

PUBLIC WORKS AND UTILITIES COMMITTEE

11-0037R

RESOLUTION AUTHORIZING AGREEMENT WITH HRA ACCEPTING
EASEMENTS FOR THE HAWK RIDGE DEVELOPMENTS AT NO COST.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. _____, with the housing and redevelopment authority of Duluth accepting dedication of easements for emergency road access and storm water drainage facilities and providing for maintenance thereof, all pertaining to the development of Hawk Ridge Estates and Hawk Ridge Estates First Addition at no cost to the city.

Approved:



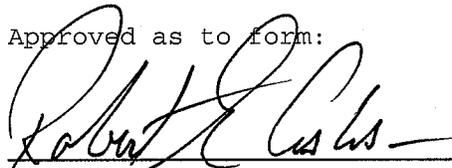
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PW&U/ATTY REA:dma 01/13/2011

STATEMENT OF PURPOSE: The purpose of this resolution is to authorize an agreement with HRA to accept easements for emergency road access and storm water drainage facilities and providing for maintenance thereof, all pertaining to the development of Hawk Ridge Estates and Hawk Ridge Estates First Addition.

Hawk Ridge Estates and Hawk Ridge Estates First Addition is a new housing development located below Skyline Parkway generally between 52nd and 54th Avenue East being developed by HRA. In order to develop the property in the desired manner, four storm water retention ponds and supporting storm sewer facilities were required to be developed. HRA will be responsible for constructing these facilities in conformance with City standards but, once constructed, they will be maintained by the City. One of the functions of this agreement is for HRA to

provide easements to the City for these facilities and additional easements as may be necessary to maintain them.

The development also requires the creation of an easement to provide emergency vehicle access to a portion of the development in order to conform to requirements of the fire code.

**EASEMENT AGREEMENT
(EMERGENCY ACCESS ROAD, ACCESS ROADS AND PONDS)**

This Easement Agreement (“**Agreement**”) is entered into by The Housing and Redevelopment Authority of Duluth, Minnesota, a public body corporate and politic, (“**Grantor**”) and the City of Duluth, Minnesota, a municipal corporation and political subdivision of the State of Minnesota (“**Grantee**”).

RECITALS

A. Grantor is the owner of real property located in St. Louis County, Minnesota, and legally described as:

Lot 7, Block 2 Hawk Ridge Estates

AND

Outlots B and C Hawk Ridge Estates

AND

Outlot C Hawk Ridge Estates First Addition

(the “**Property**”).

B. Grantee has requested and Grantor has agreed to provide an emergency access road (“**Emergency Access Road**”) providing access from Snowy Owl Circle to 54th Avenue East.

C. The Emergency Access Road is located within the area described and depicted on **Exhibit A** attached hereto (the “**Emergency Access Road Easement Description**”).

D. Grantor will improve the Emergency Access Road by grading and placement of Class-5 aggregate as hereinafter provided for.

E. Pursuant to paragraph 6 of the Memorandum of Understanding between Grantor and Grantee’s City Engineer dated December 19, 2005, the (“**Memorandum of Understanding**”) Grantor constructed a storm sewer system on the Property, including storm water retention ponds (“**Ponds**”), stormwater pipes and related apparatus (“**Stormwater Pipes**”) and access roads (“**Access Roads**”) which have now been approved by Grantee’s City Engineer.

F. As shown in **Exhibit B**, there are 4 Ponds (the “**Ponds**”) **Pond A** is located within the area described and depicted on **Exhibit B** as the **Pond A Access and Easement Area**. **Pond B** is located within the area described and depicted on **Exhibit B** as the **Pond B Access and Easement Area**. **Pond C** is located within the area described and depicted on **Exhibit B** as the **Pond C Access and Easement Area**. **Pond D** is located within the area described and depicted on **Exhibit B** as the **Pond D Access and Easement Area**.

G. The Pond A **Access and Easement Area** Description, Pond B **Access and Easement Area** Description, Pond C **Access and Easement Area** Description and Pond D **Access and Easement Area** Description described and depicted on **Exhibit B** attached hereto are hereinafter collectively referred to as the “**Pond Access and Easement Area**”.

H. Ponds B and D are immediately adjacent to improved dedicated streets from which Grantee can access the Pond B Access and Easement Area and Ponds B and the Pond D Access and Easement Area and Pond D.

I. Pond D also lies adjacent to the Emergency Access Road and a portion of the Emergency Access Road Easement Description overlaps a portion of the Pond D Access and Easement Area.

