



STAFF REPORT

DATE: 11/7/2017

REGULAR

ITEM #: 16

TO: City Council
FROM: Emily Becker, Planning Director
AGENDA ITEM: Comprehensive Plan Amendment and Zoning Text Amendment Amending Open Space Preservation Language Regarding Density
REVIEWED BY: Joan Ziertman, Planning Program Assistant
Ben Prchal, City Planner

BACKGROUND:

The City has received an application from Landucci Homes, Inc. (Nathan Landucci) for a Comprehensive Plan and Zoning Text Amendment amending language regarding allowable density within Open Space Preservation Planned Unit Developments. The current language in both the Comprehensive Plan and City's Zoning Code indicates that densities in such developments are allowed up to 0.45 dwelling units per buildable acre or 18 units per 40 buildable acres. The Applicant is requesting that density be based on gross acreage.

ISSUE BEFORE COUNCIL:

The Council is being asked to consider the request to amend language regarding allowable density within Open Space Preservation developments within the City.

PROPOSAL DETAILS/ANALYSIS:

COMPREHENSIVE PLAN AMENDMENT

Reason for Request. The Applicant has indicated on the application that if Legends of Lake Elmo, which received Concept Plan approval by the City on March 2, 2016, was developed under the current Open Space Preservation Planned Unit Development ordinance and Comprehensive Plan language, it would be underutilized, underdeveloped and have a disproportionate amount of road, as the site has 17 acres out of 110 acres of land. The Applicant has also stated that wetlands are sought after for buffers, land preservation, privacy, animal and plant habitat and an overall attractive and diversified environment. The Applicant feels that the request "levels the playing field" between land that has no wetlands and land that have some or no wetlands. The Applicant also demonstrates in the application that Legends of Lake Elmo, had it had no wetlands, would be able to develop 50 homes as opposed to 40 homes with no wetlands.

- *Example 1: Land with no wetlands*
 - Gross acreage: 110 acres
 - Buildable acreage: 110 acres
 - Wetland acreage: 0 acres
 - Number of units allowed: 50 homes
 - Open space breakdown: 55 acre fields

- *Example 2: Legends of Lake Elmo*
 - Gross acreage: 110 acres
 - Buildable acreage: 93 acres
 - Wetland acreage: 17 acres
 - Number of units allowed: 41 homes
 - Open space breakdown: 38 acre fields, 17 acres of wetlands

History. The City’s Open Space Preservation Ordinance was adopted in 2001 and has undergone a number of amendments, the most recent set of amendments adopted on October 4, 2016 after a number of both Planning Commission and City Council meetings. No amendment to the allowable density was proposed or made during this amendment, however, due to Comprehensive Plan language indicating that the allowable density in an Open Space Preservation development is 0.45 dwelling units per acre. One of the amendments that was adopted was that open space calculations were changed from 50% buildable area to 50% gross area.

Exact Language of the Comprehensive Plan. The exact language and proposed change to the Comprehensive Plan is below:

RURAL AREA DEVELOPMENT – This category represents the large areas of rural residential development within the City. Common uses found in these areas include working farms, alternative agricultural uses as defined by City Code, and rural single family detached residences. Development in these areas requires 10+ acres, or a conditional use permit to authorize a cluster development meeting the City’s Open Space Preservation regulations. Densities are allowed up to 0.45 dwelling units per **buildable acre, based on gross acreage**, when planned as part of an Open Space Preservation development. No new areas of rural area development are being established by the official land use plan. [Corresponding Zoning District(s): A, RR, OP]

Preserved Open Space. The Minnesota Land Trust holds conservation easements to protect a variety of lands and focuses its efforts on relatively undisturbed natural habitat, the shoreline of lakes, rivers and streams, and scenic landscapes, particularly those with local significance. The Applicant has submitted a Concept Plan for an Open Space Development within the City with open space which the Minnesota Land Trust has communicated would not be interested in holding. This is not necessarily directly related to the requested Comprehensive Plan and Zoning Text Amendments, however, it may be important to note that the Comprehensive Plan Advisory Panel has previously discussed that if the City holds a conservation easement (which it is allowed to do under the OP ordinance), that due to the City’s conservative amount of Staff, that Homeowners’ Associations could possibly aid in enforcement of the conservation easement. An increase in the number of homes allowed within an OP development may increase the chances for violations of the conservation easement.

Net Density. Density is usually calculated as net density. The Metropolitan Council calculates density using net density when calculating density required for sewered areas. By their standards, the following can be netted out from gross acres when calculating density: wetlands and water bodies, public parks and open space, arterial road rights-of-way, and other areas protected from development by local ordinance. While open space preservation developments are not sewered and are not subject to these stipulations, the City should consistently calculate density, and calculating wetlands in the allowed density would create possible inconsistency.

Metropolitan Council Flexible Residential Development Ordinance Guidelines for the Diversified Rural Area. The Metropolitan Council planning strategies for Diversified Rural Areas calls for communities in those areas to have land use plans that “accommodate growth not to exceed forecasts and clustered development not to exceed 1 unit per 10 acres.” The Council recognizes that communities have ordinances that allows for densities that will severely limit the ability of some communities to achieve (in

the future) the minimum density of at least three units per net developable residential acre that is necessary for future cost-effective and efficient regional wastewater treatment services.

The Council does recognize, however, that there are areas of the community that may not be suitable for future urbanization as the capability of the land to support development is low and constrained and has developed guidelines for these developments. One of the guidelines is that the ordinance should define lands that are considered buildable, as these lands are considered the most suitable for development. Removing lands that are restricted due to federal and state regulations, as well as any features that the local government has defined for protection or conservation, will allow the community to preserve sensitive natural features and to ensure the availability of land to accommodate future development. Without specifying types of lands that are required for future development, many communities have inadvertently encouraged large lot development in which private lots often consume most of the developable land and leave little remaining developable acreage. The guidelines generally discourage future development of rural residential patterns (unsewered lots of 2.5 acres or less). As previously mentioned, the Open Space Preservation ordinance was already amended so that 50% of the gross acreage of an Open Space Development can be preserved as opposed to 50% of the buildable area, which already goes against these guidelines. Therefore, requesting any further density change within rural areas may not be amenable to these guidelines.

Comprehensive Plan Update. It should be considered that the City is undergoing a required Comprehensive Plan update. A number of changes may be made to the overall vision of the City. One of these changes that has been mentioned a number of times in the past is allowing 2.5 acre parcels in Rural Residential and Agricultural zoning districts, which at this time require a maximum density of one unit per 10 acres and one unit per 40 acres, respectively. Additionally, this change would affect a number of properties, as shown in the attached map that outlines properties that are over 20 acres in size and are zoned Agricultural, Rural Residential, or Residential Estates and are therefore eligible to develop through the Open Space Preservation Planned Unit Development Ordinance. The ordinance would affect up to 58 parcels and approximately 6,062 acres of property within the City. Assuming 15% of this acreage were wetlands, assuming an allowed density of 0.45 units per acre, the amount of units that could increase based on gross vs. buildable would be as follows:

Gross Acreage	6,062 acres
Wetland Acreage	909 acres
Buildable Acreage	5,153 acres
Number of Units Based on Buildable Acreage	2,318 units
Number of Units Based on Gross Acreage	2,723 units

Therefore, the number of units that could potentially increase with this change (assuming 15% unbuildable land; this has not been verified) would be 405 units, totalling 2,723 units that could be added through Open Space Preservation developments throughout the City. As per the City's 2015 systems statement, the City is only projected to increase its number of unsewered households by 3,379 by the year 2040.

Forecast Year	Forecast Component	Population	Households	Employment
2010	MCES Sewered	0	0	623
2010	Unsewered	8,061	2,776	1,318
2020	MCES Sewered	3,712	1,359	2,338
2020	Unsewered	6,788	2,441	562
2030	MCES Sewered	6,960	2,540	2,788
2030	Unsewered	7,140	2,760	562
2040	MCES Sewered	10,208	3,721	3,238
2040	Unsewered	7,992	3,379	562

Adjacent Cities Review. The Metropolitan Council advised that Staff send out adjacent review to cities directly abutting potentially affected parcels. Stillwater Township and Baytown Township responded that they see have no comments about the proposed change and that the Open Space Development ordinances in those two townships have both used gross acres to calculate densities.

Increased Traffic and Other Standards of the OP Ordinance. The potential increase in homes could lead to a significant increase in traffic counts. Currently, the City is undergoing a study for potential options for Highway 36, and this increase has not been factored in. Additionally, with all of the other standards of the OP Ordinance including but not limited to: minimum lot size requirement (one acre lots for those being served by individual septic systems and half acre lots for those being served by community septic systems); required buffers from adjacent lands; required setbacks from waterbodies and non-buildable land; setbacks; placement of streets; open space requirements; etc. will still need to be met unless approved by a 4/5 (super-majority) vote.

Comprehensive Plan Advisory Panel. The Comprehensive Plan Advisory Panel held a meeting in July of 2017 discussing Rural Residential trends. During this meeting, a brief discussion was held regarding density in open space developments. During this discussion, there was no substantial conclusion to this, but there was desire by the group to allow this. As such, the Applicant is requesting the amendment now in order to bring focus to the issue and not have to wait until the Comprehensive Plan is officially adopted and approved by the Metropolitan Council. Because of the potentially significant impact on the City's population and the substantial number of parcels and acreage within the City that the proposed amendments would affect, Staff would recommend that the Planning Commission table the request and request direct input from the Comprehensive Plan Advisory Panel on this proposed change. Ultimately, the Planning Commission may wish to recommend denial provided the issue may be best considered within the context of all land use changes currently under consideration. The next Comprehensive Plan Advisory Panel meets on October 25, 2017, and this item can be discussed briefly at this meeting.

ZONING TEXT AMENDMENT

Consistency with the Comprehensive Plan. If the Council denies the proposed Comprehensive Plan Amendment, they should also deny the Zoning Text Amendment. If the Council wishes to approve the proposed Comprehensive Plan Amendment, the proposed Zoning Text Amendment should be reviewed for consistency with the Comprehensive Plan and current Open Space Preservation Planned Unit Development Ordinance.

Consistency with the Comprehensive Plan. If the Comprehensive Plan Amendment is approved, the proposed Zoning Text Amendment to Section 154.657: Open Space PUD Design, Section (A) would be as follows:

A. Density

The maximum dwelling unit density within an open space planned unit development shall be 18 units per 40 gross acres of ~~buildable land on~~ the undeveloped parcel; however, the total number of dwelling units shall not exceed the density limitations contained in the Comprehensive Plan for Open Space Preservation Development.

Provided the Comprehensive Plan Amendment is approved, this would be consistent with the density of 0.45 units per acreage based on gross acreage.

Intent of the Open Space Planned Unit Development Ordinance. The intent of the Open Space Planned Unit Developments is as follows. The Planning Commission should specifically consider whether increasing the allowable density to 0.45 units per acre of the developments gross acreage as opposed to buildable acreage would alter the intent of this ordinance or of the Comprehensive Plan. Also included below are responses to how the proposed change would affect the intent of the ordinance:

- A. A variety of lot configurations and housing styles that may or may not otherwise exist within the City's rural areas;
 - *Staff Comment:* An increased number of units would likely have no effect on this intent.
- B. An avenue to provide a development density equal to or greater than what could be achieved via underlying zoning;
 - *Staff Comment:* The allowed density (provided the area had wetlands) would be increased by the proposed amendment. The proposed amendment would make no difference to properties that have acreage that is not buildable.
- C. A reduction in the costs to construct and maintain public facilities and infrastructure in a rural setting;
 - *Staff Comment:* Allowing density to be based on gross acreage would increase the number of homes allowed within a development that had unbuildable acreage and therefore would reduce costs for a developer.
- D. Protected open space to enhance and preserve the natural character of the community;
 - *Staff Comment:* The applicant is not proposing to change the amount of preservation of the open space within a development.
- E. The creation of distinct neighborhoods that are interconnected within rural areas
 - *Staff Comment:* The proposed amendment would likely not have an effect on interconnectivity.
- F. To preserve large continuous open spaces.
 - *Staff Comment:* The applicant is not proposing to reduce the amount of open space. The amendment to the Open Space Planned Unit Development ordinance back in 2016 amended the required amount of open space, allowing the open space to be calculated by gross acreage rather than buildable acreage.

