



# MAYOR & COUNCIL COMMUNICATION

**DATE: 9/1/15**  
**REGULAR**  
**ITEM # 15**  
**RESOLUTION 2015-071**

**AGENDA ITEM:** Savona 3<sup>rd</sup> Addition Developer’s Agreement

**SUBMITTED BY:** Kyle Klatt, Community Development Director

**THROUGH:** Clark Schroeder, Interim City Administrator

**REVIEWED BY:** Jack Griffin, City Engineer  
Dave Synder, City Attorney  
Cathy Bendel, Finance Director

**SUGGESTED ORDER OF BUSINESS:**

- Introduction of Item .....Community Development Director
- Report/Presentation.....Community Development Director
- Questions from Council to Staff ..... Mayor Facilitates
- Call for Motion ..... Mayor & City Council
- Discussion ..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

**POLICY RECCOMENDER:** Staff is recommending that the City Council approve a developer’s agreement associated with the third phase of the Savona development. The agreement has been drafted based on the model agreement previously reviewed by the Council.

**FISCAL IMPACT:** Direct Payments to Developer – TBD: the project development plans include oversizing of water lines. The City Engineer has provided a cost estimate for the oversizing amounts, and this number has been included in the agreement as a future City payment. Future financial impacts include maintenance of streets, trails, sanitary sewer mains, watermains and other public infrastructure, maintenance of storm water ponding areas (after three years), monthly lease payments for street lights, and other public financial responsibilities typically associated with a new development.

**SUMMARY AND ACTION REQUESTED:** The City Council is being asked to authorize execution of a developer’s agreement for the third phase of the Savona residential subdivision. The attached agreement has been reviewed by the City Staff, and all recommend changes

specific to the Savona project have been incorporated into the document as drafted. This agreement must be executed before any construction activity, outside of the previously authorized grading work, may proceed on the site. The recommended motion to take action on the request is as follows:

***“Move to adopt Resolution 2015-071 approving the developer’s agreement for Savona 3<sup>rd</sup> Addition”***

**LEGISLATIVE HISTORY/STAFF REPORT:** One of the conditions attached to the resolution approving the Savana Final Plat specifies that the developer enter into a Developer’s Agreement prior to the execution of the plat by City officials. Staff has drafted such an agreement consistent with the City’s developer’s agreement template, and this document is attached for consideration by the City Council. Please note that the document as drafted contains some modifications to the original template based on some of the unique aspects of the Savona 3<sup>rd</sup> development. The key aspects of the agreement include the following components:

- That all improvements to be completed by October 31, 2016.
- That the developer provide a letter of credit in the amount of \$3,238,764 related to the cost of the proposed improvements.
- That the developer provide a cash deposit of \$1,189,733 for SAC and WAC charges, engineering administration, one year of street light operating costs and other City fees. These fees include payment for any outstanding special assessments on lots to be replatted as Savona 3<sup>rd</sup> Addition.
- The agreement includes no required park fees in lieu of land dedication. All required park dedication fees for Savana were paid with the first addition.
- A City payment for utility oversizing of \$12,045 based on calculations completed by the City Engineer.
- The agreement includes the updated letter of credit reduction schedule that was approved for recent projects and provides for a better connection between the work that will be occurring in the field and the timing of this work.

The City Engineer has not approved the final construction plans for the project, and no work will be allowed to commence on the site until these plans are approved by the City (this plan review is close to being completed).

**BACKGROUND INFORMATION (SWOT):**

**Strengths:** The developer's agreement has been drafted to guarantee that the improvements associated with the Savona 3<sup>rd</sup> development plans will be installed in accordance with City specifications.

Execution of the developer's agreement and compliance with all conditions in the agreement will allow the developer to record the Final Plat.

**Weaknesses:** The City will assume responsibility for future maintenance of the public improvements.

**Opportunities:** The final plans include the construction of 5th Street to the western project limits.

**Threats:** The City will need to provide construction observation throughout the course of the project (these costs will be covered under an Engineering Administration Escrow).

**RECOMMENDATION:** Based on the above Staff report, Staff is recommending that the City Council approve the Developer's Agreement for Savona 3<sup>rd</sup> Addition and that the Council direct the Mayor and Staff to execute this document. The suggested motion to adopt the Staff recommendation is as follows:

***“Move to adopt Resolution 2015-071 approving the developer's agreement for Savona 3<sup>rd</sup> Addition”***

**ATTACHMENTS:**

1. Resolution 2015-071
2. Savona 3<sup>rd</sup> Developer's Agreement – Final Draft

## **RESOLUTION NO. 2015-071**

### *A RESOLUTION APPROVING THE DEVELOPER'S AGREEMENT FOR SAVONA 3<sup>RD</sup> ADDITION*

**WHEREAS**, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

**WHEREAS**, U.S. Home Corporation (d/b/a Lennar), 16305 36<sup>th</sup> Avenue North, Suite 600, Plymouth, MN ("Applicant") has previously submitted an application to the City of Lake Elmo ("City") for a Final Plat for Savona 3<sup>rd</sup> Addition; and