J. No additional improved Access Road provides access to Ponds B or D.

K. Access to Pond A is provided by an improved gravel road.

L. Access to Pond C is provided pursuant to an existing Utility Easement dedicated over Lots 4 and 5, Block 1 Hawk Ridge Estates pursuant to the Plat of Hawk Ridge Estates. Although this access must remain clear and open, no additional improvements are anticipated at this time.

M. Portions of the Stormwater Pipes are located within the area described as “**Stormwater Pipe Description**” on **Exhibit B** and depicted on **Exhibit B** which is also a part of the Pond B Access and Easement Area. Other portions of the Stormwater Pipes lie within the publicly dedicated streets within Hawk Ridge Estates and Hawk Ridge Estates First Addition and in other portions of the Property.

N. As contemplated by the Memorandum of Understanding, Grantor desires to convey and Grantee desires to obtain from Grantor an easement over portions of the Property to allow Grantee to operate and maintain the Ponds, Stormwater Pipes, Access Roads and Emergency Access Roads (collectively, the “**Facilities**”).

O. The Emergency Access Road Easement Description and the Pond Access and Easement Areas, and any other easement areas created, described or depicted herein are collectively referred to as the “**Easement Areas**”.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Recitals. The Recitals are included as a part of the parties’ agreement.
2. Emergency Access Road Easement. Grantor grants to Grantee a non-exclusive and perpetual easement (the “**Emergency Access Road Easement**”), for the purpose of operating and maintaining the Emergency Access Road within the Emergency Access Road Easement Description. Grantee's use will be limited to activities related to the use and maintenance of the Emergency Access Road as an emergency point of access and for access to Pond D.

3. No Public Dedication of the Emergency Access Road Easement Description. The Emergency Access Road Easement is limited by its terms and is not a public dedication of the Emergency Access Road or the Emergency Access Road Easement Description.

4. Grantor Improvements to the Emergency Access Road. Grantor will make improvements to the Emergency Access Road to provide a 20 foot minimum width, free of weeds. Grantor will construct the Emergency Access Road so as to safely support a 75,000 pound vehicle and will provide a letter ("**Engineer's Letter**") from a licensed engineer certifying that the Emergency Access Road as constructed will meet or exceed this standard.

5. Pond Access and Easements. Grantor also grants to Grantee a non-exclusive and perpetual easements (the "**Pond and Access Easements**"), for the purpose of operating and maintaining the Ponds and access to the Ponds, including the Access Road to Pond A, over and across the Pond A Access and Easement Area.

6. No Dedication of the Pond Access and Easement Area. The Pond and Access Easements are limited by their terms and are not a public dedication of the use of the Pond Access and Easement Areas.

7. Stormwater Pipe Easement. Grantor also grants to Grantee a non-exclusive and perpetual easement (the "**Stormwater Pipe Easement**") for the purpose of operating and maintaining the Stormwater Pipes as the same are now located within the Pond B Access and Easement Area and as the same are now located throughout the Property. To the extent no specific easement area is described for a portion of the Stormwater Pipe, the easement area is the area lying within 10 feet on either side of the centerline of that portion of the Stormwater Pipe. The easements granted in this Section 7 are in addition to the easement created by the dedication of streets and utility easements in the plats of Hawk Ridge Estates and Hawk Ridge Estates First Addition.

8. Maintenance by Grantee. Grantee shall operate and maintain the Ponds, Stormwater Pipes and Access Roads. Maintenance may include, without limitation, grading, plowing, dredging, clearing and other activities deemed necessary or appropriate by Grantee for the purpose of keeping the Ponds, Stormwater Pipes and Access Roads safe and useful for their intended purposes. In addition, Grantee shall provide snow plowing for the Emergency Access Road; provided, however, that Grantee shall not be responsible to provide snow plowing for the Emergency Access Road until Grantor constructs the Emergency Access Road to the standard provided in Section 4 and provides the Engineer's Letter.

9. Maintenance by Grantor. Grantor shall maintain the Emergency Access Road (except for snow plowing). Maintenance of the Emergency Access Road will include, without limitation, grading, clearing and other activities necessary or appropriate for the purpose of keeping the Emergency Access Road safe and useful for its intended purposes and to the design standard as provided in Section 4.

10. No Assignment by Grantee. Grantee shall not assign the Emergency Access Road Easement, the Stormwater Pipe Easement or the Pond and Access Easement, or any part thereof or interest therein, without the prior written consent of Grantor, which may be granted or denied in

Grantor's sole discretion. However, Grantee shall have the right to contract with third parties for the performance of its obligations pertaining to the Facilities at its discretion.