Planning Commission Review. The Planning Commission held a public hearing and reviewed the proposed Comprehensive Plan Amendment and Zoning Text Amendment on October 23, 2017. The Planning Commission had the following findings in regards to the proposal:

1. The proposed density calculation is not consistent with that of the City (density within sewerer developments is calculated using net density whereas the proposed amendment calculates density using gross density).
2. The current language regarding density within the Comprehensive Plan Open Space Preservation Planned Unit development ordinance helps protect natural resources by limiting allowed density to buildable acres.

3. A lower density within Open Space Preservation developments minimizes risk for septic systems to fail and thereby minimizes the need to connect to City sewer.

There was also concern about management of open space within an OP Development that was discussed earlier in this report. The Planning Commission felt it necessary that the City needs to be better prepared to manage open space easements when the Minnesota Land Trust will not accept them.

Based on the above findings, the Planning Commission recommended denial of the proposed Comprehensive Plan and Zoning Text Amendments regarding density within Open Space Preservation developments

FISCAL IMPACT:

An increased number of lots may be created with the proposed amendments to the language within the Comprehensive Plan and Zoning Code, which could increase tax revenue but also increase need for essential services.

RECOMMENDATION:

Staff and the Planning Commission recommend that Council adopt Resolution denying the proposed Comprehensive Plan Amendment to amend language regarding density for Open Space Preservation developments.

“Move to adopt Resolution 2017-123 denying the proposed Comprehensive Plan Amendment regarding density for Open Space Preservation developments.”

Staff and the Planning Commission recommend that the Council adopt Resolution 2017- denying the proposed Comprehensive Plan and Zoning Text amendment regarding density for Open Space Preservation developments.

“Move to adopt Resolution 2017-124 denying the proposed Zoning Text Amendment regarding density for Open Space Preservation developments.”

ATTACHMENTS:

- Comprehensive Plan and Zoning Text Amendment application and Narrative
- Map showing properties that are of 20 acres or more and zoned Rural Residential, Residential Estates and Agricultural (properties eligible to be developed as and Open Space Preservation Planned Unit Development)
- Resolution 2017-123 denying proposed Comprehensive Plan Amendment regarding Open Space Preservation development density
- Resolution 2017-124 denying proposed Zoning Text Amendment regarding Open Space Preservation development density

Date Received: 5/15/17
Received By: SN
Permit #: _____



651-747-3900
3800 Laverne Avenue North
Lake Elmo, MN 55042

LAND USE APPLICATION

- Comprehensive Plan Zoning District Amend Zoning Text Amend Variance*(see below) Zoning Appeal
- Conditional Use Permit (C.U.P.) Flood Plain C.U.P. Interim Use Permit (I.U.P.) Excavating/Grading
- Lot Line Adjustment Minor Subdivision Residential Subdivision Sketch/Concept Plan
- PUD Concept Plan PUD Preliminary Plan PUD Final Plan Wireless Communications



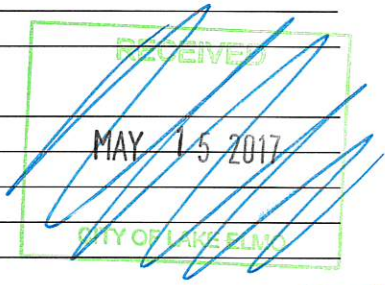
Applicant: Landucci Homes, Inc. (Nathan Landucci)
Address: 13230 20th St. Ct. N., Stillwater, MN 55082
Phone #: 651-894-2582
Email Address: LANDUCNL@hotmail.com

Fee Owner: Same as above
Address: " "
Phone #: " "
Email Address: " "

Property Location (Address): XXX 50th St. N., Lake Elmo, MN 55042
(Complete (long) Legal Description: See attached)

PID#: See attached

Detailed Reason for Request: See attached



*Variance Requests: As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the applicant must demonstrate practical difficulties before a variance can be granted. The practical difficulties related to this application are as follows:
See attached

In signing this application, I hereby acknowledge that I have read and fully understand the applicable provisions of the Zoning ordinance and current administrative procedures. I further acknowledge the fee explanation as outlined in the application procedures and hereby agree to pay all statements received from the City pertaining to additional application expense.

Signature of applicant: [Signature] Date: 5/10/17 9/21/17
Signature of fee owner: [Signature] Date: 5/10/17 9/21/17

Land Use Application: Comprehensive Plan/ Zoning Text Amendment

PID#: 01.029.21.42.0003

Acreage: 50.03 acres

Legal Description: THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 29, RANGE 21, WASHINGTON COUNTY, MINNESOTA, EXCEPT THE SOUTH 1725.00 FEET OF THE EAST 505.00 FEET OF SAID WEST HALF OF THE SOUTHEAST QUARTER AND ALSO EXCEPT THAT PART OF SAID WEST HALF OF THE SOUTHEAST QUARTER, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTH 1725.00 FEET OF THE EAST 505.00 FEET; THENCE NORTH 0 DEGREES 21 MINUTES 51 SECONDS WEST, ALONG THE WEST LINE OF SAID SOUTH 1725.00 FEET OF THE EAST 505.00 FEET, A DISTANCE OF 1040.00 FEET; THENCE SOUTH 89 DEGREES 38 MINUTES 09 SECONDS WEST, A DISTANCE OF 588.00 FEET; THENCE SOUTH 0 DEGREES 21 MINUTES 51 SECONDS EAST, A DISTANCE OF 213.00 FEET; THENCE SOUTH 34 DEGREES 10 MINUTES 25 SECONDS EAST A DISTANCE OF 517.61 FEET; THENCE SOUTH 0 DEGREES 21 MINUTES 51 SECONDS EAST A DISTANCE 400.00 FEET TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER; THENCE NORTH 89 DEGREES 02 MINUTES 53 SECONDS EAST A DISTANCE OF 300.00 FEET TO THE POINT OF BEGINNING. SUBJECT TO NORTHERN NATURAL GASS COMPANY PIPELINE EASEMENT PER DOCUMENT NO. 3797430 AND DOCUMENT NO. 3797431 AND SUBJECT TO 50TH STREET NORTH. SECTION 01 TOWNSHIP 029 RANGE 021

PID#: 01.029.21.41.0001

Acreage: 40 acres

Legal Description: NE1/4-SE1/4 SECTION 01 TOWNSHIP 029 RANGE 021

PID#: 01.029.21.43.0001

Acreage: 20 acres

Legal Description: PART W1/2-SE1/4 BEING S 1725.06FT OF E 505FT SUBJ TO EASE FOR RDWY SECTION 01 TOWNSHIP 029 RANGE 021

Detailed Reason for Request: Property is negatively impacted by wetlands though current OP ordinance which states density is based on "buildable" land area vs. "gross" land area. Many cities base density on "gross" acreage not "buildable" acreage, especially when provisions for 50% open space and park dedication instruments are in place.

Variance Requests: As outlined in Section 301.060 C. of the Lake Elmo Municipal Code, the applicant must demonstrate practical difficulties before a variance can be granted. The practical difficulties related to this application are as follows: If the proposed land was to be developed under the current OP ordinance, it would be underutilized, underdeveloped and have a disproportionate amount of road. This would occur due to the wetlands under the OP ordinance do not count toward open space, making them useless to any OP development. Since the Legends site is comprised of 110 acres but has 17 acres of wetland, it essentially becomes a 93 acre project, yet roads, grading, utilities, etc extend though the full 110 acres, making developing any land with wetlands an unreasonable venture vs. building on land without any wetlands. When in fact wetlands are very sought after for buffers, land preservation, privacy, animal and plant habitat and an overall attractive and diversified environment that interest homeowners in neighborhoods like the Proposed Legends of Lake Elmo. This

MAY 15 2017

CITY OF LAKE ELMO

application is seeking to level the playing field between land that has no wetlands and land that has some wetlands, examples below to illustrate this point:

Example 1: Land with no wetlands

Gross acres: 110 acres

Buildable acres: 110 acres

Wetland acres: 0 acres

Number of homesites allowed: **50 homes**

Open space breakdown: 55 acres fields

Example 2: Legends of Lake Elmo

Gross acres: 110 acres

Buildable acres: 93 acres

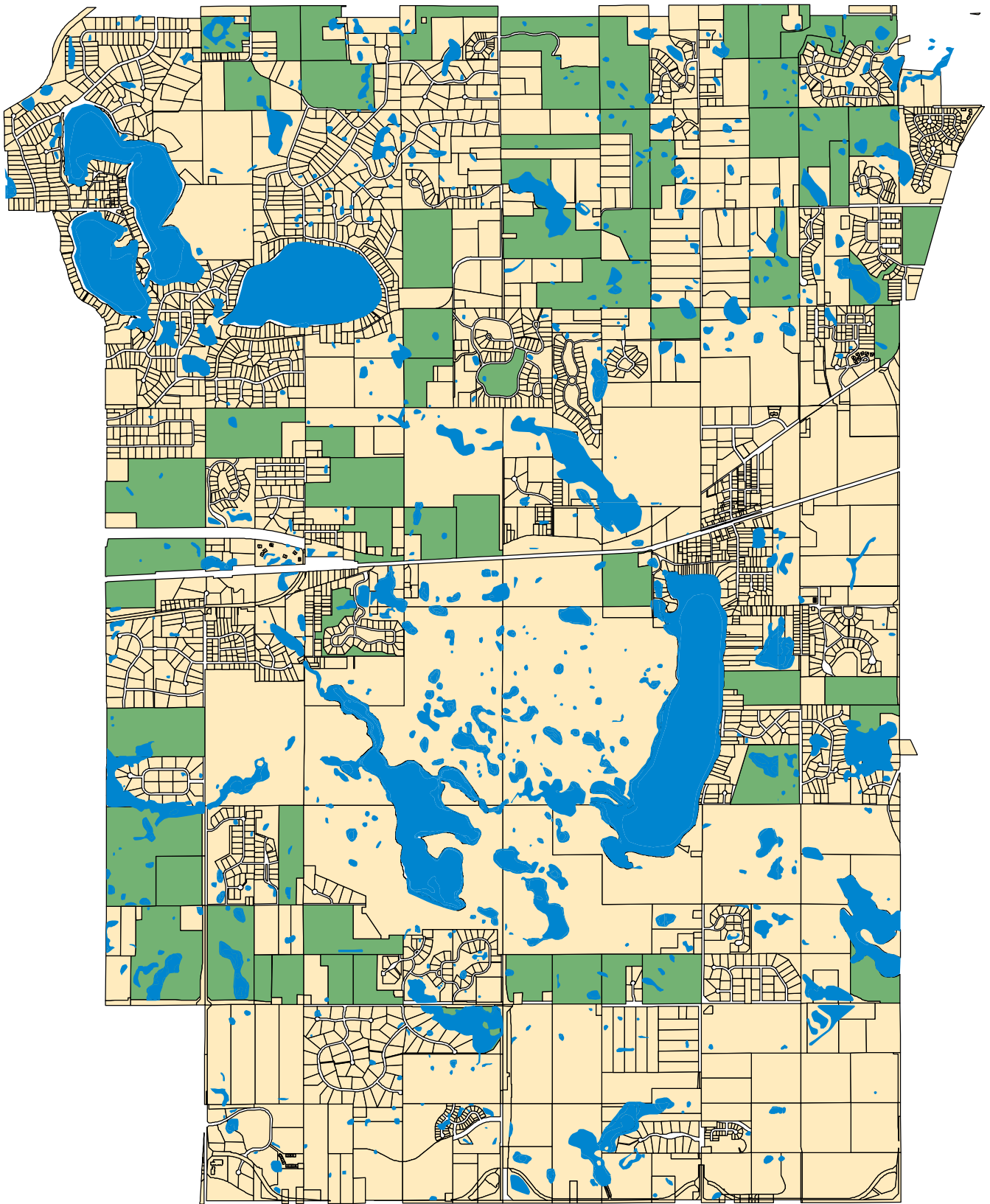
Wetland acres: 17 acres

Number of homesites allowed: **40 homes**

Open space breakdown: 38 acres fields; 17 acres wetland

Homeowners would prefer open space comprised of a combination of fields and wetlands as opposed to just fields. Current ordinance never factored for land that has +/- 15% of wetlands because ultimately it is making the most desirable developable land unattractive/unbuildable to a developer.