**WHEREAS**, the Lake Elmo City Council considered and approved the Preliminary Plat request for Savona at a meeting held on August 6, 2013; and

**WHEREAS**, The Lake Elmo City Council adopted Resolution No. 2015-070 on September 1, 2015 approving the Final Plat for Savona 3<sup>rd</sup> Addition; and

**WHEREAS**, Condition (2) of said Resolution No. 2015-070 establishes that, prior to the execution of the Final Plat by City officials, the Applicant is to enter into a Developer's Agreement with the City; and

**WHEREAS**, the Applicant and City have agreed to enter into such a contract, and a copy of the Developer's Agreement was submitted to the City Council for consideration at its September 1, 2015 meeting.

**NOW, THEREFORE**, based on the information received, the City Council of the City of Lake Elmo does hereby approve the Developer's Agreement for Savona 3<sup>rd</sup> Addition and authorizes the Mayor and City Clerk to execute the document.

Passed and duly adopted this 1<sup>st</sup> day of September 2015 by the City Council of the City of Lake Elmo, Minnesota.

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Mike Pearson, Mayor

ATTEST:

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Julie Johnson, City Clerk

*(reserved for recording information)*

## **DEVELOPMENT CONTRACT**

*(Public sewer and water)*

### ***Savona 3<sup>rd</sup> Addition***

**AGREEMENT** dated \_\_\_\_\_, 2015, by and between the **CITY OF LAKE ELMO** a Minnesota municipal corporation ("City"), and U.S. Home Corporation, d/b/a Lennar (the "Developer").

**1. REQUEST FOR PLAT APPROVAL.** The Developer has asked the City to approve the plat for Savona 3<sup>rd</sup> Addition (referred to in this Contract as the "plat"). The land is situated in the County of Washington, State of Minnesota, and legally described in Exhibit "A".

**2. CONDITIONS OF PLAT APPROVAL.** The City hereby approves the plat on condition that the Developer enter into this Contract, furnish the security required by it, and record the plat with the County Recorder or Registrar of Titles within (180) days after the City Council approves the final plat.

**3. RIGHT TO PROCEED.** Unless separate written approval has been given by the City, within the plat or land to be platted, the Developer may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings until all the following conditions have been satisfied: 1) this agreement has been fully executed by both

parties and filed with the City Clerk, 2) the necessary security has been received by the City, 3) the plat and required homeowner's association documents have been recorded with the Washington County Recorder's Office, and 4) the City's Community Development Director has issued a letter that all conditions have been satisfied, a preconstruction conference has been held, and that the Developer may proceed.

**4. PHASED DEVELOPMENT.** This plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached this Contract and the breach has not been remedied. Development of subsequent phases may not proceed until Development Contracts for such phases are approved by the City. Park charges and area charges for sewer and water referred to in this Contract are not being imposed on outlots, if any, in the plat that are designated in an approved preliminary plat for future subdivision into lots and blocks. Such charges will be calculated and imposed when the outlots are final platted into lots and blocks unless previously paid as part of an earlier development phase.

**5. PRELIMINARY PLAT STATUS.** The plat is a phase of a multi-phased preliminary plat, the preliminary plat approval for all phases not final platted shall lapse and be void unless final platted into lots and blocks, not outlots, within five (5) years after preliminary plat approval.

**6. CHANGES IN OFFICIAL CONTROLS.** For two (2) years from the date of this Contract, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the residential use, development density, lot size, lot layout or dedications of the approved final plat unless required by state or federal law or agreed to in writing by the City and the Developer. Thereafter, notwithstanding anything in this Contract 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.

**7. DEVELOPMENT PLANS.** The plat shall be developed in accordance with the following plans and at the Developer's sole expense. The plans shall not be attached to this Contract. If the plans vary from the written terms of this Contract, the written terms shall control. The plans are:

Plan A – Final Plat

Plan B – Final Grading, Drainage, and Erosion Control Plans

Plan C – Final Sanitary Sewer, Water Main, Storm Sewer, and Street Plans

Plan D – Final Landscape Plan

**8. IMPROVEMENTS.** The Developer shall install and pay for the following:

- A. Streets
- B. Sanitary Sewer
- C. Watermain
- D. Surface Water Facilities (pipe, ponds, rain gardens, etc.)
- E. Grading and Erosion Control
- F. Sidewalks/Trails
- G. Street Lighting
- H. Underground Utilities
- I. Street Signs and Traffic Control Signs
- J. Landscaping and Street Trees
- K. Tree Preservation and Reforestation
- L. Wetland Mitigation and Buffers
- M. Monuments Required by Minnesota Statutes

The improvements shall be installed in accordance with the City subdivision ordinance and the City's Engineering Design and Construction Standards Manual and pursuant to the direction of the City Engineer. The Developer shall submit plans and specifications which have been prepared by a competent registered professional engineer to the City for approval by the City Engineer. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the approved City standards as a condition of City acceptance. In addition, the City may, at the City's discretion and at the Developer's expense, have one or more City inspectors and a soil engineer inspect the work on a full or part-time basis. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer

and the Developer's contractor. The Developer or his engineer shall schedule a pre-construction meeting at a mutually agreeable time at the City Hall with all parties concerned, including the City staff, to review the program for the construction work.

