

**CITY OF TONKA BAY
HENNEPIN COUNTY, MINNESOTA**

**DEVELOPMENT AGREEMENT REGARDING THE
SUNRISE ADDITION SUBDIVISION**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2016, by and between the City of Tonka Bay, a municipal corporation under the laws of the state of Minnesota, (the “City”), Alan Chazin Homes, Inc., a corporation under the laws of the state of Minnesota (collectively the “Developer”).

RECITALS

- A. The Developer is the fee owner of certain land located in Tonka Bay, Minnesota, which consists of approximately two acres and is legally described in the attached Exhibit A (the “Property”);
- B. The Developer applied to the City for approval of a preliminary plat to divide the Property into three residential lots identified and proposed as Lots 1 through 3, and one outlot identified as Outlot A (“Outlot A”), which are labeled and proposed as Lot 1, Lot 2, Lot 3, and Outlot A on the survey and preliminary plat attached hereto as Exhibit B;
- C. The subdivision is subject to the requirements of the City’s Subdivision Regulations (“Subdivision Regulations”), Section 1030 of the City Code;
- D. On March 8, 2016, the City Council adopted Resolution No. 16-09 (the “Resolution”), which is incorporated herein by reference, making findings and determinations approving the preliminary plat subject to certain conditions, one of which required the Developer to enter into this Agreement with the City;
- E. Property is located in the City’s R1B Residential Zoning District and is also subject to the City’s Shoreland District regulations;
- F. The establishment of three residential lots is consistent with the requirements of the Zoning District and of the Subdivision Regulations;
- G. The Developer will dedicate to the public for public use the drainage and utility easements as shown on the survey attached hereto as Exhibit B;
- H. The Developer is required to make certain improvements upon the Outlot A before conveying Outlot A to the City;
- I. The subdivision creates new lots and so payment of a park dedication fee is required under the Subdivision Regulations; and
- J. The Developer’s conveyance of Outlot A to the City shall satisfy the park dedication requirements under the City’s Subdivision Regulations.

AGREEMENT

In consideration of the mutual promises and conditions contained herein, and intending to be legally bound, the parties hereto hereby agree as follows:

1. **Development of the Lots.** Development of the lots created as part of the subdivision may only occur in compliance with the applicable portions of City Code. Developer and its successors in interest shall be responsible for acquiring all relevant governmental approvals, including but not limited to building permits.]
2. **Fees and Costs of City.** All administrative, planning, engineering, legal and other fees and costs incurred by the City related to the Developer's subdivision including, but not limited to, preparing the approval resolution, and drafting this Agreement shall be the responsibility of the Developer. In the event the escrow provided with the application is not sufficient to fully reimburse the City, the Developer shall be required to pay such additional amounts within fourteen days of receiving a bill from the City. The Developer agrees that all costs the City incurs related to this subdivision, this Agreement, and the enforcement of its provisions, constitute a service charge that may be imposed on the Property or the resulting lots pursuant to Minnesota Statutes, section 366.012 and 415.01 if such costs are not paid in full as provided herein. Any approvals the City has provided for the subdivision shall be suspended until the outstanding amounts have been paid in full.
3. **Tax Identification Number.** The Developer shall make an application to the Hennepin County Assessor's office to issue a parcel identification number for Lot 1, Lot 2, Lot 3, and, if necessary, for Outlot A.
4. **Park Dedication.** The Developer agrees to convey Outlot A to the City after making such improvements thereon as required under this Agreement. The City has agreed to accept the conveyance of Outlot A in satisfaction of the park dedication requirements in the City's Subdivision Regulations.
5. **Improvements required on Outlot A.** The Developer hereby agrees to complete the following improvements on Outlot A (the "Improvements") prior to conveyance of Outlot A to the City. Such Improvements are also shown in Exhibit D attached hereto. Developer shall bear the entire cost of completing the Improvements. The Developer further agrees to complete all Improvements according to the City's plans and specifications. The City shall have the opportunity to inspect all work done by the Developer and to order the Developer to correct any deficiencies prior to conveyance and acceptance of Outlot A to the City.
 - a. The Developer shall grade the pond as shown in Exhibit D attached hereto, such grading shall also include the removal of all excess material from the Property;
 - b. The Developer shall salvage and re-spread the topsoil;
 - c. The Developer shall plant all of the trees shown in Exhibit D attached hereto, and such trees shall be planted in 3" caliper balls and burlap. Prior to the installation of the trees required herein, the location of each shall be approved by the City Engineer