Properties Zoned A, RR or RE & 20+ Acres



Data Source: Washington County, MN
10.11.17

-  Zoned A, RR, and RE 20+ acres
-  Water Bodies/Wetlands



**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2017-123

*A RESOLUTION DENYING A COMPREHENSIVE PLAN AMENDMENT TO CHANGE
LANGUAGE REGARDING ALLOWED OPEN SPACE PRESERVATION DEVELOPMENT
DENSITY*

WHEREAS, the City of Lake Elmo (the “City”) has established a Comprehensive Plan that provides a compilation of background data, policy statements, standards, and maps, which help to guide the future physical, social, and economic development of the City; and

WHEREAS, Landucci Homes, Inc., 13230 20th Street Court North, Stillwater, MN 55082 (the “Applicant”) has submitted an application to the City to amend the Comprehensive Plan, a copy of which is on file in the City Planning Department; and

WHEREAS, the Applicant has requested to amend language regarding allowable density within Open Space Preservation developments to be based on gross acreage rather than buildable.

WHEREAS, the Planning Commission held a public hearing on October 23, 2017 to consider the Applicant’s requests; and

WHEREAS, the Planning Commission adopted a motion to recommend denial to the City Council on the Applicant’s requests based on a number of findings; and

WHEREAS, the City Council reviewed the Planning Commission and public comments regarding the Applicant’s requests at its meeting on November 7, 2017; and

WHEREAS, the City Council has reviewed the Comprehensive Plan amendment and believes that it is not consistent with the spirit and intent of the Comprehensive Plan.

NOW THEREFORE BE IT RESOLVED based upon the testimony elicited and information received, the City Council makes the following findings of fact:

FINDINGS.

1. That the Applicant has submitted a request to amend the Comprehensive Plan in accordance with the procedures as established by the Lake Elmo Planning Department and Lake Elmo Planning Commission; and
2. That the request is to amend the Comprehensive Land Use Plan:
 - a. On page III-8, updating language regarding densities within Open Space Preservation to be based on gross rather than buildable acreage.

3. The proposed density calculation is not consistent with that of the City (density within sewer developments is calculated using net density whereas the proposed amendment calculates density using gross density).
4. The current language regarding density within the Comprehensive Plan Open Space Preservation Planned Unit development ordinance helps protect natural resources by limiting allowed density to buildable acres.
5. A lower density within Open Space Preservation developments minimizes risk for septic systems to fail and thereby minimizes the need to connect to City sewer.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Lake Elmo City Council hereby denies the request by Landucci Homes, Inc. to amend the City of Lake Elmo Comprehensive Plan by amending language regarding allowable densities within Open Space Preservation developments.

Passed and duly adopted this 7th day of November 2017, by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2017-124

A RESOLUTION DENYING A ZONING TEXT AMENDMENT TO AMEND THE CITY'S OPEN SPACE PLANNED UNIT DEVELOPMENT ORDINANCE BY AMENDING LANGUAGE REGARDING ALLOWABLE DENSITY

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

WHEREAS, Landucci Homes, Inc., 13230 20th Street Court North, Stillwater, MN 55082 (the "Applicant") has submitted an application to the City to amend the City's Zoning Code, a copy of which is on file in the City Planning Department; and

WHEREAS, the Applicant has requested to amend language regarding allowable density within Open Space Preservation developments to be based on gross acreage rather than buildable.

WHEREAS, the Planning Commission held a public hearing on October 23, 2017 to consider the Applicant's requests; and

WHEREAS, the Planning Commission adopted a motion to recommend denial to the City Council on the Applicant's requests based on a number of findings; and

WHEREAS, the City Council reviewed the Planning Commission and public comments regarding the Applicant's requests at its meeting on November 7, 2017; and

WHEREAS, the City Council has reviewed the Comprehensive Plan amendment and believes that it is not consistent with the spirit and intent of the Comprehensive Plan.

NOW THEREFORE BE IT RESOLVED based upon the testimony elicited and information received, the City Council makes the following findings of fact:

FINDINGS.

1. That the Applicant has submitted a request to amend the City's Zoning Code in accordance with the procedures as established by the Lake Elmo Planning Department and Lake Elmo Planning Commission; and
2. That the request is to amend the Zoning Code:
 - a. Section 154.657 (A): Open Space PUD Design, Density by amending language regarding allowable density from buildable acreage to gross acreage.
3. The proposed density calculation is not consistent with that of the City (density within sewer developments is calculated using net density whereas the proposed amendment calculates density using gross density).

4. The current language regarding density within the Comprehensive Plan Open Space Preservation Planned Unit development ordinance helps protect natural resources by limiting allowed density to buildable acres.
5. A lower density within Open Space Preservation developments minimizes risk for septic systems to fail and thereby minimizes the need to connect to City sewer.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Lake Elmo City Council hereby denies the request by Landucci Homes, Inc. to amend the City of Lake Elmo Comprehensive Plan by amending language regarding allowable densities within Open Space Preservation developments.

Passed and duly adopted this 7th day of November 2017, by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk



STAFF REPORT

DATE: November 7, 2017

REGULAR

Item #: 17

AGENDA ITEM: 2018 Street Improvements – Resolution Receiving Feasibility Report and Calling Hearing on Improvement

SUBMITTED BY: Jack Griffin, City Engineer

REVIEWED BY: Kristina Handt, City Administrator
Brian Swanson, Finance Director
Chad Isakson, Assistant City Engineer

ISSUE BEFORE COUNCIL: Should the City Council accept the Feasibility Report and call a public hearing for the 2018 Street Improvements to be held at the December 5, 2017 Council meeting?

BACKGROUND: On August 15, 2017, the City Council authorized the preparation of a feasibility report for the 2018 Street Improvements. The streets selected for improvement in 2018 are in accordance with the City's Street Capital Improvement Program which provides for the long-term planning and management of street and transportation infrastructure throughout the City.

PROPOSAL DETAILS/ANALYSIS: This Feasibility Report has been prepared to address street and drainage improvements programmed for construction in 2018. The report serves to identify the necessary improvements, the estimated project costs, and to consider the assessment of a portion of the project costs to properties adjacent to and benefitting from the improvements.

The proposed project includes street reclaim improvements for the following street segments located in the south portion of the tri-lakes area, consisting of approximately 2.0 miles of local streets:

- Jane Road North, from Lake Jane Trail North to Jamaca Avenue North. 3,400 LF
- Jane Court North, from Jane Road North to dead end. 1,500 LF
- Jamaca Avenue North, from Jane Road North to Jamaca Avenue North. 1,300 LF
- Jerome Avenue North, from 49th Street North to 53rd Street North. 1,200 LF
- Jerome Avenue Court North, from Jerome Avenue North to dead end. 650 LF
- 53rd Street North, from Jamaca Boulevard North to 9480 53rd Street North. 2,100 LF

The timing of these street improvements was determined by the City's pavement management program. Upon review of the necessary street improvements, staff also reviews the street drainage systems and existing public utilities. In addition to the street improvements, the scope of this Report includes storm sewer casting replacement and storm sewer or drainage upgrades to prevent water from standing on or along the new street pavements. As part of the improvements the existing bituminous curb will be replaced with new concrete curb and gutter to improve drainage, improve the construction quality, and provide edge control to protect and extend the service life of the new bituminous surface.

The total estimated project cost is \$1,229,000. The improvements would be partially assessed against the benefitting properties consistent with the City's Special Assessment Policy. Street and drainage improvements are assessed at a rate of 30% of the total project costs for residential properties using a unit method. Residential properties are considered to provide an equal demand on street use and are therefore

assessed on a per unit basis. The remaining 70% of the project costs are paid through the City general fund. Residential properties along Jane Road North, Jane Court North, Jamaca Avenue North, Jerome Avenue North, Jerome Avenue Court North, and 53rd Street North with direct access to the street are included as benefitting properties. Each property is assessed one unit unless the property has the ability to be subdivided using the current underlying land use and zoning regulations. The City planning department reviews larger parcels to determine if a parcel can be subdivided and the number of lots that could be obtained.

Assessments for street and drainage improvements will be levied over a 15-year period. Assessments will be charged an interest rate of 1% over the bond rate for the project.

In addition to the recommended improvements, the estimated project costs and the proposed assessments, this report addresses the permitting requirements and the easement and right-of-way acquisition needed to implement the improvements. The feasibility report findings and recommendations will be further presented at the meeting.

FISCAL IMPACT: The total estimated project cost is \$1,229,000. with \$377,500 paid through special assessments and the remaining \$851,500 paid through the general tax levy.

RECOMMENDATION: Staff is recommending that the City Council approve Resolution No. 2017-125, receiving the Feasibility Report and calling a public hearing for the 2018 Street Improvements. The recommended motion for this action is as follows:

“Move to approve Resolution No. 2017-125, receiving the Feasibility Report and Calling a Public Hearing for the 2018 Street Improvements.”

ATTACHMENTS:

1. Resolution 2017-125 Receiving Report and Calling for Hearing on Improvements.
2. Notice of Hearing on Improvement.
3. Location Map.
4. Project Schedule.
5. Feasibility Report (*available for review at City Hall*).

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2017-125

**A RESOLUTION RECEIVING A FEASIBILITY REPORT FOR THE
2018 STREET IMPROVEMENTS AND
CALLING HEARING ON IMPROVEMENT**

WHEREAS, pursuant to City Council authorization, adopted on August 15, 2017, a feasibility report has been prepared by FOCUS Engineering, Inc. for the 2018 Street Improvements; and

WHEREAS, the feasibility report recommends that benefitting properties be assessed all or a portion of the cost of the improvements pursuant to the City's Special Assessment Policy and Minnesota Statutes, Chapter 429; and

WHEREAS, the feasibility report provides information regarding whether the proposed improvement is necessary, cost-effective, and feasible; whether it should best be made as proposed or in connection with some other improvement; the estimated cost of the improvements as recommended; and a description of the methodology used to calculate individual assessments for affected parcels.

NOW, THEREFORE, BE IT RESOLVED,

1. That the City Council will consider the improvements in accordance with the report and the assessments of the abutting properties for all or a portion of the cost of the improvements pursuant to Minnesota Statutes, Chapter 429 at an estimated total project cost of \$1,229,000.
2. A public hearing shall be held on such proposed improvements on the 5th day of December, 2017, in the council chambers of the City Hall at or approximately after 7:00 P.M. and the clerk shall give mailed and published notice of such hearing and improvement as required by law.

**ADOPTED BY THE LAKE ELMO CITY COUNCIL ON THE SEVENTH DAY OF
NOVEMBER, 2017.**

CITY OF LAKE ELMO

By: _____
Mike Pearson
Mayor

(Seal)
ATTEST:

Julie Johnson
City Clerk

**CITY OF LAKE ELMO
NOTICE OF HEARING ON IMPROVEMENT
2018 STREET IMPROVEMENTS**

Notice is hereby given that the City Council of Lake Elmo will meet in the council chambers of the city hall at or approximately after 7:00 P.M. on **Tuesday, December 5, 2017**, to consider the making of the following improvements, pursuant to Minnesota Statutes, Sections 429.011 to 429.111;

Street and drainage improvements including a new bituminous pavement supported by a renewed recycled aggregate base with new concrete curb and gutter, and a repair or restoration of the existing street drainage system for the following streets:

- Jane Road North, from Lake Jane Trail North to Jamaca Avenue North.
- Jane Court North, from Jane Road North to dead end.
- Jamaca Avenue North, from Jane Road North to Jamaca Avenue North.
- Jerome Avenue North, from 49th Street North to 53rd Street North.
- Jerome Avenue Court North, from Jerome Avenue North to dead end.
- 53rd Street North, from Jamaca Boulevard North to 9480 53rd Street North.