All labor and work shall be done and performed in the best and most workmanlike manner and in strict conformance with the approved plans and specifications. No deviations from the approved plans and specifications will be permitted unless approved in writing by the City Engineer. The Developer agrees to furnish to the City a list of contractors being considered for retention by the Developer for the performance of the work required by the Contract. The Developer shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this Contract, for which reimbursement is expected from the City, unless such work is first ordered in writing by the City Engineer as provided in the specifications.

#### **9. CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION**

**OBSERVATION.** Prior to the commencement of any construction activity authorized under this agreement, the Developer shall submit an escrow for City Engineering Administration and Construction Observation in an amount provided under paragraph 36. Summary of Cash Requirements. Thereafter, the Developer shall reimburse the City each month, within 30 days of receiving an invoice, for all engineering administration and construction observation performed during the construction of the plat. After 30 days of the invoice, the City may draw upon the escrow and stop the work on site until said escrow has been replenished in its full amount. City engineering administration will include monitoring of construction progress and construction observation, consultation with Developer and his engineer on status or problems regarding the project, coordination for testing, final inspection and acceptance, project monitoring during the warranty period, and processing of requests for reduction in security. Construction observation may be performed by the City's in-house staff or consulting engineer. Construction observation shall include, at the discretion of the city, part or full time inspection of proposed public utilities and street construction. Services will be billed on an hourly basis.



The direction and review provided through the inspection of the improvements should not be considered a substitute for the Developer required management of the development. Developer will cause the contractor(s) to furnish the City with a schedule of proposed operations at least five (5) days prior to the commencement of construction of each type of Improvement. City shall inspect all Developer Installed Improvements during and after construction for compliance with approved plans and specifications. Developer will notify the City Engineer at such times during construction as the City Engineer requires for inspection purposes. Such inspection is pursuant to the City's governmental authority, and no agency or joint venture relationship between the City and Developer is thereby created.

**10. CONTRACTORS/SUBCONTRACTORS.** City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a 25% ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the public improvements identified in Paragraph 8 above.

**11. PERMITS.** The Developer shall obtain or require its contractors and subcontractors to obtain all necessary permits, including but not limited to:

- A. Right-of-Way Excavations and Obstructions:
  - City of Lake Elmo, Right-of-Way Utility Installation(s)
  - City of Lake Elmo, Right-of-Way Obstruction(s)
  - Washington County, Utility Installations(s)
  - Washington County, Street or Driveway Access(s)
  - Minnesota Department of Transportation, Utility Installation
  - Minnesota Department of Transportation, Right-of-Way Permit
  
- B. Watermain Extensions:
  - Minnesota Department of Health
  
- C. Sanitary Sewer Extensions:
  - Minnesota Pollution Control Agency
  - Metropolitan Council Environmental Services
  
- D. Stormwater Management:
  - Valley Branch, Brown's Creek or South Washington Watershed District Permit
  
- E. Erosion, Sedimentation Control:
  - Minnesota Pollution Control Agency, General NPDES Stormwater Permit
  - SWPPP (Stormwater Pollution Prevention Plan)

- F. Wetland Mitigation:
  - Board of Water and Soil Resources, WCA
- G. Construction Dewatering:
  - Minnesota Department of Natural Resources

**12. TIME OF PERFORMANCE.** The Developer shall install all required public improvements by October 31, 2016, with the exception of the final wear course of asphalt on streets. The Developer shall have the option of installing the wearing course of streets within one (1) year following initial commencement of work on the required basic improvements or installing it after the first course has weathered a winter season, consistent with warranty requirements, however final acceptance of the improvements will not be granted until all work is completed including the final wear course. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to reflect cost increases and amending this agreement to reflect the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.

**13. LICENSE.** The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the plat to perform all work and inspections deemed appropriate by the City in conjunction with plat development.

**14. CONSTRUCTION ACCESS.** Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the subdivision via 5<sup>th</sup> Street. No construction traffic is permitted on other adjacent local streets.

**15. CONSTRUCTION SEQUENCE AND COMPLIANCE.** The City will require the developer to construct the improvements in a sequence which will allow progress and compliance points to be measured and evaluated. The Developer and/or their representatives are required to supervise and coordinate all construction activities for all improvements and must notify the City in writing stating

when the work is ready for the inspection at each of the measurable points defined in the following paragraphs 16, 17, and 18. For the purpose of this paragraph, Electronic message (email) shall be deemed an acceptable method of notification provided it is captioned "Notice pursuant to Development Agreement".