11. No Waiver. No delay on the part of either party in enforcing any of the terms of this agreement shall be construed to or operate as a waiver of any covenant or condition hereof.

12. No Unreasonable Interference or Obstruction. Neither party will unreasonably interfere with or obstruct use of the Easement Areas by the other party.

13. Signage and Gate. Grantor may provide signs in the Easement Areas to discourage use of the Emergency Access Road, the Access Roads and the Ponds by members of the public. Grantor may also maintain an unlocked gate across the entrances to the Emergency Access Road to discourage use of the Emergency Access Road by members of the public. To facilitate snow plowing, Grantor must keep the gate open from October 15 through April 15.

14. Minnesota Law. This Agreement shall be governed by the laws of the State of Minnesota, and all terms, conditions, and covenants herein shall be interpreted in accordance therewith.

15. Binding Effect. This Agreement shall be binding upon the Easement Areas and parties hereto and their heirs, successors and assigns. The Emergency Access Road Easements, the Stormwater Pipe Easement and the Pond and Access Easement shall be perpetual and all other rights granted in this Agreement shall run with the land and shall be binding upon the heirs, successors and assigns of the parties.

16. Notices. Any notice required to be given pursuant to this Agreement shall be in writing and shall be deemed duly given: (i) on the date of personal delivery; (ii) one business day following dispatch by Federal Express or equivalent or (iii) three (3) business days after mailing certified or registered mail, postage prepaid, return receipt requested, to respective addresses of the parties set out below:

Grantor: The Housing and Redevelopment Authority of Duluth, Minnesota
Attn: Executive Director
222 East Second Street
PO Box 16900
Duluth, MN 55816

Grantee: City of Duluth, MN
Attn: City Engineer
411 West First Street
Duluth, MN 55802

The address for required notices to a party may be changed by the party by providing notice of the change in writing in a manner that meets the requirements of this Section.

17. Headings. The headings provided for the Sections in this Agreement are for convenience only and are not intended to aide in the interpretation of this Agreement.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Agreement to be executed this _____ day of _____, 2010.

THE HOUSING AND REDEVELOPMENT
AUTHORITY OF DULUTH, MINNESOTA

CITY OF DULUTH, a Minnesota municipal
corporation

By: [Signature]
Its Executive Director

By: _____
Its Mayor

Attest:

By: _____
Its City Clerk

Approved:

Countersigned:

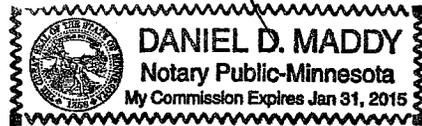
Auditor

Assistant City Attorney

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

The foregoing instrument was acknowledged before me this 28th day of December, 2010, by Richard W. Ball, the Executive Director of The Housing and Redevelopment Authority of Duluth, Minnesota, a public body corporate and politic, on behalf of the public body.