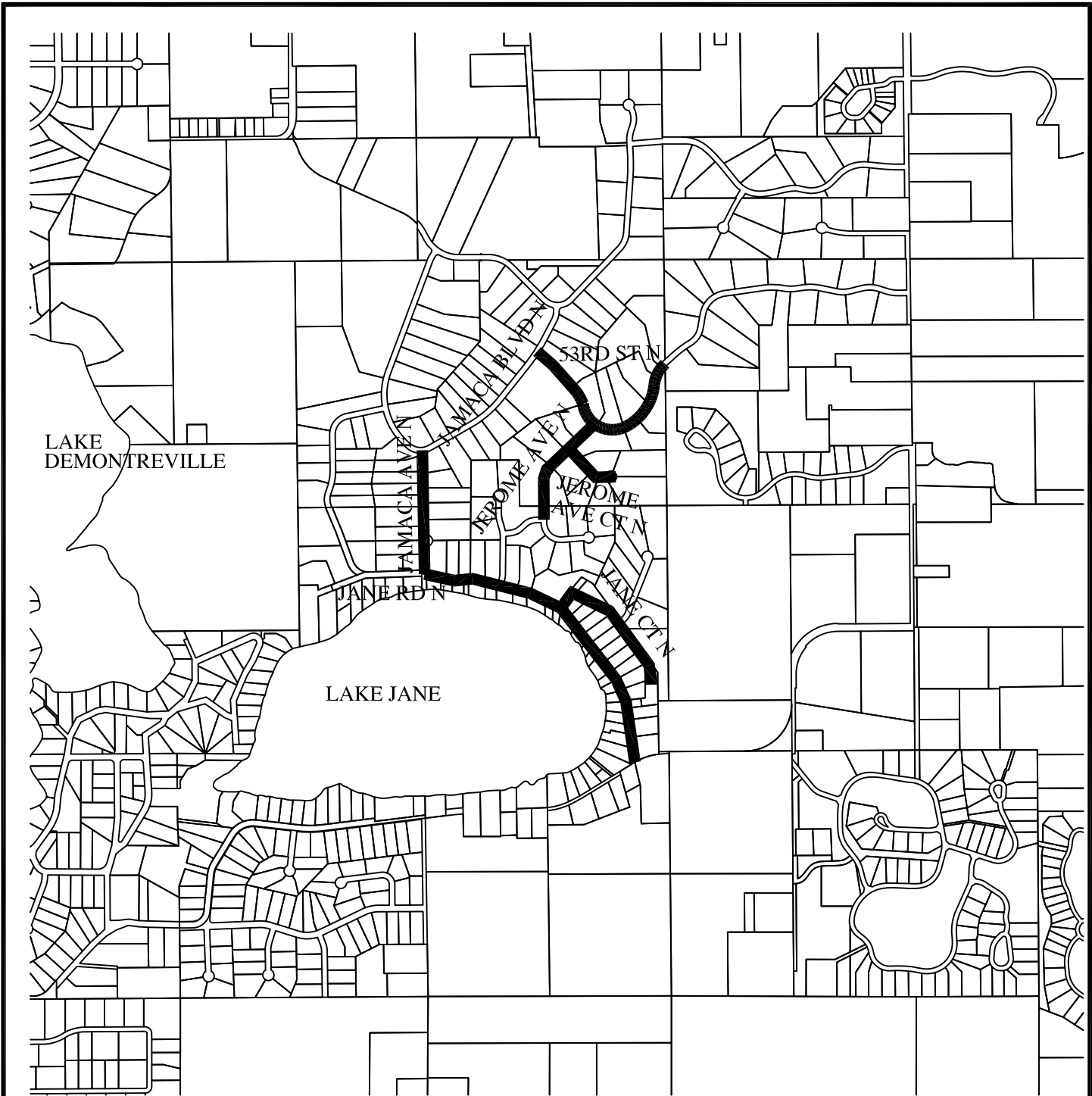
The area proposed to be assessed for these improvements include properties abutting the above referenced streets or properties that gain direct driveway access from the above referenced streets. The estimated total cost for the project is \$1,229,000. A reasonable estimate of the impact of the assessment will be available at the hearing. Such persons as desiring to be heard with reference to the proposed improvements will be heard at this meeting.

DATED: November 7, 2017

BY ORDER OF THE LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

(Published in the Oakdale/Lake Elmo Review on November 15, 2017 and November 22, 2017)



LEGEND

 2018 STREET IMPROVEMENTS



FIGURE NO. 1

LOCATION MAP
SOUTH TRI LAKES AREA

PROJECT SCHEDULE
CITY OF LAKE ELMO

FOCUS ENGINEERING, inc.

Cara Geheren, P.E. 651.300.4261
Jack Griffin, P.E. 651.300.4264
Ryan Stempki, P.E. 651.300.4267
Chad Isakson, P.E. 651.300.4283

2018 STREET IMPROVEMENTS
PROJECT NO. 2017.156

OCTOBER 2017

- AUGUST 15, 2017 Council authorizes Feasibility Report.
- NOVEMBER 7, 2017 Presentation of Feasibility Report. Council accepts Report and calls Hearing.
- DECEMBER 5, 2017 Public Improvement Hearing. Council Orders the Improvement and orders the preparation of Plans and Specifications (Requires 4/5th vote).
- MARCH 20, 2018 Council approves Plans and Specifications and orders Advertisement for Bids.
- APRIL 19, 2018 Receive Contractor Bids.
- MAY 1, 2018 Council accepts Bids and awards Contract.
- MAY 28, 2018 Conduct Pre-Construction Meeting and issue Notice to Proceed.
- SEPTEMBER 21, 2018 Substantial Completion.
 - OCTOBER 26, 2018 Final Completion.



STAFF REPORT

DATE: November 7, 2017
REGULAR
ITEM #: 18

TO: Mayor and City Council
FROM: Jake Foster, Assistant City Administrator
AGENDA ITEM: 2018 Health Insurance Plan and Rates

BACKGROUND:

Staff was presented with a renewal rate from the Southwest West Central Service Cooperative corresponding with a 20.9% increase in health insurance premiums. This increase prompted staff to have the City's insurance broker (NFP) gather quotes for 2018 employer/employee health insurance coverage from outside cooperatives, directly from providers, and through other benefits administration organizations.

The quote for the Advantage Plan from Minnesota Public Employees Insurance Program (PEIP)/Innovo Benefits Administration presented the greatest cost reduction to the City as well as staff.

ISSUE FOR DISCUSSION:

Should the City switch to Minnesota Public Employees Insurance Program's (PEIP) Advantage Plan with percentage of the health insurance premium should be covered by the employer in 2017?

PROPOSAL DETAILS/ANALYSIS:

The PEIP Advantage Plan bases their coverage on four tiers or cost levels. Employees must select an insurance provider, and their primary care clinic. The cost level is then determined based on the provider and primary care clinics they select. Most clinics fall into the cost level two category, and analysis was done based on that assumption.

A cost level two clinic in the PEIP Advantage Plan has a \$250 deductible for single coverage, and a \$500 deductible for family coverage, compared to the \$0 deductible with the City's current plan. The copay at the cost level two clinic in the PEIP Advantage Plan is \$30 compared to the \$25 copay. The out-of-pocket maxes for medical the PEIP Advantage Plan is \$1,200 for single and \$2,400 at a level two clinic, and \$800/\$1,600 for prescriptions respectively. The out-of-pocket medical maxes for the City's current plan, and proposed renewal, are \$1,500 per person, \$750 for single prescription and \$1,500 for family.

Last year, the HR Committee recommended that the City cover 90% of the premium for single coverage and 80% for family coverage. Staff recommends that Council adopt Resolution 2017-122 approving the PEIP Advantage Plan, and a 90% City premium contribution for single/employee coverage and an 80% City premium contribution for family coverage.

Employees will also see annual savings of approximately \$190 for single coverage, and \$300 for family coverage.

FISCAL IMPACT:

The City will save approximately \$33,000 by opting to approve the PEIP Advantage Plan in place of the SWCSC renewal, and chooses to adopt the 90% City contribution for employee coverage, and 80% City

contribution for employee family coverage policy as proposed by the HR Committee. Of this amount about \$30,000 will be reduced in the general fund budget and the remainder from the utility funds in 2018. If approved, staff will update the 2018 budget documents before final adoption. This would result in the proposed tax levy increase declining from 22.911% to 21.870% and the tax rate declining from 22.602% to 22.411%. This change saves the median value home roughly \$7.00.

OPTIONS:

- 1) Adopt Resolution 2017-122 to approve the PEIP Advantage Plan and the HR Committee's recommendation for City
- 2) Amend and then Adopt Resolution 2016-108

RECOMMENDATION:

"Motion to adopt Resolution 2017-122

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2017-122

*A RESOLUTION APPROVING HEALTH CARE PLAN AND ESTABLISHING CITY
CONTRIBUTION TO EMPLOYEE HEALTH INSURANCE BENEFITS FOR 2017*

WHEREAS, the Lake Elmo City Council has determined that it is the best interest of the City to provide a health insurance plan to help maintain the health of its current employees and to enable the city to attract and retain a quality workforce; and

WHEREAS, it is now necessary to determine the insurance plan and contributions to premium costs for the period from 1/1/2018 to 12/31/2018;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAKE ELMO, WASHINGTON COUNTY, MINNESOTA, that it should and hereby does approve the PEIP Advantage Plan for the period of 1/1/18 to 12/31/18; and

FURTHER BE IT RESOLVED, that for calendar year 2018, the City of Lake Elmo's contribution to the total cost of providing health insurance benefits shall be as follows: 90% of premium for single coverage and 80% of premium for family coverage.

This resolution was adopted by the City Council of the City of Lake Elmo on this ____ day of _____, 2017.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk



STAFF REPORT

DATE: November 7, 2017
REGULAR #19

AGENDA ITEM: Easton Village 2nd and 3rd Addition Development Agreement Amendment Request
TO: Mayor and City Council
SUBMITTED BY: Emily Becker, Planning Director
REVIEWED BY: Kristina Handt, City Administrator

BACKGROUND:

The City has received a request by Chase Development, Inc. to amend the Development Agreements for Easton Village 2nd and 3rd Additions to allow building permits prior to installation of sidewalks.

ISSUE BEFORE COUNCIL:

Should the Development Agreements for Easton Village 2nd and 3rd Additions be amended to allow the City to release building permits prior to installation of sidewalks?

PROPOSAL:

The City adopted a new Developer Agreement Template in January of 2016 and has continued to make updates. The latest version of the template states that no building permit shall be issued for any lot until sanitary sewer, water, storm sewer, curbing and one lift of asphalt has been installed and tested for all public streets; sidewalks have been installed; street and traffic control signs are installed; property monuments have been installed and grading as-built plans have been submitted and approved by the City. Therefore, the requirement that sidewalks are installed prior to building permits has been established for a number of developments. The Royal Golf Club at Lake Elmo Development Agreement was amended to allow sidewalks to be installed as a requirement of issuance of certificates of occupancy. This exception was made due the unique nature of the development requiring lift stations and significant utility work that was necessary before the winter season.

The City requires sidewalks to be installed prior to issuance of building permits in order to prevent builders from changing established grades required for sidewalks. This policy generally results in better infrastructure. Therefore, Staff would not recommend that this change be made. However, if Council does wish to allow this change, Staff suggests that language be included to require the developer to install sidewalks according to the approved grading plan. Additionally, if Council does wish to allow this change, the Council should consider amending the Developer Agreement Template so that in the future all developers are treated equally in this regard.