**16. EROSION CONTROL.** Prior to initiating site grading, the erosion control plan, Plan B, shall be implemented by the Developer and inspected and approved by the City. Erosion control practices must comply with the approved plans and specifications for the plat, with all watershed district permits and with Minnesota Pollution Control Agency's Best Management Practices. The City may impose additional erosion control requirements as deemed necessary. The parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the erosion control plan and schedule or supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder. If the Developer does not reimburse the City for any cost the City incurred for such work within ten (10) days, the City may draw down the security to pay any costs. No development, utility or street construction will be allowed and no building permits will be issued unless the plat is in full compliance with the approved erosion control plan.

If building permits are issued prior to the acceptance of public improvements, the developer assumes all responsibility for erosion control compliance throughout the plat and the City may take such action as allowed by this agreement against the Developer for any noncompliant issue as stated above. Erosion control plans for individual lots will be required in accordance with the City's building permit requirements, or as required by the City or City Engineer.

**17. GRADING PLAN.** The plat shall be graded in accordance with the approved grading drainage and erosion control plan, Plan "B". The plan shall conform to Engineering Design and Construction Standards Manual. All grading shall be completed within the Subdivision prior to the preparation and submittal of the as-constructed grading plan.

Within thirty (30) days after completion of the grading, the Developer shall provide the City with a "record" grading plan certified by a registered land surveyor or engineer that all trails, ponds, swales, and ditches have been constructed on public easements or land owned by the City. The "record" plan shall contain site grades and field verified elevations of the following: a) cross sections of ponds; b) location and elevations along all swales, emergency overflows, wetlands, wetland mitigation areas if any, ditches, locations and dimensions of borrow areas/stockpiles; c) lot corner elevations and house pads; and d) top and bottom of retaining walls. The City will not issue any building permits until the approved certified record grading plan is on file with the City.

**18. STREET AND UTILITY IMPROVEMENTS.** All storm sewers, sanitary sewers, watermain, and streets shall be installed in accordance with the approved Plans and Specifications for Public Improvements, Plan "D". The plan shall conform to the City's Engineering Design and Construction Standards Manual. Curb and gutter and the first lift of the bituminous streets, sidewalks, the boulevards graded, street signs installed, and all restoration work on the site shall be completed in accordance with the approved plans. Once the work is completed, the developer or its representative shall submit a written request to the City asking for an inspection of the initial improvements. The City will then schedule a walk-through to create a punch list of outstanding items to be completed. Upon receipt of the written punch list provided by the City, the punch list items must be completed by the Developer and the City notified to re-inspect the improvements. The final bituminous wear course may be installed in accordance with paragraph 12. above.

**19. STREET MAINTENANCE DURING CONSTRUCTION.** The Developer shall be responsible for all street maintenance until the streets are accepted by the City in writing. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and to direct attention to detours. If and when streets become impassable, such streets shall be barricaded and closed. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage to insure that the streets are passable to traffic and emergency vehicles. The Developer shall be responsible for keeping streets

within and without the subdivision clean of dirt and debris that may spill, track, or wash onto the street from Developer's operation. The Developer may request, in writing, that the City keep the streets open during the winter months by plowing snow from the streets prior to final acceptance of said streets. The City shall not be responsible for repairing the streets because of snow plowing operations. Providing snow plowing service does not constitute final acceptance of the streets by the City. The Developer shall contract for street cleaning within and immediately adjacent to the development. At a minimum, scraping and sweeping shall take place on a weekly basis. A copy of this contract shall be approved by the City before grading is started. The contract shall provide that the City may direct the contractor to clean the streets and the contractor will bill the Developer.

**20. OWNERSHIP OF IMPROVEMENTS.** Upon completion of the work and construction required by this Contract, the improvements lying within public easements shall become City property. Prior to acceptance of the improvements by the City, the Developer must furnish the City with a complete set of reproducible "record" plans, an electronic file of the "record" plans in accordance with the City's Engineering Design and Construction Standards Manual together with the following affidavits:

- Developer/Developer Engineer's Certificate
- Land Surveyor's Certificate

certifying that all construction has been completed in accordance with the terms of this Contract. All necessary forms will be furnished by the City. Upon receipt of "record plans" and affidavits, and upon review and verification by the City Engineer, the City Engineer will accept the completed public improvements.

**21. PARK DEDICATION.** The Developer has previously submitted a payment for park dedication requirements for all the areas to be platted within the Savona Preliminary Plat and paid said fee as part of the Savona Development Contract. No additional fees in lieu of land dedication are required for the plat.

**22. SANITARY SEWER AND WATER UTILITY AVAILABILITY CHARGES (SAC AND WAC).** The Developer shall be responsible for the payment of all sewer availability charges (SAC

and all water availability charges (WAC) with respect to the Improvements required by the City and any state or metropolitan government agency.

The sewer availability charge (SAC) in the amount of \$3,000.00 per REU shall be paid by the Developer prior to the City recording the final plat. The total amount to be paid by the Developer is \$360,000 (120 single family lots).

The water availability charge (WAC) in the amount of \$3,000.00 per REU shall be paid by the Developer prior to the City recording the final plat. The total amount to be paid by the Developer is \$360,000 (120 single family lots).