in writing. Additionally, the Developer shall guarantee the trees for at least two calendar years beginning on the date of initial planting. Upon determination by the City that any tree(s) are defective and notice to Developer of same, the Developer shall replace the defective trees at no cost to the City.; and

- d. The Developer shall seed the Property as specified in the attached Exhibit D. Such seed shall be applied at the rates specified per MnDOT 2016 Standard Construction Specifications. Following seed placement, the seeded area shall be watered and maintained by the Developer at its sole cost until the turf has been established and accepted by the City Engineer.
6. **Conveyance**. The Developer hereby agrees that upon completion of the Improvements and approval of same by the City, Developer will cause that land proposed to be platted as Outlot A as shown in Exhibit B to be conveyed to the City by executing a warranty deed for Outlot A in the general form of the deed attached hereto as Exhibit C. The City shall be responsible for recording the deed with the County Registrar of Titles after the final plat has been recorded, and such recording charges shall be charged against the escrow account. The Developer further agrees to take any curative steps which may be necessary to allow the City to record such deed, or this Agreement.
7. **Inspections**. The City, its officers, and consultants may enter the Property, after providing reasonable notice to the Developer, at all reasonable times to conduct inspections for the purpose of ensuring compliance with this Agreement. Prior notice to inspect the Property is not required in the event of an emergency.
8. **Subject to Regulations and Conditions**. The Developer agrees to comply with all laws, ordinances, and regulations of Minnesota, the County, and the City applicable to the subdivision and the development of proposed Lot 1, Lot 2, and Lot 3. The Developer further agrees to be solely responsible for complying with the terms and conditions of this Agreement, the conditions set out in the Resolution and, to the extent necessary, to demonstrate their compliance to the City upon reasonable request.
9. **Warranty of Title and Transfer**. Developer warrants and represents to the City that it is the fee owner of the Property and that it has the authority to execute this Agreement and agree to the conditions hereof, including the conveyance of Outlot A to the City. The Developer shall be responsible for obtaining all such other approvals as may be required for the subdivision.
10. **Assignment**. The Developer may not assign this Agreement without the written permission of the City, which permission shall not be unreasonably denied. No assignment shall be effective unless the assignee assumes all the obligations of the Developer under this Agreement and the documents related thereto are in a form reasonably acceptable to the City.
11. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

12. **Indemnification.** The Developer hereby agrees to indemnify, defend and hold the City and its officials, employees, contractors and agents harmless from claims made by it for damages sustained or costs incurred resulting from the approval of the subdivision. The Developer hereby agree to indemnify, defend and hold the City and its officials, employees, contractors and agents harmless for all costs, damages or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees, except matters involving acts of gross negligence by the City. This duty to indemnify shall not extend to the State of Minnesota or to any of its agencies if any of them become the owner of any portion of the Property or otherwise.
13. **Severability.** In the event that any provision of this Agreement shall be held invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other section or provision of this Agreement.
14. **Binding Effect.** This Agreement shall be deemed to be a restrictive covenant and the terms and conditions hereof shall run with the land described herein and be binding on and inure to the benefit of the heirs, representatives and assigns of the parties hereto, and shall be binding upon all future Developers of all or any part of the Property, and shall be deemed covenants running with the land. This Agreement will be placed of record so as to give notice hereof to subsequent purchasers, the cost of said recording shall be charged against the escrow account.