Draft Development Agreement amendments are proposed on pages 14 and 15 of the attached Development Agreements for reference.

FISCAL IMPACT:

Requiring sidewalks to be installed prior to the release of building permits could result in better infrastructure, thereby possibly reducing future maintenance and repair costs.

OPTIONS:

- 1) Approve Resolution No 2017-126 and 2017-127 denying Easton Village 2nd and 3rd Additions Development Agreements amendment
- 2) Approve Resolution No 2017-126 and 2017-127 approving Easton Village 2nd and 3rd Additions Development Agreements amendment
- 3) Amend and then Approve either Resolutions

RECOMMENDATION:

“Motion to adopt Resolution No 2017-126 and 2017-127 denying the requests to amend Easton Village 2nd and 3rd Addition Development Agreements to allow building permits to be released prior to installation of sidewalks.”

If the Council approves the amendments, Staff should also be directed to include this provision in the Development Agreement template to be used for future Development Agreements.

“Motion to adopt Resolution No 2017-126 and 2017-127 approving the requests to amend Easton Village 2nd and 3rd Addition Development Agreements to allow building permits to be released prior to installation of sidewalks.”

ATTACHMENTS:

- Resolution 2017-126 and 2017-127 denying the amendments to Easton Village 2nd and 3rd Additions Development Agreements.
- Resolution 2017-126 and 2017-127 approving the amendments to Easton Village 2nd and 3rd Additions Development Agreement
- Amended Development Agreement Drafts for Easton Village 2nd and 3rd Additions

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2017-126

*A RESOLUTION DENYING AMENDMENTS TO THE APPROVED DEVELOPMENT
AGREEMENT FOR EASTON VILLAGE 2ND ADDITION*

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

WHEREAS, Chase Development, Inc. 2140 County Rd 42 W, Burnsville, MN 55337 (“Applicant”) has previously submitted an application to the City of Lake Elmo (“City”) for a Final Plat for Easton Village 2nd Addition; and

WHEREAS, The Lake Elmo City Council adopted Resolution No. 2017-040 on May 2, 2017 approving the Final Plat for Easton Village 2nd Addition; and

WHEREAS, The Lake Elmo City Council adopted Resolution No. 2017-057 on June 6, 2017, approving the Development Agreement for Easton Village 2nd Addition; and

WHEREAS, the Applicant has requested that the Development Agreement for Easton Village 2nd Addition be amended to allow building permits to be released prior to installation of sidewalks and to require installation of sidewalks prior to release of certificates of occupancy.

WHEREAS, the City has established a Development Agreement template which requires that sidewalks be installed prior to release of building permits in order to help ensure quality infrastructure, thereby potentially reducing future maintenance and repair costs.

NOW, THEREFORE, based on the information received, the City Council of the City of Lake Elmo does hereby deny the amended Developer’s Agreement for Easton Village 2nd Addition.

Passed and duly adopted this 7th day of November 2017 by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2017-127

*A RESOLUTION DENYING AMENDMENTS TO THE APPROVED DEVELOPMENT
AGREEMENT FOR EASTON VILLAGE 3RD ADDITION*

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

WHEREAS, Chase Development, Inc. 2140 County Rd 42 W, Burnsville, MN 55337 (“Applicant”) has previously submitted an application to the City of Lake Elmo (“City”) for a Final Plat for Easton Village 3rd Addition; and

WHEREAS, The Lake Elmo City Council adopted Resolution No. 2017-076 on July 18, 2017 approving the Final Plat for Easton Village 3rd Addition; and

WHEREAS, The Lake Elmo City Council adopted Resolution No. 2017-081 on July 18, 2017, approving the Development Agreement for Easton Village 3rd Addition; and

WHEREAS, the Applicant has requested that the Development Agreement for Easton Village 3rd Addition be amended to allow building permits to be released prior to installation of sidewalks and to require installation of sidewalks prior to release of certificates of occupancy.

WHEREAS, the City has established a Development Agreement template which requires that sidewalks be installed prior to release of building permits in order to help ensure quality infrastructure, thereby potentially reducing future maintenance and repair costs.

NOW, THEREFORE, based on the information received, the City Council of the City of Lake Elmo does hereby deny the amended Developer’s Agreement for Easton Village 3rd Addition.

Passed and duly adopted this 7th day of November 2017 by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2017-126

*A RESOLUTION APPROVING AMENDMENTS TO THE APPROVED DEVELOPMENT
AGREEMENT FOR EASTON VILLAGE 2ND ADDITION*

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

WHEREAS, Chase Development, Inc. 2140 County Rd 42 W, Burnsville, MN 55337 (“Applicant”) has previously submitted an application to the City of Lake Elmo (“City”) for a Final Plat for Easton Village 2nd Addition; and

WHEREAS, The Lake Elmo City Council adopted Resolution No. 2017-040 on May 2, 2017 approving the Final Plat for Easton Village 2nd Addition; and

WHEREAS, The Lake Elmo City Council adopted Resolution No. 2017-057 on June 6, 2017, approving the Development Agreement for Easton Village 2nd Addition; and

WHEREAS, the Applicant and City have agreed to amend the approved Development Agreement to allow building permits to be released prior to installation of sidewalks and to require installation of sidewalks prior to release of certificates of occupancy.

NOW, THEREFORE, based on the information received, the City Council of the City of Lake Elmo does hereby approve the amended Developer’s Agreement for Easton Village 2nd Addition and authorizes the Mayor and City Clerk to execute the document.

Passed and duly adopted this 7th day of November 2017 by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2017-127

*A RESOLUTION APPROVING AMENDMENTS TO THE APPROVED DEVELOPMENT
AGREEMENT FOR EASTON VILLAGE 3RD ADDITION*

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

WHEREAS, Chase Development, Inc. 2140 County Rd 42 W, Burnsville, MN 55337 (“Applicant”) has previously submitted an application to the City of Lake Elmo (“City”) for a Final Plat for Easton Village 3rd Addition; and

WHEREAS, The Lake Elmo City Council adopted Resolution No. 2017-076 on July 18, 2017 approving the Final Plat for Easton Village 3rd Addition; and

WHEREAS, The Lake Elmo City Council adopted Resolution No. 2017-081 on July 18, 2017, approving the Development Agreement for Easton Village 3rd Addition; and

WHEREAS, the Applicant and City have agreed to amend the approved Development Agreement to allow building permits to be released prior to installation of sidewalks and to require installation of sidewalks prior to release of certificates of occupancy.

NOW, THEREFORE, based on the information received, the City Council of the City of Lake Elmo does hereby approve the amended Developer’s Agreement for Easton Village 3rd Addition and authorizes the Mayor and City Clerk to execute the document.

Passed and duly adopted this 7th day of November 2017 by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

(reserved for recording information)

DEVELOPMENT AGREEMENT

(Public sewer and water)

Easton Village 2nd Addition

THIS DEVELOPMENT AGREEMENT is dated _____, 2017, by and between the **CITY OF LAKE ELMO**, a Minnesota municipal corporation (the "City"), and to Chase Development, Inc, a Minnesota Limited Liability Company (the "Developer").

1. REQUEST FOR PLAT APPROVAL. The Developer has asked the City to approve a plat for Easton Village 2nd Addition (referred to in this Agreement as the "Subdivision"). The property being platted is situated in the County of Washington, State of Minnesota, and is legally described on **Exhibit A**.

2. CONDITIONS OF PLAT APPROVAL. The City hereby approves the Subdivision on condition that the Developer enter into this Agreement, furnish the security required by it, and record the plat with the County Recorder or Registrar of Titles within 120 days after the City Council approves the final plat.

3. RIGHT TO PROCEED. This Agreement is intended to regulate the development of the Property and the construction therein of certain public and private improvements. The Developer

may not grade or otherwise disturb the earth, remove trees or construct public or private improvements or any buildings within the Subdivision until all the following conditions precedent have been satisfied:

- A. the Developer has executed and recorded with Washington County all drainage and utility easements required for the Subdivision by the City Engineer and Public Works Director in the City's standard form;
- B. the Developer has executed and recorded with Washington County the storm water maintenance and easement agreement in the City's standard form;
- C. this Agreement has been executed by the Developer and the City;
- D. the required Letters of Credit (as hereinafter defined) have been received by the City from or on behalf of the Developer including a \$10,854 for park dedication that will be released upon required dedication of park land with a future phase of the development.
- E. final construction plans and specifications have been submitted by the Developer and approved by the City Engineer;
- F. the Developer has paid the City for all legal, engineering and administrative expenses incurred by the City regarding the City approvals and has given the City the additional construction inspection escrow required by this Agreement;
- G. the Developer has paid any outstanding assessments and taxes for the property or property being deeded to the City;
- H. the Developer has fulfilled any park dedication requirements as specified under this Agreement;
- I. the Developer has received all necessary permits from the MPCA, MDH, DNR, applicable watershed, Washington County, and any other agency having jurisdiction over the Subdivision;

- J. the Developer has provided the City with a certificate of insurance required by this Agreement;
- K. the Developer or the Developer's engineer and the Developer's contractor(s) have initiated and attended a preconstruction meeting with the City Engineer, and City staff;
- L. the final plat has been recorded with Washington County;
- M. the City has issued a written notice that all above conditions have been satisfied and that the Developer may proceed;
- N. Legal documents regarding homeowner association documents, covenants, and restrictions have been submitted, reviewed and approval by the City Attorney; and
- O. the Developer shall provide a Title Policy for all land dedicated to the City.

4. PHASED DEVELOPMENT. If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases of the development if the Developer is not in compliance with any term of this Agreement and the non-compliance has not been remedied. Development of subsequent phases of the development may not proceed until development agreements for such phases are approved by the City. Park dedication charges and availability charges for sewer and water referred to in this Agreement are not being imposed on outlots that are designated in the plat for future subdivision into lots and blocks, if any, in the plat. Such charges will be calculated and imposed when these outlots, if any, are platted into lots and blocks.

5. PRELIMINARY PLAT STATUS. If the Subdivision 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 Agreement, no amendments to the City's Comprehensive Plan or official controls shall apply to

or affect the 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 Agreement to the contrary, to the full extent permitted by state law, the City may require compliance with any changes to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Agreement.

7. DEVELOPMENT PLANS. The Developer agrees to develop the Property in accordance with the City approvals, including the terms and conditions of approval of the final plat as detailed in City Council Resolution No. 2017-040, and to construct all improvements in accordance with the approved construction plans and specifications (collectively, the "Plans") prepared by a professional engineer registered in the State of Minnesota at its sole expense. All terms and conditions of the City approvals are hereby incorporated by reference into this Agreement. The documents which constitute the Plans are those on file with and approved by the City and are listed on **Exhibit B** attached hereto. The Plans may not be modified by the Developer without the prior written approval of the City.

8. IMPROVEMENTS. In developing the Subdivision in accordance with the Plans, the Developer shall make or install at its sole expense the following public and private improvements (collectively, the "Subdivision Improvements"):

- A. Grading and erosion control;
- B. Sanitary sewer;
- C. Water system improvements;
- D. Stormwater improvements (storm sewer pipe, control structures, ponds, BMPs, etc.);
- E. Streets and sidewalks;
- F. Trails;
- G. Underground private utilities;
- H. Landscaping;
- I. Street lighting and signage;
- J. Intersection improvements (turn lanes, by-pass lanes, traffic control, etc.);

- K. Tree preservation and reforestation;
- L. Wetland mitigation and buffers; and
- M. Monuments required by Minnesota Statutes.

All improvements shall be installed in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. 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 Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation 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 or a soil engineer inspect the Developer's 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.