In addition, a sewer connection charge in the current amount of \$1,000.00 per REU, a Met Council sewer availability charge in the current amount of \$2,435.00 per REU, and a water connection charge in the current amount of \$1,000.00 per REU will be collected by the City at the time the building permit is issued for each lot. These amounts are charged at the time of building permit in accordance with the latest City fee schedule.

**23. TRAFFIC CONTROL SIGNS.** Traffic control signs shall be included as part of the public street improvements, and the installation costs shall be included in the street construction calculations.

**24. STREET LIGHTS.** The Developer is responsible for the installation of street lights consistent with a street lighting plan approved by the City. The Developer shall coordinate the installation of street lights with Xcel Energy in conjunction with the other improvements, and agrees to pay Xcel Energy for all upfront costs associated with the street lighting system, including underground cables, posts, lamps, ballasts, starters, photocells, and glassware. All street lights will be leased by the City upon final acceptance of the system. The Developer shall also pay \$987 in payment for the first year operating costs for street lights.

**25. WETLAND MITIGATION.** The Developer shall complete wetland mitigation/restoration in accordance with the approved Plans and Specifications and in accordance with any applicable Watershed or agency Permits. If the mitigation work is found to be incomplete or restoration is unsuccessful the City may draw down the security at any time during the warranty period if the Developer fails to take corrective measures to be used by the City to perform the work.

**26. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.**

A. Public sewer and water, curbing, and one lift of asphalt shall be installed on all public and private streets prior to issuance of any building permits, except two model homes on lots acceptable to the Community Development Director.

B. Prior to issuance of building permits, wetland buffer monuments shall be placed in accordance with the City's zoning ordinance. The monument design shall be approved by the Community Development Department.

C. Written certification of the as-constructed grading must be on file at the City for the block where the building is to be located.

D. Breach of the terms of this Contract by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits and/or withholding of other permits, inspection or actions, including lots sold to third parties, and the halting of all work in the plat.

E. If building permits are issued prior to the acceptance of public improvements, the Developer assumes all liability and costs resulting in delays in completion of public improvements and damage to public improvements caused by the City, Developer, their contractors, subcontractors, materialmen, employees, agents, or third parties.

F. No sewer and water connection permits may be issued until the streets needed for access have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.

G. The City will not issue a certificate of occupancy for any building constructed on any lot or parcel in the Plat, including any model homes authorized under this agreement, until Public

sewer and water, curbing, and one lift of asphalt is installed on all public and private streets; all utilities are tested and approved by the City Engineer; and the as-constructed grading must be on file at the City for the block where the building is to be located.

## **27. RESPONSIBILITY FOR COSTS.**

A. In the event that the City receives claims from labor, materialmen, or others that work required by this Contract has been performed, the sums due them have not been paid, and the laborers, materialmen, or others are seeking payment from the City, the Developer hereby authorizes the City to commence an Interpleader action pursuant to Rule 22, Minnesota Rules of Civil Procedure for the District Courts, to draw upon the letters of credit in an amount up to 125 percent of the claim(s) and deposit the funds in compliance with the Rule, and upon such deposit, the Developer shall release, discharge, and dismiss the City from any further proceedings as it pertains to the letters of credit deposited with the District Court, except that the Court shall retain jurisdiction to determine payment of attorneys' fees pursuant to this Contract.

B. Except as otherwise specified herein, the Developer shall pay all costs incurred by it or the City in conjunction with the development of the plat, including but not limited to legal, planning, engineering and inspection expenses incurred in connection with approval and acceptance of the plat, the preparation of this Contract, review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting development of the plat. All amounts incurred and due at the time, must be fully paid prior to execution and release of the final plat for recording.

C. The Developer shall hold the City and its officers, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from plat approval and development. The Developer shall indemnify the City and its officers, employees, and agents for all costs, damages, or expenses which the City may pay or incur in consequence of such claims, including attorneys' fees.

D. The Developer shall reimburse the City for costs incurred in the enforcement of this Contract, including reasonable engineering and attorneys' fees.



E. The Developer shall pay, or cause to be paid when due, and in any event before any penalty is attached, all special assessments referred to in this Contract. This is a personal obligation of the Developer and shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of it.

F. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Contract within thirty (30) days after receipt. Bills not paid within thirty (30) days shall be assessed a late fee per the City of Lake Elmo adopted Fee Schedule. Upon request, the City will provide copies of detailed invoices of the work performed.

**28. CITY PAYMENTS.** In the event City payments are required by Section 28.A below, within thirty (30) days of the City's final acceptance of the Improvements, pursuant to Section 20 of the Contract, but only if the Developer is not in default to this Contract, the City shall pay to the Developer the sums set forth in the attachment to this Contract as Exhibit B. The actual amount of the reimbursement shall be based on actual construction costs which will be verified by the Developer to the City in the Plans submitted to the City as required in Section 19. This payment by the City shall be the City's only responsibility with regard to construction of the Improvements and in no case shall act as a waiver of any other right of the City under this Contract or under applicable laws, ordinances or rules.