[Signature]
Notary Public



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

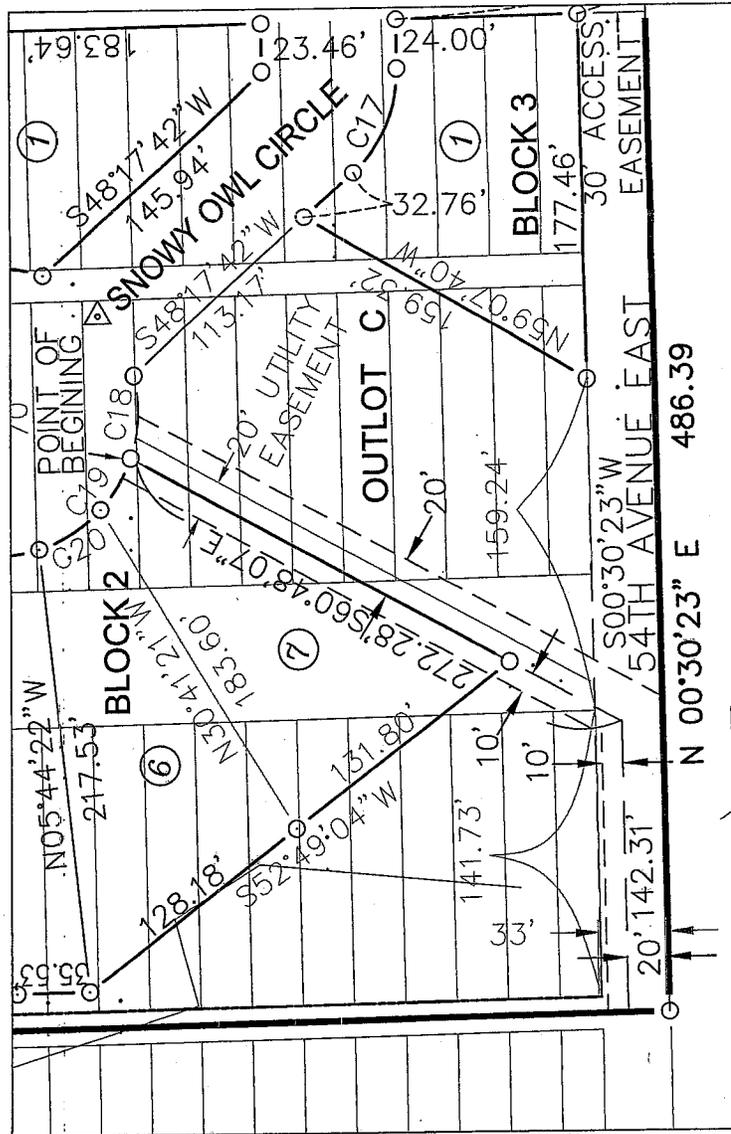
The foregoing instrument was acknowledged before me this ___ day of _____, 2010, by Don Ness and Jeffrey J. Cox, the Mayor and City Clerk, respectively, of the City of Duluth, Minnesota, a municipal corporation and political subdivision of the State of Minnesota.

Notary Public

This instrument was drafted by:

Fryberger, Buchanan, Smith & Frederick, P.A.
700 Lonsdale Building
302 West Superior Street
Duluth, Minnesota 55802
(218) 722-0861
DDM/13848-35

"EXHIBIT A"



EMERGENCY ACCESS ROAD EASEMENT DESCRIPTION

That part of Outlot C and Lot 7, Block 2 all in Hawk Ridge Estates lying 10 feet to the right and 20 feet to the left of the following described line:

Beginning at the most northerly corner of said Lot 7; thence South 60 degrees 48 minutes 07 seconds East along the northeasterly line of said Lot 7 and its projection a distance of 272.28 feet to a point which lies westerly and 20 feet distant from the centerline of 54th Avenue East thence South 00 degrees 30 minutes 23 seconds West on a line parallel with and 20 feet westerly of the centerline of 54th Avenue East a distance of 142.31 feet to the south line of the plat of Hawk Ridge Estates and there terminating.

The sidelines of said easement shall be prolonged or shortened to terminate on the south boundary line of the plat of Hawk Ridge Estates and on the right-of-way of Snowy Owl Circle.

PHONE (612) 278-3000 418 W. Superior St., Suite 200 Duluth, Minnesota 55802-1512		I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA. JOHN J. HIZEMANN, JR. PRINTED NAME		DATE 12/28/4		REG. NO. 12284		SIGNATURE	
EASEMENT DRAWING	SHEET 1 OF 1		FILE NO.	DATE	8/28/08	CHECKED BY M.L.A.	DATE	DRAWN BY M.L.A.	DATE

POND A ACCESS AND EASEMENT AREA

That part of Outlot C, Hawk Ridge Estates First Addition described as follows: Beginning at the southeast corner of Lot 30, Block 4, Hawk Ridge Estates First Addition; thence westerly along the south line of Lots 30 and 31 in said Block 4 on an assigned bearing of South 89 degrees 33 minutes 01 seconds West for 255.82 feet; thence North 16 degrees 28 minutes 17 seconds West along the east line of said Outlot C (also the southwest line of Lots 32 and 33, Block 4, Hawk Ridge Estates First Addition) for 206.39 feet to the southerly right-of-way of Bald Eagle Trail; thence South 50 degrees 12 minutes 20 seconds West along the southerly right-of-way of Bald Eagle Trail for 54.45 feet; thence South 16 degrees 28 minutes 17 seconds East along the west line of said Outlot C (also the northeast line of Lot 6, Block 1, Hawk Ridge Estates First Addition) for 163.35 feet; thence South 50 degrees 12 minutes 20 seconds West along the northwest line of said Outlot C (also the southeast line of Lots 3, 4, 5 and 6, Block 1, Hawk Ridge Estates First Addition) for 200.00 feet; thence South 53 degrees 11 minutes 46 seconds East for 154.20 feet; thence North 71 degrees 11 minutes 32 seconds East for 358.03 feet; thence North 00 degrees 25 minutes 55 seconds West along the east line of said Outlot C for 100.53 feet to the POINT OF BEGINNING and there terminating.