9. CITY ADMINISTRATION AND CONSTRUCTION OBSERVATION.

At the time of the City's approval of the final plat for the Subdivision, the Developer shall submit to the City an amount to be escrowed by the City for City administration and construction observation costs in an amount provided under paragraph 38 of this Agreement - Summary of Cash Requirements. Thereafter, the Developer shall reimburse the City each month, within 30 days of receiving an invoice, for all administration and construction observation costs incurred by the City during the construction of the Subdivision Improvements by the City's engineering, public works, planning, and landscape architecture staff and consultants. After 30 days of the invoice, the City may draw upon the escrow and stop the work on site until the escrow has been replenished in its full amount. City administration and oversight will include monitoring of construction progress and construction observation, consultation with the Developer and the

Developer's professionals 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 the Security. 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 by the City on an hourly basis.

The direction and review provided by the City through the inspection of the Subdivision Improvements should not be considered a substitute for the Developer-required management of the construction of the Subdivision Improvements. The Developer must require the Developer's 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 Subdivision Improvement. The City shall inspect all Developer-installed Subdivision Improvements during and after construction for compliance with the Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer will notify the City at such times during construction as the City 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 the 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 twenty-five (25) percent ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the Subdivision Improvements identified in Paragraph 8 above.

11. TIME OF PERFORMANCE. The Developer shall install all required Subdivision Improvements by October 31, 2017, with the exception of the final wear course of asphalt on streets. The Developer shall install the bituminous wearing course of streets after the first course has weathered a winter season, consistent with warranty requirements, however, final acceptance

of the Subdivision Improvements by the City 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.

12. MAINTENANCE DURING CONSTRUCTION. The Developer shall be responsible for all maintenance of the Subdivision Improvements including the snow plowing of the streets, roads and alleys until the Subdivision Improvements are accepted by the City in writing. *The developer is also responsible to locate all underground utilities until the development is accepted in writing by the City.* Warning signs shall be placed by the Developer 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 by the Developer. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage to ensure that the streets are passable for traffic and emergency vehicles. The Developer shall be responsible for keeping streets within and without the Subdivision clean and clear of dirt and debris that may spill, track, or wash onto the street from the Developer's operations. The Developer shall contract for street cleaning for streets within and immediately adjacent to the Subdivision. At a minimum, scraping and sweeping shall take place on a weekly basis.

Prior to the City's acceptance of the streets the City may agree, at the City's sole discretion, to keep the streets open during winter months by plowing snow. The City will consider snow plowing streets on a case by case basis and under the following conditions. 1) The Developer must request in writing the streets in question to be plowed by the City, with such request received prior to October 1st of each winter season that plowing is requested. 2) The

streets must be occupied by residences of the City. 3) For streets that do not have the bituminous wear course placed, the developer must install paved wedges along all curb lines and catch basins. 4) Gate valves and manholes must be level with the pavement surface. 5) Street curves, center medians, and other protrusions in the right-of-ways must be delineated with "High-vis" fiberglass stakes. 6) A site review must be scheduled and conducted with Public Works, and attended by the developer, to accept the streets for plowing prior to the commitment of plowing by the City. 7) The City shall not be responsible for any damage caused by snow plowing operations to the streets, curb and gutter, manholes, catch basins or other infrastructure. 8) The Developer shall enter into an Agreement with the City for plowing of the streets.

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

14. CONSTRUCTION ACCESS. Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the Subdivision via Linden Avenue North and the Village Parkway. No construction traffic is permitted on other adjacent local streets.

15. CONSTRUCTION SEQUENCE AND COMPLIANCE. The City will require the Developer to construct the Subdivision Improvements in a sequence which will allow progress and compliance points to be measured and evaluated. The Developer and the Developer's representatives are required to supervise and coordinate all construction activities for all Subdivision 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. EROSION CONTROL. All construction regarding the Subdivision Improvements shall be completed in a manner designed to control erosion and in compliance with the City Code, the City's Engineering Design and Construction Standards Manual, all watershed district permits, the

Minnesota Pollution Control Agency's best management practices, and other requirements including the City's permit with the Minnesota Pollution Control Agency for the municipal separate storm sewer system program. Prior to initiating any work on the site, an erosion control plan must be implemented by the Developer and inspected and approved by the City. Erosion and sediment control measures shall be coordinated with the various stages of development. The City may impose additional erosion control requirements at any stage in development as deemed necessary to maintain a compliant site. All areas disturbed for site improvements must be reseeded by the Developer promptly after the work in the area is complete unless construction of the next stage of the improvements will begin in that area within seven (7) days. 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 by the City unless the Subdivision is in full compliance with the approved erosion control plan.

If building permits are issued prior to the acceptance of public Subdivision Improvements, the Developer assumes all responsibility for erosion control compliance throughout the Subdivision 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. SITE GRADING. In order to construct the Subdivision Improvements and otherwise

prepare the Property for development, it will be necessary for the Developer to grade the Subdivision. All grading must be done in compliance with this Agreement and the approved grading plans. Within 30 days after completion of the grading, the Developer shall provide the City with an "as built" grading plan and a certification by a registered land surveyor or engineer as required in the City's Engineering Design and Construction Standards Manual.

18. STREET AND UTILITY IMPROVEMENTS. All storm sewers, sanitary sewers, watermain, and streets, including turn lane and intersection improvements, shall be installed in accordance with the approved Plans, the City approvals, the City Code, and the City's Engineering Design and Construction Standards Manual. Curb and gutter, the first lift of the bituminous streets, sidewalks, 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 the Developer's 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 shall be installed by the Developer after the first bituminous course has weathered a winter season. Prior to placement of the final bituminous wear course, the Developer shall repair or replace all broken or failing curbs, sidewalks and damaged or settled streets as determined by the City from a pre-wear course walk through inspection.

19. LANDSCAPING AND TREE REPLACEMENT IMPROVEMENTS.

- A. The Developer agrees to install landscaping in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. All landscaping materials such as trees, shrubs, grasses, or other vegetation installed

by the Developer must be warranted and maintained for a period of two (2) years. The two (2) year warranty period shall be deemed to start once all required landscaping identified as responsibility of Developer in the approved Plans has received acceptance by the City. The Developer agrees to have the installer of the landscaping complete an inspection thirty (30) days prior to the end of the two (2) year warranty period and provide the City with a written report identifying the condition of all landscaping. In the event any landscaping installed by the Developer is deemed to be in poor condition or dead, the Developer is to replace the landscaping with like kind materials or as otherwise approved by the City.

- B. The Developer shall be responsible for maintaining regular watering, fertilizing, and over-seeding necessary to establish final lawns and yards as identified in the approved Plans for outlots, public rights-of-way, and any disturbed areas outside the Subdivision boundaries according to a landscape maintenance plan approved by the City. The Developer agrees to achieve “substantial performance” on all seeded or sodded lawns and yards disturbed during the construction of Subdivision Improvements. For the purpose of this agreement “substantial performance” shall be defined for areas seeded or sodded with a turf or lawn mix as “square foot turf areas with an average blade height of three (3) inches free of eroded, bare, or dead spots and free from perennial weeds or unwanted grasses with no visible surface soil.” For areas seeded with a native grass or flower mix “substantial performance” shall be defined as “square foot native grass or flower areas with an average height of eight (8) inches free of eroded, bare, or dead spots and no visible surface soil.”
- C. The Developer shall follow the City of Lake Elmo “Bee Safe” policy for pesticide use as per City Council Resolution # 2015-13.

20. SIGNAGE, STREET LIGHTING AND OTHER UTILITIES. The Developer agrees to

install street signs, traffic and parking signs, and pavement markings within the Subdivision all in accordance with the approved Plans and the City Engineering Design Standards Manual. Street and traffic sign details shall be submitted by the Developer to the City for approval prior to installation. In addition, the Developer shall be responsible for the cost and all coordination work to extend private utilities along with street lighting within the Subdivision all in accordance with the approved plans and right-of-way permits.

21. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction required by this Agreement, the Subdivision Improvements lying within public easements shall become City property. Prior to acceptance of the public Subdivision Improvements by the City, the Developer must furnish the City with a complete set of reproducible "record" plans and 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 Agreement. 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 that the public Subdivision Improvements have been completed in accordance with the terms of this Agreement, the City Engineer will accept the completed public Subdivision Improvements.

22. PARK DEDICATION. The Developer shall be required to dedicate 9.84 acres of land for public park purposes for the entire subdivision. The Developer was required to dedicate 3.99 acres with the Easton Village 1st Addition. Future phases shall either dedicate the remaining 5.85 acres park land or pay a cash payment in lieu of land dedication consistent with the Lake Elmo Subdivision Ordinance. The developer shall provide a security in the form of a Letter of Credit in the amount of \$10,854 which represents fee in lieu of park dedication for the 5.2 acre final plat to be released by the City when the required 5.85 acres of parkland is dedicated to the City with

future phases. .

23. VILLAGE AREA AUAR FEE. The Developer shall be responsible for the payment of the Village Area Alternative Urban Areawide Review (AUAR) fee as adopted by the City Council with respect to the environmental review completed by the City. The Village Area Alternative Urban Areawide Review (AUAR) fee in the amount of \$230.00 per REC shall be paid by the Developer prior to the City recording the final plat. The total amount to be paid by the Developer is \$4,370.00

24. 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 Subdivision 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 REC shall be paid by the Developer to the City prior to recording the final plat. The total amount to be paid by the Developer is \$57,000.00.

The water availability charge (WAC) in the amount of \$3,000.00 per REC shall be paid by the Developer to the City prior to recording the final plat. The total amount to be paid by the Developer is \$57,000.00.

In addition, a sewer connection charge in the amount of \$1,000.00 per REC, a Metropolitan Council sewer availability charge in the amount of \$2,485.00 per REC, and a water connection charge in the amount of \$1,000.00 per REC will be payable by the Developer and collected by the City at the time the building permit is issued for each lot.

25. STREET LIGHTS. The Developer is responsible for the cost of street light installation consistent with a street lighting plan approved by the City. Before the City signs the final plat, the Developer shall post a Security for street light installation consistent with the approved plan. The required Security is \$48,000 and consist of seven (8) decorative lights at \$6000 each, a Developer

shall also pay the City \$1032 to reimburse the City for the first year operating costs for the street lights.

26. WETLAND MITIGATION. The Developer shall complete wetland mitigation/restoration in accordance with the approved Plans 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 to perform the work if the Developer fails to take corrective measures after being provided reasonable notice by the City.

27. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

- A. No building permit shall be issued for any lot within the Subdivision, or within a completed phase of the Subdivision in a City preapproved phasing plan, until such time that sanitary sewer, water, storm sewer, curbing and one lift of asphalt has been installed and tested for all public streets; ~~sidewalks have been installed~~; street and traffic control signs are installed; property monuments have been installed and grading as-built plans have been submitted and approved by the City. A “preapproved phasing plan” is defined as a phased construction plan that has been submitted by the Developer and approved by the City in advance of the preconstruction meeting for the Subdivision. Once the construction has started, the City will not consider revisions to the phasing plan for the purpose of issuing building permits.
- B. Issuance of a single building permit for a “model home” may be authorized by the City Planning Director prior to the completion of the Subdivision Improvements described in paragraph 27 (A) above, if there is safe public access to the lot that is sufficient to allow construction to proceed and there is a grading as-built plan approved by the City for the lot and all downstream storm water drainage facilities.

However, the City will not issue a certificate of occupancy for any "model home" until all conditions identified in paragraph 27 (A) above have been completed. The Developer shall use the model home only for real estate sales purposes and no other purposes.

- C. 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 Planning Department.
- D. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and withholding of other permits, inspection or actions and the halting of all work in the Subdivision.
- E. If building permits are issued prior to the acceptance of the public Subdivision Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of public Subdivision Improvements and damage to public Subdivision Improvements caused by the City, Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any 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. No certificate of occupancy will be issued for any lot within the Subdivision in a City preapproved phasing plan until such time that sidewalks have been installed continuously from end of street to end of street in such phase without exceptions. The Developer is responsible for installing sidewalks to the approved grading plan.
- F.