A. City payments pursuant to this Contract shall be: \$ 12,045

**29. SPECIAL PROVISIONS.** The following special provisions shall apply to the Plat:

A. Implementation of the recommendations listed in the August 20, 2015 Engineering memorandum.

B. Upon execution of the final plat, the Developer shall convey Outlots A, B and C to the City by warranty deed, free and clear of any and all encumbrances.

C. The Developer shall install a temporary turnaround on any streets that will be extended into adjacent developments in the future as directed by the City Engineer.

D. The Developer shall enter into a maintenance agreement with the City that clarifies

the individuals or entities responsible for any landscaping installed in areas outside of land dedicated as public park and open space on the final plat.

E. A building permit may not be granted for more than half of the residential units depicted on the Savona preliminary plat (155) until a second access is provided to the subdivision, either via a connection to Hudson Boulevard to the south, Inwood Avenue (CSAH 13) to the west, or back to Keats Avenue (CSAH 19) through the property north of Savona.

F. The developer shall provide signed easement documents to verify that the proposed grading activity on property presently owned by MFC Properties, Walter Ebertrz, and DPS Lake Elmo, LLC will be allowed.

### **30. MISCELLANEOUS.**

A. The Developer may not assign this Contract without the written permission of the City Council. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of it.

B. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical engineer licensed by the State of Minnesota. Following construction, a certification signed by the design engineer shall be filed with the City Engineer evidencing that the retaining wall was constructed in accordance with the approved plans and specifications. All retaining walls identified on the development plans or by special conditions referred to in this Contract shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.

C. Appropriate legal documents regarding Homeowner Association documents, covenants and restrictions relating to the plat approval and outlots and conveyances, as approved by the City Attorney, shall be filed with the final plat. No third-party beneficiary status is hereby conferred. All outlots and common areas, including Outlots D, E, F, G, H, I, J, K, L, M, and N shall be maintained in good order and repair by a homeowner's association, and, if it does not do so, then the City may perform the work and assess the costs against the individual lots within the plat of Savona 2<sup>nd</sup> Addition and

without regard to the formalities or requirements of Minn. Stat. § 429.

D. Developer shall take out and maintain or cause to be taken out and maintained until six (6) months after the City has accepted the public improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage which may arise out of Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them. Limits for bodily injury and death shall be not less than \$500,000 for one person and \$1,000,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a combination single limit policy of \$1,000,000 or more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate evidencing coverage prior to the City signing the plat. The certificate shall provide that the City must be given thirty (30) days advance written notice of the cancellation of the insurance.

E. Third parties shall have no recourse against the City under this Contract.

F. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Contract is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Contract.

G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Contract. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Contract shall not be a waiver or release.

H. This Contract shall run with the land and may be recorded against the title to the property. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the property being final platted and/or has obtained consents to this Contract, in the form attached hereto, from all parties who have an interest in the property; that there are no unrecorded interests in the property being final platted; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.

I. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to

City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

J. The Developer represents to the City that the plat complies with all city, county, metropolitan, state, and federal laws and regulations, including but not limited to: subdivision ordinances, zoning ordinances, and environmental regulations. If the City determines that the plat does not comply, the City may, at its option, refuse to allow construction or development work in the plat until the Developer does comply. Upon the City's demand, the Developer shall cease work until there is compliance.

**31. EVENTS OF DEFAULT.** The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

A. Subject to unavoidable delays, failure by Developers to commence and complete construction of the Public Improvements pursuant to the terms, conditions and limitations of this Agreement.

B. Failure by Developers to substantially observe or perform any material covenant, condition, obligation or agreement on their part to be observed or performed under this Agreement.

**32. REMEDIES ON DEFAULT.** Whenever any Event of Default occurs, the City, subject to any rights of third parties agreed to by the City pursuant to this Agreement, or otherwise by written, executed instrument of the City, may take any one or more of the following:

A. The City may suspend its performance under the Agreement until it receives assurances from Developers, deemed adequate by the City, that Developers will cure their default and continue their performance under the Agreement. Suspension of performance includes the right of the City to withhold permits including, but not limited to, building permits.

B. The City may initiate such action, including legal or administrative action, as is necessary for the City to secure performance of any provision of this agreement or recover any amounts due under this Agreement from Developers, or immediately draw on the Letter of Credit, as set forth in this

Agreement. In the event of any uncorrected failure to maintain any common area or landscape areas, the City may undertake to do the work and assess the costs to the individual lots within the plat without regard to the formalities or requirements of Minn. Stat. § 429..

**33. ENFORCEMENT BY CITY; DAMAGES.** The Developers acknowledge the right of the City to enforce the terms of this Agreement against the Developers, by action for specific performance or damages, or both, or by any other legally authorized means. The Developers also acknowledge that their failure to perform any or all of their obligations under this Agreement may result in substantial damages to the City; that in the event of default by the Developers, the City may commence legal action to recover all damages, losses and expenses sustained by the City; and that such expenses may include, but are not limited to, the reasonable fees of legal counsel employed with respect to the enforcement of this Agreement.