[SIGNATURE PAGES FOLLOW]

EXHIBIT A
Description of Property

Torrens Property

Lot 4, Auditor's Subdivision No. 243, Hennepin County, Minnesota, except that part lying Northwesterly of a line drawn from the most Easterly corner of Lot 23, I.C. Seeley and N.F. Griswold's Amendment and First Addition to Minnetonka Lake Park to the most Easterly corner of Lot 27 said Amendment and First Addition

Hennepin County, Minnesota.

EXHIBIT B

Survey and Preliminary Plat of the Property

PRELIMINARY PLAT
ALAN CHAZIN HOMES INC.
 5293 Wayzata Blvd.
 Suite No. 202
 St. Louis Park, MN 55448

NOTES:

Property Address: 1433-1515 S. Sunrise Avenue
 Property Identification Number: 27-1129-24209
 Existing Zoning Classification: R-10 (Single-Family Residential) "The above described parcel does not qualify for any Planned Zoning Classification - R-10 (Single-Family Residential) "R1"

100 Year Flood Plain Elevation is 897.84 feet

Required Building Setbacks
 Front Yard: 20 feet
 Side Yard: 10 feet
 Rear Yard: 20 feet

Minimum Lot Area - Not less than 15000 sq. ft.
 Minimum Lot Width - Not less than 75 feet from street/centerline
 Maximum Building Height - 30 feet

See City Code for accessory structures.
 Easements will be required as of record.

Total Area of Property = 15256 sq. ft.

Total number of proposed Lots = 4

Net Area of proposed lots:
 LOT 1: 3700 sq. ft. - 2779 sq. ft.
 LOT 2: 3700 sq. ft. - 2779 sq. ft.
 LOT 3: 3700 sq. ft. - 2779 sq. ft.
 LOT 4: 3700 sq. ft. - 2779 sq. ft.

Minimum Front Street Easement is 20 ft wide.
 Minimum Front Street Easement is 20 ft wide.

Section corners shall be set in accordance with Minnesota State Survey of 1794/1804/1858.

Existing Legal Description

Lot 4, Block 1, Addition to Minnetonka Lake Park, Subdivision No. 243, City of Tonka Bay, Minnesota, as shown on the Official Plat of said Addition, recorded in the Office of the County Recorder of Hennepin County, Minnesota, on 04/11/2016, at 10:00 AM, and as amended by the Official Plat of said Addition, recorded in the Office of the County Recorder of Hennepin County, Minnesota, on 04/11/2016, at 10:00 AM, and as amended by the Official Plat of said Addition, recorded in the Office of the County Recorder of Hennepin County, Minnesota, on 04/11/2016, at 10:00 AM.