28. RESPONSIBILITY FOR COSTS.

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- A. In the event that the City receives claims from labor, materialmen, or others that work required by this Agreement has been performed and the amounts due to 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 Security 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 letter of credit deposited with the District Court, except that the Court shall retain jurisdiction to determine attorneys' fees pursuant to this Agreement.
- 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 Subdivision, including but not limited to legal, planning, engineering, and inspection expenses incurred in connection with the City's approval and acceptance of the plat and the Subdivision, the preparation of this Agreement, the City's review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting development of the Subdivision. All amounts incurred and due to the City at the time of the recording of the final plat must be fully paid by the Developer prior to the City executing and releasing the final plat for recording.
- C. The Developer shall hold the City and its officials, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from the City's approval of the plat and the development of the Subdivision. The Developer shall indemnify the City and its officials, 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

Agreement, 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 Agreement. 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 Property, or any portion of it.

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

29. RAILROAD CROSSING IMPROVEMENTS. The Developer shall be required to pay for a portion of the costs to secure, build and install a public rail crossing at the location shown in Exhibit B to specifications required by the City, the Minnesota Department of Transportation, the Union Pacific Rail Road and any other regulatory agency having jurisdiction over the crossing and the track in accordance with the specifications of the City of Lake Elmo. The Developer's portion of these costs shall be calculated based on the percentage of the overall number of Residential Equivalency Connection (REC) units planned for developments that will directly access the Village Parkway minor collector road between Washington County Highway 14 and 30th Street divided by the estimated overall project costs. The City will request that all future development projects connecting directly to Village Parkway contribute towards said crossing improvement. The Developer shall provide all property in fee and/or easements as required by the City necessary to establish the railroad crossing. The Developer paid \$63,000 out of the estimated \$193,000 to the City for its share of the estimated cost railroad crossing improvements with the final plat of Easton Village 1st Addition.

- A. The amount of the cash payment for Easton Village 2nd Addition shall be \$16,791 which was calculated as follows: \$193,000 (Easton Village's share of the estimated project costs multiplied by 8.7% (19 Lots / 217 Lots in all phases) =

\$16,791. In addition, the Developer shall pay the amount remaining due from Easton Village 1st Addition, \$111, which should have been calculated as: \$193,000 (Easton Village's share of the estimated project costs multiplied by 32.7% (71 Lots / 217 Lots in all phases) = \$63,111, less the \$63,000 previously paid. The total payment shall be \$16,902 to fulfill the requirements for phase 1 and phase 2.

B. The calculation for future railroad crossing costs has been determined as follows:

Parcel ID(s)	Percentage	Total Costs
Easton Village 13.029.21.14.0002 13.029.21.42.0001 13.029.21.41.0001 13.029.21.13.0001	38.6%	\$193,000
13.029.21.43.0004 13.029.21.44.0002	17.8%	\$89,000
13.029.21.12.0001 13.029.21.14.0002	30.2%	\$151,000
13.029.21.24.0001	13.4%	\$67,000
Totals	100%	\$500,000

C. If the construction amount of the railroad crossing installation exceeds \$500,000, the additional cost shall be allocated proportionally to the parcels listed above upon consent of all property owners and the City. The City may participate in the additional costs of construction of the railroad crossing if it is deemed to be necessary as a matter of public safety.

30. SPECIAL PROVISIONS. The following special provisions shall apply to the Subdivision:

A. Implementation of the recommendations listed in the April 12, 2017, Engineering memorandum.

- B. The Developer shall install a temporary turnaround on the north end of Linden Avenue N and the north end of the Village Parkway until it is extended to the north with the future phase of the Easton Village development.
- C. The Developer must obtain a sign permit from the City Building Official prior to installation of any subdivision identification signs.
- D. The Developer shall enter into a Landscape License Agreement with the City that clarifies the individuals or entities responsible for maintenance of any landscaping installed in areas outside of land dedicated as public park and open space on the final plat.
- E. The Village Parkway shall be constructed complying with the Village Parkway Typical Section and Village Parkway Collector Design Guidelines as modified with the approval of the Easton Village 2nd Addition Final Plat.

31. MISCELLANEOUS.

- A. The Developer may not assign this Agreement without the written permission of the City Council. The Developer's obligations hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire Property, or any portion of it.
- B. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a professional 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. All retaining walls identified on the Plans or by special conditions referred to in this Agreement shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.

C. Legal documents regarding homeowner association documents, covenants, and restrictions shall be submitted to the City prior to recording of the final plat for review and approval by the City Attorney.

D. The 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 Subdivision 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 \$1,500,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a combination single limit policy of \$1,500,000 or more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate of insurance 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 Agreement.

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

G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. 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 Agreement shall not be a waiver or release.

- H. This Agreement shall run with the land and may be recorded against the title to the Property at the Developer's expense. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the Property being final platted and has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the Property, including, but not limited to, mortgagees; 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 Subdivision and the Subdivision Improvements comply or will comply 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 Subdivision is not in compliance, the City may, at its option, refuse to allow construction or development work in the Subdivision until it is brought into compliance. Upon the City's demand, the Developer shall cease work until there is compliance.

32. 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 the Developer to commence and complete construction of the public Subdivision Improvements pursuant to the terms, conditions and limitations of this Agreement.
- B. Failure by the Developer to substantially observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

33. 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 the Developer, deemed adequate by the City, that Developer will cure its default and continue its 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 the Developer, or immediately draw on the Security, as set forth in this Agreement.

34. ENFORCEMENT BY CITY; DAMAGES. The Developer acknowledges the right of the City to enforce the terms of this Agreement against the Developer, by action for specific performance or damages, or both, or by any other legally authorized means. In the event of a default by the Developer as to construction or repair of any of the Subdivision Improvements or any other work or undertaking required by this Agreement, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek

an order from any court for permission to enter the Subdivision for such purposes. If the City does such work, the City may, in addition to its other remedies, levy special assessments against the land within the Subdivision to recover the costs thereof. For this purpose, the Developer, for itself and its successors and assigns, expressly waives any and all procedural and substantive objections to the special assessments, including, but not limited to, hearing requirements, and any claim that the assessments exceed the benefit to the land so assessed. The Developer, for itself and its successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes Section 429.081.

The Developer also acknowledges that its failure to perform any or all of the Developer's obligations under this Agreement may result in substantial damages to the City; that in the event of default by the Developer, 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.

35. WARRANTY. During the warranty period, the Developer warrants that all Subdivision Improvements will be free from defects and that they will continue to meet all technical specifications and standards. During the warranty period, the Developer agrees to repair or replace any Subdivision Improvement, or any portion or element thereof, which shows signs of failure, normal wear and tear excepted. If the Developer fails to repair or replace a defective Subdivision Improvement during the warranty period, the City may repair or replace the defective portion and may use the Security to reimburse itself for such costs. The Developer agrees to reimburse the City fully for the cost of all Subdivision Improvement repair or replacement if the cost thereof exceeds the remaining amount of the Security. Such reimbursement must be made within 45 days of the date upon which the City notifies the Developer of the cost due under this paragraph. The Developer hereby agrees to permit the City to specially assess any unreimbursed costs against any lots in the Subdivision which have not been sold to home buyers if the Developer

fails to make required payments to the City. The Developer, on behalf of itself and its successors and assigns, acknowledges the benefit to the lots within the Subdivision of the repair or replacement of the Subdivision Improvements and hereby consents to such assessment and waives the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.

- A. The required warranty period for all work relating to the public sewer and water 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 of the work.
- C. The required warranty period for sod, trees, and landscaping is two (2) years from the date of final written City acceptance of the installation.

36. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public Subdivision Improvements, and construction of all public Subdivision Improvements, the Developer shall furnish the City with an irrevocable letter of credit or a cash escrow or a combination of a cash escrow and letter of credit (the "Security") in the amount of **\$702,776**. The bank originating the letter of credit shall be determined by the City to be solvent and creditworthy. The letter of credit shall substantially be in the form attached to this Agreement and must be approved by the City. The amount of the Security was calculated as itemized on Exhibit C. If at any time the City reasonably determines that the bank issuing the letter of credit no longer satisfies the City's requirements regarding solvency and creditworthiness, the City shall notify the Developer and the Developer shall provide to the City within 45 days a substitute for the letter of credit from another bank meeting the City's requirements. If the Developer fails to provide the City within 45 days with a substitute letter of credit from an issuing bank satisfactory to the City,

the City may draw under the existing letter of credit.

This breakdown is for historical reference; it is not a restriction on the use of the Security. The City may draw down the Security, without notice, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term. If the required public Subdivision 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 by the City to cure the default.

37. REDUCTION OF SECURITY. Upon written request by the Developer and upon receipt of proof satisfactory to the City Engineer that work has been completed in accordance with the approved Plans and the terms of this Agreement and that all financial obligations to the City have been satisfied, the City Engineer may approve reductions in the Security in the following instances:

- A. Upon completion of grading operations, including temporary site restoration. The Developer must submit an as-built grading survey to the City that at a minimum establishes the as-built grades at all lot corners and downstream drainage conveyance systems and storm water ponds. Upon inspection of the site and approval of the as-built survey by the City, one hundred (100) percent, or \$47,858, of the Security associated with grading may be released. This Security reduction does not include amounts related to erosion and sedimentation control.
- B. Up to 75 percent of the Security associated with the itemization on Exhibit C may be released upon completion of the following key milestones of the project as determined by the City Engineer:
 - 1. Construction Categories 2 and 3: The amount of \$107,928 may be released when all sanitary sewer and watermain utilities have been installed, all testing and televising has been successfully completed, sanitary sewer as-built inverts have been verified, and the utilities are considered ready for use by the City

Engineer.

2. Construction Categories 4 and 5: The amount of \$263,651 may be released when all streets, sidewalks, and storm sewer 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 and including verification of storm sewer as-built inverts, but not including the final wear course.
 3. Construction Categories 6-10 and 14-17: The amount of \$76,477 may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) bituminous wear course; (2) street lighting and private utilities; (3) trails; (4) bio retention facilities; (5) iron monuments for lot corners have been installed; (3) all financial obligations to the City satisfied; (4) the required "record" plans in the form of the City standards have been received and approved by the City; and (5) the public Subdivision Improvements are accepted by the City Engineer and the City Council.
 4. Construction Categories 11, 12 and 13: The amount of \$43,133 may be released when landscaping Subdivision Improvements have been installed to the satisfaction of the City Landscape Architect including all corrective work for any identified punch list items.
- C. Twenty-five (25) percent of the original Security amount, excluding grading and landscaping improvements shall be retained until: (1) all Subdivision Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.
- D. Twenty-five percent (25%) of the original Security amount associated with landscaping shall be retained by the City until: (1) all landscaping Subdivision

Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items being completed by the Developer; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.

- E. In addition to the above project milestone based Security reductions, the Developer may submit a written request and upon receipt of proof satisfactory to the City Engineer that work is progressing in accordance with the approved Plans and the terms of this Agreement and that all financial obligations to the City have been satisfied, the City Engineer may approve a one-time reduction in the Security for Construction Categories 2-5 in an amount not to exceed fifty (50) percent of the initial Security amount.
- F. It is the intent of the parties that the City at all times have available to it Security in an amount adequate to ensure completion of all elements of the Subdivision Improvements and other obligations of the Developer under this Agreement, including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of the Security shall be evaluated by the City in light of that principle.

38. SUMMARY OF CASH REQUIREMENTS. The following is a summary of the cash requirements under this Agreement which must be paid to the City prior to recording the final plat:

Sewer Availability Charge (SAC):	\$57,000
Water Availability Charge (WAC):	\$57,000
Park Dedication (Letter of Credit in amount of \$10,584):	N/A
AUAR Fee:	\$4,370
Railroad Crossing Improvement Contribution:	\$16,902
Special Assessments Due:	\$0
Street Light Operating Fee:	\$1032
City Base Map Upgrading (\$25.00 per REU):	\$475
City Engineering Administration Escrow:	\$50,000
TOTAL CASH REQUIREMENTS:	\$186,779

39. 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: 2140 County Rd 42 W, Burnsville, MN 55337. 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.