**34. WARRANTY.** The Developer warrants all improvements required to be constructed by it pursuant to this Contract against poor material and faulty workmanship. The Developer shall submit either a letter of credit or cash escrow for twenty-five percent (25%) of the amount of the original cost of the improvements.

A. The required warranty period for materials and workmanship for the utility contractor installing public sewer and water mains shall be two (2) years from the date of final written City acceptance of the work.

B. The required warranty period for all work relating to street construction, including concrete curb and gutter, sidewalks and trails, materials and equipment shall be subject to one (1) year from the date of final written acceptance, unless the wearing course is placed during the same construction season as the bituminous base course. In those instances, the Developer shall guarantee all work, including street construction, concrete curb and gutter, sidewalks and trails, material and equipment for a period of two (2) years from the date of final written City acceptance of the work.

C. The required warranty period for sod, trees, and landscaping is two growing seasons following installation.

D. The required warranty for landscaping within storm water infiltration areas (Outlot C)

shall be three (3) years following installation. The developer shall also enter into a maintenance agreement with the City for a period of three (3) years prior to acceptance of the landscaping for within these storm water infiltration areas. Said maintenance agreement shall include requirements for the proper care of native plantings and the elimination of weeds and invasive species.

**35. SUMMARY OF SECURITY REQUIREMENTS.** To guarantee compliance with the terms of this agreement, payment of special assessments, payment of the costs of all public improvements, and construction of all public improvements, the Developer shall furnish the City with an irrevocable letter of credit, in the form attached hereto, from a bank, cash escrow or a combination cash escrow and Letter of Credit ("security") for **\$3,238,764**. The amount of the security was calculated as follows:

<b>CONSTRUCTION COSTS:</b>	<b>COST</b>	<b>(125%)</b>
1) Grading	Covered in separate grading agreement	
2) Sanitary Sewer	\$ 345,301	\$ 431,626
3) Watermain	\$ 503,113	\$ 628,891
4) Streets	\$ 1,168,007	\$ 1,460,008
5) Surface Water Facilities (pipe, ponds, rain gardens, etc.)	\$ 333,140	\$ 416,425
6) Erosion Control	\$133,732	\$167,165
7) Sidewalks/Trails	Included with streets	
8) Street Lighting	Xcel to Install, to be pre-paid directly by developer	
9) Street Signs and Traffic Control Signs	Included with streets	
10) Landscaping	\$95,218	\$119,023
11) Tree Preservation and Restoration	N/A	N/A
12) Wetland Mitigation and Buffers	Separate letter of credit through Watershed District	
13) Monuments	\$6,000	\$7,500
14) Miscellaneous Facilities	N/A	N/A

15) Developer's Record Drawings	\$6,500	\$8,125
<hr/>		
<b>Construction Sub-Total</b>	<b>\$ 2,591,011</b>	
<b>Total Project Securities (at 125% Construction Costs)</b>		<b>\$ 3,238,764</b>

This breakdown is for historical reference; it is not a restriction on the use of the security. The bank shall be subject to the approval of the City Administrator. The City may draw down the security for any violation of the terms of this Contract or if the security is allowed to lapse prior to the end of the required term. If the required public improvements are not completed at least thirty (30) days prior to the expiration of the security, the City may also draw it down. If the security is drawn down, the proceeds shall be used to cure the default.

**36. REDUCTION OF SECURITY.** Upon written request by the Developer and upon receipt of proof satisfactory to the City Engineer that work has been completed and financial obligations to the City have been satisfied, with City Engineer approval the security may be reduced as follows:

A. Upon completion of grading operations, including temporary site restoration, Developer shall submit an as-built grading survey to the City. Upon inspection of the site and approval of the as-built survey by the City, 100%, or \$127,000 of the grading security (associated with the separate grading agreement for Savana 3<sup>rd</sup> Addition) shall be released.

B. Up to 75% of the remaining security provided in accordance with paragraph 33 may be released at the following stages of construction and project approvals by the City.

a. Construction Categories 2 and 3: The amount of \$795,387 may be released when all sanitary sewer and watermain utilities have been installed, all testing has been successfully completed, utility record drawings have been verified, and the utilities are considered ready for use by the City Engineer.

b. Construction Categories 4-7: The amount of \$1,532,699 may be released when all streets, sidewalks, trails, storm sewer, and storm water facilities have been installed and

tested, and have been found to be complete to the satisfaction of the City Engineer including all corrective work for any identified punch list items, but not including the final wear course.

c. Construction Categories 8-15: The amount of \$ 100,986 may be released when all remaining Developer's obligations under this Agreement have been completed and the Public

Improvements have been found to be complete to the satisfaction of the City including all corrective work for any identified punch list items, but not including the final wear course.

