improvements: shall mean the Road and the Utilities.
- E. Plans: shall mean the plans and specifications on file in the office of the Engineer bearing City Project No.1403.
- F. Project: shall mean the DESIGN AND construction of the Improvements.
- G. Property: shall mean the property in St. Louis County, Minnesota described on the Plat of Kayak Bay on file in the Office of the County Recorder for St, Louis County, Minnesota.
- H. Road: shall mean a Twenty-eight (28') foot wide bituminous roadway located on the Easement for RiverWest Drive as shown on the Plat from Grand Avenue to the Burlington Northern Santa Fe Railroad Right-Of-Way and the traffic signal at the intersection of Grand Avenue and RiverWest Drive and shall include a combined parking area and turn-around adjacent to said Right-Of-Way as shown on the Plans, all constructed to City of Duluth Engineering Design Standards.

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I. Road Cost: shall mean all costs of designing and constructing the Road. Road Costs and shall specifically include the costs of wetland mitigation, the purchase of wetlands credits, grading costs including any grading costs as on the Plans and recording fees for recording the Easements.

J. Utilities: shall mean an eight (8”) inch waterline, a two (2”) inch natural gas main, an eight (8”) inch sanitary sewer line and storm drainage facilities, all as show on the Plans and constructed to standard City Specification.

K. Utility Cost: shall mean the cost of designing and constructing the Utilities and shall specifically include the costs of wetland mitigation, the purchase of wetland credits, grading costs including any grading costs as described on the Plans and recording fees for recording the Easements.

ARTICLE II

Plans

A. Plans

Developer hereby acknowledges that it has reviewed the Plans as herein defined, that Developer has consulted with and received any necessary advice from design professions he or she deems necessary

EXHIBIT B
ASSESSMENT AGREEMENT (Page 5 of 14)

for review of the Plans and hereby approves the Plans and agrees to be assessed, as hereinafter provided, for Developer's share of the costs of constructing the Project in substantial conformance therewith, subject to Paragraph B below.

B. Changes After Initial Approval

At any time he or she shall determine it reasonably necessary or advantageous to the City to do so, the Engineer may change or cause to have changed the Plans without the prior consent or approval of the Developer as long as such changes do not have a material deleterious effect on the ability of the Project to serve the needs of the Development.

ARTICLE III

City's Construction Obligations

City hereby agrees that, upon the signing of this Agreement, it will construct or cause to be constructed the Project. City agrees to use its best efforts to cause construction of the Project to be completed prior to December 31, 2021 but City shall have no liability to Developer or any other person or entity if, despite such best efforts, City is unable to complete said construction by said date. In such event City will proceed to cause construction of the Project to be completed as soon as it can reasonably do so, subject to reasonable legal and practical constraints.

EXHIBIT B

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ARTICLE IV

Costs of Project

A. Benefits of and Payment for the Project

Developer agrees that the construction of the Project constitute public improvements which confer special benefits accruing to each of the Property which equals or exceeds the amount of the Cost. It is hereby stipulated and agreed that value of the benefits conferred upon the Property are equal to or exceed the amounts to be assess against Property, without reference to any benefits conferred upon other benefitted properties.

B. Developer Agrees to Assessment

Because the Developer agrees that the value of the benefits to the Property arising out of the construction of Project equals or exceeds the anticipated Cost thereof, Developer agrees to accept and to pay an Assessment in the amount of Cost against the Property by City to defray the costs of said improvements. Said Assessment shall be levied against the various parcels of the Project in accordance with the percentages of the total levy amount as shown on Exhibit A attached hereto and made a part hereof and shall run for a term of fifteen (15) years at the City's standardized rate for special assessments then in effect which rate is currently estimated to be Two and 87/100s (2.87%) percent per annum.

C. Waiver of Defenses

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Developer, for itself and its successors and assigns and for any other affected party, specifically waives, without limitation, all defenses of any kind whatsoever, including, but not limited to, procedural defenses to the Assessments to be levied pursuant to this Article and agrees that Developer and its successors and assigns, if any, shall be bound thereby.

ARTICLE V

General Defaults by Developer and Remedies Therefore

A. General Events of Default

The following shall be deemed to be general events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph B. below shall be applicable as otherwise set forth in this Agreement:

1. Failure to Make Payments

Developer shall fail to make any payment on any Assessment levied against the Property pursuant to Article IV above, or any installment thereof in a timely manner and in full; provided, however, that to the extent only an installment or a portion of said Assessment(s) is due, then “in full” shall only mean such installment or portion then due.

B. General Remedies

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ASSESSMENT AGREEMENT (Page 8 of 14)

Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by Developer:

1. Seek and be entitled to monetary damages, including consequential damages from Developer for any damages, including consequential damages incurred by City as a result of Developer's default.

2. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Developer's violation of the terms and conditions of this Agreement or to compel Developer's performance of its obligations hereunder.

3. Enforce the assessment against the benefitted property and collect any sums due and owing thereunder.

4. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

C. Non-Waiver

The waiver by City of any default on the part of Developer or the failure of City to declare default on the part of Developer of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. And, to be effective, any waiver of any default by the

EXHIBIT B
ASSESSMENT AGREEMENT (Page 9 of 14)

defaulting party hereunder shall be in writing by the non-defaulting party.

D. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

E. Attorneys' Fees

In the event that either party is in default of any of the terms and conditions of this Agreement and the other party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorneys' fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE VI

Force Majeure

Under the terms of this Agreement, neither the City nor Developer shall be considered in default or in breach of any of the terms with respect to the performance to their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control

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and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE VII

Term

Except as provided for below, the term of this Agreement shall run from the date first above shown until December 31, 2022 or the completion of construction of the Project, whichever occurs first unless this Agreement is otherwise terminated as hereinbefore provided for. Nothing to the contrary in the foregoing withstanding the terms and conditions of Articles III, IV and V shall survive the term or termination or both of this Agreement for so long as is necessary to give effect to their provisions.

Article VIII

Runs With the Land

This Agreement shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns.

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ARTICLE IX

Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid or deposited with a nationally recognized overnight courier service for next business day delivery to:

In the case of City:

City of Duluth
Office of the City Clerk
Room 318, City Hall
Duluth, MN 55802

In the case of Developer:

Spirit Valley Land Company LLC
P.O. Box 235
Chanhassen, MN 55317

With a copy to:

William M. Burns
Hanft Fride, A Professional Assn.
1000 U.S. Bank Place
130 West Superior Street
Duluth, MN 55802-2094

EXHIBIT D

ASSESSMENT DISTRIBUTION AMONGST THE PROPERTIES

Kayak Bay Block / Lot	Assessment Percentage Responsibility
Block 1, Lot 2	9.35%
Block 2, Lot 1	9.35%
Block 3, Lot 1	40.63%
Block 4, Lot 1	15.19%
Block 4, Lot 2	25.48%