Traverse Property
 Condition #1234567890

PRELIMINARY PLAT
SUNRISE ADDITION

CERTIFICATION

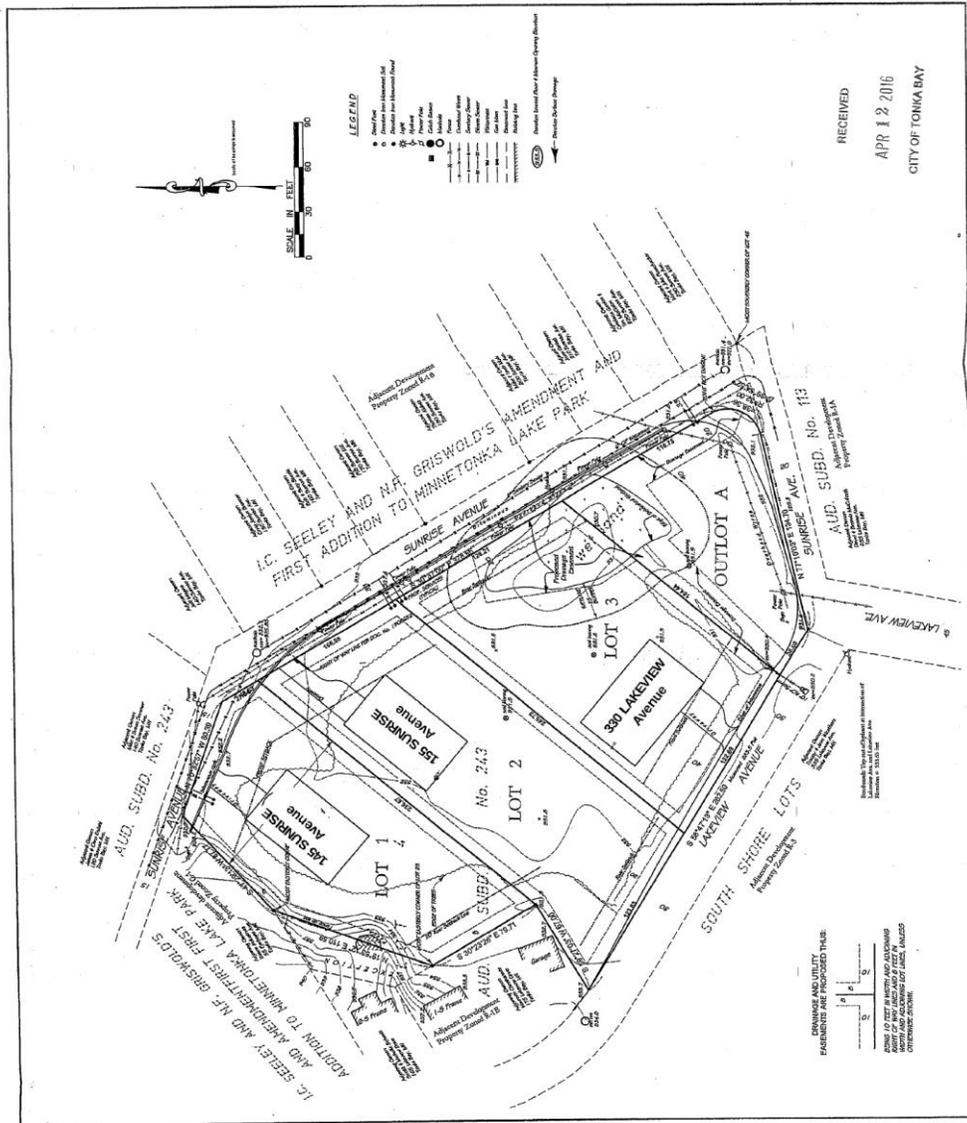
The City of Tonka Bay has been notified of the proposed subdivision and the proposed plat has been reviewed and approved by the City Council on 04/11/2016, at 10:00 AM, and the City Clerk has signed the Official Plat of said Addition, recorded in the Office of the County Recorder of Hennepin County, Minnesota, on 04/11/2016, at 10:00 AM, and as amended by the Official Plat of said Addition, recorded in the Office of the County Recorder of Hennepin County, Minnesota, on 04/11/2016, at 10:00 AM, and as amended by the Official Plat of said Addition, recorded in the Office of the County Recorder of Hennepin County, Minnesota, on 04/11/2016, at 10:00 AM.

By: *[Signature]*
 City Clerk

By: *[Signature]*
 Alan Chazin, President
 Alan Chazin Homes Inc.

City Address	1433-1515 S. Sunrise Avenue
City Parcel ID	27-1129-24209
City Parcel Name	1433-1515 S. Sunrise Avenue
City Parcel Area	15256 sq. ft.
City Parcel Zoning	R-10
City Parcel Status	Proposed

7.8.00 - 10/15/12 - Minnesota, 22.000



This instrument was drafted by:

Kennedy & Graven, Chartered
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

Tax Statements should be sent to:

City of Tonka Bay
4901 Manitou Rd
Tonka Bay, MN 55331
Attn: City Administrator

EXHIBIT D

Outlet A Improvements

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