C. The final portion of the remaining security amounts in paragraph 33 above (25%) shall be retained as security until: (1) all improvements have been completed, including bituminous wear course, (2) iron monuments for lot corners have been installed, (3) all financial obligations to the City satisfied, (4) the required "record" plans have been received and approved by the City, (5) a warranty security is provided, and (6) the public improvements are accepted by the City.

**36. SUMMARY OF CASH REQUIREMENTS.** The following is a summary of the cash requirements under this Contract which must be furnished to the City at the time of final plat approval:

Sewer Availability Charge (SAC)	\$360,000
Water Availability Charge (WAC)	\$360,000
Park Dedication	N/A
Street Light Operating Fee	\$987
City Base Map Upgrading	\$3,000
City Engineering Administration Escrow	\$50,000 (Based on two months of administration/observation)
Special Assessment Payoff (120 lots @ \$ 3,464.55)	\$415,746
<b>Total Cash Requirements</b>	<b>\$1,189,733</b>

**37. NOTICES.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the



following address: 16305 36<sup>th</sup> Ave N, Suite 600. Plymouth, MN 55446. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator, or mailed to the City by certified mail in care of the City Administrator at the following address: Lake Elmo City Hall, 3800 Laverne Avenue N. Lake Elmo, Minnesota 55042.

**38. EVIDENCE OF TITLE.** Developer shall furnish the City with evidence of its fee ownership of the property being platted by way of an attorney's title opinion or title insurance policy dated not earlier than thirty (30) days prior to the execution of the plat.

**CITY OF LAKE ELMO**

BY: \_\_\_\_\_, Mayor

AND \_\_\_\_\_, City Clerk

**DEVELOPER:**

BY: \_\_\_\_\_  
Its

(SEAL)



**FEE OWNER CONSENT  
TO  
DEVELOPMENT CONTRACT**

\_\_\_\_\_, fee owners of all or part of the subject property, the development of which is governed by the foregoing Development Contract, affirm and consent to the provisions thereof and agree to be bound by the provisions as the same may apply to that portion of the subject property owned by them.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

STATE OF MINNESOTA     )  
  ( ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_,  
by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042  
(651) 747-3901

**MORTGAGE CONSENT  
TO  
DEVELOPMENT CONTRACT**

\_\_\_\_\_, which holds a mortgage on the subject property, the development of which is governed by the foregoing Development Contract, agrees that the Development Contract shall remain in full force and effect even if it forecloses on its mortgage.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

STATE OF MINNESOTA     )  
  ( ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

DRAFTED BY:  
City of Lake Elmo  
3800 Laverne Avenue North  
Lake Elmo, MN 55042  
(651) 747-3901

\_\_\_\_\_  
\_\_\_\_\_  
  
\_\_\_\_\_

**EXHIBIT "A" TO  
DEVELOPMENT CONTRACT**

**Legal Description of Property Being Final Platted as Savona 3<sup>rd</sup> Addition**

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Outlots C, D and F, Savona 2<sup>nd</sup> Addition, according to the recorded plat thereof, Washington County, Minnesota

**EXHIBIT "B"**  
**TO**  
**DEVELOPMENT CONTRACT**  
**City Oversizing Payment Calculation**

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# IRREVOCABLE LETTER OF CREDIT

No. \_\_\_\_\_  
Date: \_\_\_\_\_

TO: City of Lake Elmo

Dear Sir or Madam:

We hereby issue, for the account of \_\_\_\_\_ (Name of Developer) and in your favor, our Irrevocable Letter of Credit in the amount of \$ \_\_\_\_\_, available to you by your draft drawn on sight on the undersigned bank at its offices in Minnesota.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 2\_\_\_\_\_, of (Name of Bank) \_\_\_\_\_";
- b) Be signed by the Mayor or City Administrator of the City of Lake Elmo.
- c) Be presented for payment at \_\_\_\_\_ (Address of Bank) \_\_\_\_\_, on or before 4:00 p.m. on November 30, 2\_\_\_\_\_.

This Letter of Credit shall automatically renew for successive one-year terms unless, at least forty-five (45) days prior to the next annual renewal date (which shall be November 30 of each year), the Bank delivers written notice to the Lake Elmo City Administrator that it intends to modify the terms of, or cancel, this Letter of Credit. Written notice is effective if sent by certified mail, postage prepaid, and deposited in the U.S. Mail, at least forty-five (45) days prior to the next annual renewal date addressed as follows: City Administrator, City Hall, 3800 Laverne Ave. N. Lake Elmo Minnesota 55042 and is actually received by the City Administrator at least thirty (30) days prior to the renewal date.

This Letter of Credit sets forth in full our understanding which shall not in any way be modified, amended, amplified, or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit is not assignable. This is not a Notation Letter of Credit. More than one draw may be made under this Letter of Credit.

This Letter of Credit shall be governed by the most recent revision of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500.

We hereby agree that a draft drawn under and in compliance with this Letter of Credit shall be duly honored upon presentation.

BY: \_\_\_\_\_

Its \_\_\_\_\_