The Easement Area for Pond A does not include any portion of Lots 30-33, Block 4, or Lots 3-6, Block 2, Hawk Ridge Estates First Addition.

Containing 74,756 square feet or 1.72 acres more or less.

POND B ACCESS AND EASEMENT AREA

That part of Outlot C, Hawk Ridge Estates described as follows: Beginning at the west corner of Lot 2, Block 2, Hawk Ridge Estates; thence along the northwest line of said Lot 2 on an assigned bearing of North 42 degrees 32 minutes 38 seconds East for 139.66 feet; thence North 46 degrees 59 minutes 45 seconds West for 196.23 feet to the southeasterly right-of-way of Broadwing Drive; thence southwesterly along the southeasterly right-of-way of Broadwing Drive to the easterly right-of-way of 52nd Avenue East; thence southerly along the easterly right-of-way of 52nd Avenue East to the northwest corner of Lot 1, Block 1, Hawk Ridge Estates; thence North 89 degrees 27 minutes 35 seconds East for 149.97 feet along the north line of said Lot 1 to the northwest corner of Lot 3, Block 1, Hawk Ridge Estates; thence South 73 degrees 02 minutes 24 seconds East for 151.79 feet to the northeast corner of said Lot 3; thence South 31 degrees 35 minutes 55 seconds East for 192.99 feet along the east line of Lot 4, Block 1, Hawk Ridge Estates; thence North 49 degrees 45 minutes 05 seconds East for 67.38 feet to the west corner of Lot 3, Block 2, Hawk Ridge Estates; thence North 10 degrees 12 minutes 40 seconds East for 120.09 feet along the west line of said Lot 3 to the POINT OF BEGINNING and there terminating.

The Easement Area for Pond B does not include any portion of Lots 2 and 3, Block 2 or Lots 1, 3 and 4, Block 1, Hawk Ridge Estates.

Containing 80,418.27 square feet or 1.85 acres more or less.

POND C ACCESS AND EASEMENT AREA

That part of Outlot C, Hawk Ridge Estates described as follows: Beginning at the most westerly corner of Lot 3, Block 2, Hawk Ridge Estates; thence along the southwesterly line of Lots 3 and 4 in said Block 2 on an assigned bearing of South 24 degrees 54 minutes 26 seconds East for 129.97 feet; thence South 01 degrees 12 minutes 09 seconds East for 95.63 feet; thence South 84 degrees 27 minutes 47 seconds West for 100.80 feet; thence North 00 degrees 33 minutes 47 seconds West for 161.48 feet along the west line of said Outlot C (also the east line of Lot 5, Block 1, Hawk Ridge Estates); thence North 31 degrees 35 minutes 55 seconds West for 11.07 feet; thence North 49 degrees 45 minutes 05 seconds East for 67.38 feet to the POINT OF BEGINNING and there terminating.

The easement for Pond C does not include any portion of Lots 3 and 4, Block 2, or Lots 4 and 5, Block 1, Hawk Ridge Estates.

Containing 17,379 square feet or .40 acres more or less.

POND D ACCESS AND EASEMENT AREA

That part of Outlot C, Hawk Ridge Estates described as follows: Beginning at the southeast corner of Lot 1, Block 3, Hawk Ridge Estates; thence along the southwest line of Lot 1, Block 3, Hawk Ridge Estates on an assigned bearing of North 59 degrees 07 minutes 40 seconds West for 159.32 feet to the right-of-way of Snowy Owl Circle; thence along the right-of-way of Snowy Owl Circle South 48 degrees 17 minutes 42 seconds West for 113.17 feet; thence southerly along the cul-de-sac right-of-way of Snowy Owl Circle to the north corner of Lot 7, Block 2, Hawk Ridge Estates; thence along the northeast line of Lot 7, Block 2, Hawk Ridge Estates and the projection of the northeast line of Lot 7, Block 2, Hawk Ridge Estates South 60 degrees 48 minutes 07 seconds East for 255.20 feet to the west right-of-way of 54th Avenue East; thence along the west right-of-way of 54th Avenue East North 00 degrees 30 minutes 23 seconds West for 157.53 feet to the POINT OF BEGINNING and there terminating.

The Easement Area for Pond D does not include any portion of Lot 1, Block 3 or Lot 7, Block 2, Hawk Ridge Estates.

Containing 29,501 square feet or 1.48 acres more or less.