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

41. COMPLIANCE WITH LAWS. The Developer agrees to comply with all laws, ordinances, regulations, and directives of the state of Minnesota and the City applicable to the Subdivision. This Agreement shall be construed according to the laws of the Minnesota.

42. 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 provision of this Agreement.

43. NON-WAIVER. Each right, power, or remedy conferred upon the City by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the City at law or in equity, or under any other agreement. 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. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent

default.

44. COUNTERPARTS. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

CITY OF LAKE ELMO

By: _____

Its: Mayor

By: _____

Its: City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Mike Pearson and Julie Johnson, the Mayor and City Clerk, respectively, of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

Easton Village, LLC

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2017, by _____, the _____ of
_____.

NOTARY PUBLIC

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

**FEE OWNER CONSENT TO
DEVELOPMENT AGREEMENT**

_____, fee owners of all or part of the subject property, the development of which is governed by the foregoing Development Agreement, 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 _____, 2017.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017.

NOTARY PUBLIC

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

**MORTGAGE CONSENT TO
DEVELOPMENT AGREEMENT**

_____, which holds a mortgage on the Property, the development of which is governed by the foregoing Development Agreement, agrees that the Development Agreement shall remain in full force and effect even if it forecloses on its mortgage.

Dated this _____ day of _____, 2017.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20017, by _____.

NOTARY PUBLIC

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

**CONTRACT PURCHASER CONSENT TO
DEVELOPMENT AGREEMENT**

_____,
which/who has a contract purchaser's interest in all or part of the Property, the development of which is governed by the foregoing Development Agreement, hereby affirms and consents to the provisions thereof and agrees to be bound by the provisions as the same may apply to that portion of the Property in which there is a contract purchaser's interest.

Dated this ____ day of _____, 2017.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2017, 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

Outlot F, Easton Village, Washington County, Minnesota

**EXHIBIT B TO
DEVELOPMENT CONTRACT**

List of Plan Documents

The following documents prepared by Erickson Civil, and Pioneer Engineering, collectively constitute the Plans:

THOSE DOCUMENTS BY

AS FOLLOWS:

<u>SHEET</u>	<u>TITLE</u>	<u>REVISION DATE</u>
C1	Title Sheet	
C2	Existing Conditions	
C3	Grading Standard Plan Notes	
C4-C5	Erosion Control and Site Restoration Plan	
C6-C7	Grading Plan	
C8	Site Layout, Lighting and Signing Plan	
C9-C11	Street Plan and Profile	
C12-C14	Sanitary Sewer & Watermain Plan & Profile	
C15	Details	
C16-C22	City Standard Detail Plates	
L1	Landscape Plan	
L2	Landscape Plan Details	

**EXHIBIT C TO
DEVELOPMENT CONTRACT**

Subdivision Improvements Cost/Security Amount Estimate

<u>CONSTRUCTION CATEGORY</u>	<u>COST</u>	<u>125%</u>
1 Grading	\$ 38,286	\$ 47,858
2 Sanitary Sewer	\$ 54,276	\$ 67,845
3 Watermain	\$ 60,848	\$ 76,059
4 Storm Sewer (<i>includes pond structures and outfall pipes</i>)	\$ 54,920	\$ 68,650
5 Streets and Sidewalks	\$ 226,308	\$ 282,885
6 Trails	\$ 12,570	\$ 15,713
7 Surface Water Facilities (<i>ponds, infiltration basins, other BMPs</i>)	\$ -	\$ -
8 Street Lighting	\$ 48,000	\$ 60,000
9 Street and Traffic Signs	\$ 700	\$ 875
10 Private Utilities (<i>electricity, natural gas, telephone, and cable</i>)		\$ -
11 Landscaping Improvements	\$ 46,008	\$ 57,510
12 Tree Preservation and Restoration		\$ -
13 Wetland Mitigation and Buffers		\$ -
14 Monuments	\$ 1,900	\$ 2,375
15 Erosion and Sedimentation Control	\$ 15,406	\$ 19,257
16 Miscellaneous Facilities		\$ -
17 Developer's Record Drawings	\$ 3,000	\$ 3,750
TOTALS	\$ 562,221	\$ 702,776

FORM OF 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.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. _____, dated _____, 20____, 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, 20____.

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 _____

(reserved for recording information)

DEVELOPMENT AGREEMENT

(Public sewer and water)

Easton Village 3rd Addition

THIS DEVELOPMENT AGREEMENT is dated _____, 2017, by and between the **CITY OF LAKE ELMO**, a Minnesota municipal corporation (the "City"), and Chase Development Inc (the "Developer").

1. REQUEST FOR PLAT APPROVAL. The Developer has asked the City to approve a plat for Easton Village 3rd Addition (referred to in this Agreement as the "Subdivision"). The property being platted is situated in the County of Washington, State of Minnesota, and is legally described on **Exhibit A**.

2. CONDITIONS OF PLAT APPROVAL. The City hereby approves the Subdivision on condition that the Developer enter into this Agreement, furnish the security required by it, and record the plat with the County Recorder or Registrar of Titles within 120 days after the City Council approves the final plat.

3. RIGHT TO PROCEED. This Agreement is intended to regulate the development of the Property and the construction therein of certain public and private improvements. The Developer

may not grade or otherwise disturb the earth, remove trees or construct public or private improvements or any buildings within the Subdivision until all the following conditions precedent have been satisfied:

- A. The Developer has prepared deeds conveying fee title of Outlots B, I and J to the City and provided copies of the executed warranty deed to the City for recording with Washington County;
- B. the Developer has executed and recorded with Washington County all drainage and utility easements required for the Subdivision by the City Engineer and Public Works Director in the City's standard form;
- C. the Developer has executed and recorded with Washington County the storm water maintenance and easement agreement in the City's standard form;
- D. this Agreement has been executed by the Developer and the City;
- E. the required Letters of Credit (as hereinafter defined) have been received by the City from or on behalf of the Developer;
- F. final construction plans and specifications have been submitted by the Developer and approved by the City Engineer;
- G. the Developer has paid the City for all legal, engineering and administrative expenses incurred by the City regarding the City approvals and has given the City the additional construction inspection escrow required by this Agreement;
- H. the Developer has paid any outstanding assessments and taxes for the property or property being deeded to the City;
- I. the Developer has fulfilled any park dedication requirements as specified under this Agreement;
- J. the Developer has received all necessary permits from the MPCA, MDH, DNR, applicable

watershed, Washington County, and any other agency having jurisdiction over the Subdivision;

K. the Developer has provided the City with a certificate of insurance required by this Agreement;

L. the Developer or the Developer's engineer and the Developer's contractor(s) have initiated and attended a preconstruction meeting with the City Engineer, and City staff;

M. the final plat has been recorded with Washington County;

N. the City has issued a written notice that all above conditions have been satisfied and that the Developer may proceed;

O. Legal documents regarding homeowner association documents, covenants, and restrictions have been submitted, reviewed and approval by the City Attorney; and

P. the Developer shall provide a Title Policy for all land dedicated to the City.

4. PHASED DEVELOPMENT. If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases of the development if the Developer is not in compliance with any term of this Agreement and the non-compliance has not been remedied. Development of subsequent phases of the development may not proceed until development agreements for such phases are approved by the City. Park dedication charges and availability charges for sewer and water referred to in this Agreement are not being imposed on outlots that are designated in the plat for future subdivision into lots and blocks, if any, in the plat. Such charges will be calculated and imposed when these outlots, if any, are platted into lots and blocks.

5. PRELIMINARY PLAT STATUS. If the Subdivision 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 Agreement, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the 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 Agreement to the contrary, to the full extent permitted by state law, the City may require compliance with any changes to the City's Comprehensive Plan, official controls, platting or dedication requirements enacted after the date of this Agreement.

7. DEVELOPMENT PLANS. The Developer agrees to develop the Property in accordance with the City approvals, including the terms and conditions of approval of the final plat as detailed in City Council Resolution No. 2017-076, and to construct all improvements in accordance with the approved construction plans and specifications (collectively, the "Plans") prepared by a professional engineer registered in the State of Minnesota at its sole expense. All terms and conditions of the City approvals are hereby incorporated by reference into this Agreement. The documents which constitute the Plans are those on file with and approved by the City and are listed on **Exhibit B** attached hereto. The Plans may not be modified by the Developer without the prior written approval of the City.

8. IMPROVEMENTS. In developing the Subdivision in accordance with the Plans, the Developer shall make or install at its sole expense the following public and private improvements (collectively, the "Subdivision Improvements"):

- A. Grading and erosion control;
- B. Sanitary sewer;
- C. Water system improvements;
- D. Stormwater improvements (storm sewer pipe, control structures, ponds, BMPs, etc.)
- E. Streets and sidewalks;
- F. Trails;
- G. Underground private utilities;

- H. Landscaping;
- I. Street lighting and signage;
- J. Intersection improvements (turn lanes, by-pass lanes, traffic control, etc.);
- K. Tree preservation and reforestation;
- L. Wetland mitigation and buffers; and
- M. Monuments required by Minnesota Statutes.

All improvements shall be installed in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. 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 Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation 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 or a soil engineer inspect the Developer's 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.

9. CITY ADMINISTRATION AND CONSTRUCTION OBSERVATION.

At the time of the City's approval of the final plat for the Subdivision, the Developer shall submit to the City an amount to be escrowed by the City for City administration and construction observation costs in an amount provided under paragraph 39 of this Agreement - Summary of Cash Requirements. Thereafter, the Developer shall reimburse the City each month, within 30 days of receiving an invoice, for all administration and construction observation costs incurred by the City during the construction of the Subdivision Improvements by the City's engineering, public works, planning, and landscape architecture staff and consultants. After 30 days of the invoice, the City may draw upon the escrow and stop the work on site until the escrow has been

replenished in its full amount. City administration and oversight will include monitoring of construction progress and construction observation, consultation with the Developer and the Developer's professionals 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 the Security. 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 by the City on an hourly basis.

The direction and review provided by the City through the inspection of the Subdivision Improvements should not be considered a substitute for the Developer-required management of the construction of the Subdivision Improvements. The Developer must require the Developer's 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 Subdivision Improvement. The City shall inspect all Developer-installed Subdivision Improvements during and after construction for compliance with the Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer will notify the City at such times during construction as the City 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 the 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 twenty-five (25) percent ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the Subdivision Improvements identified in Paragraph 8 above.

11. TIME OF PERFORMANCE. The Developer shall install all required Subdivision Improvements by October 31, 2017, with the exception of the final wear course of asphalt on

streets. The Developer shall install the bituminous wearing course of streets after the first course has weathered a winter season, consistent with warranty requirements, however, final acceptance of the Subdivision Improvements by the City 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.

12. MAINTENANCE DURING CONSTRUCTION. The Developer shall be responsible for all maintenance of the Subdivision Improvements including the snow plowing of the streets, roads and alleys until the Subdivision Improvements are accepted by the City in writing. [The developer is also responsible to locate all underground utilities until the development is accepted in writing by the City.](#) Warning signs shall be placed by the Developer 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 by the Developer. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage to ensure that the streets are passable for traffic and emergency vehicles. The Developer shall be responsible for keeping streets within and without the Subdivision clean and clear of dirt and debris that may spill, track, or wash onto the street from the Developer's operations. The Developer shall contract for street cleaning for streets within and immediately adjacent to the Subdivision. At a minimum, scraping and sweeping shall take place on a weekly basis.

Prior to the City's acceptance of the streets the City may agree, at the City's sole discretion, to keep the streets open during winter months by plowing snow. The City will consider snow plowing streets on a case by case basis and under the following conditions. 1) The

Developer must request in writing the streets in question to be plowed by the City, with such request received prior to October 1st of each winter season that plowing is requested. 2) The streets must be occupied by residences of the City. 3) For streets that do not have the bituminous wear course placed, the developer must install paved wedges along all curb lines and catch basins. 4) Gate valves and manholes must be level with the pavement surface. 5) Street curves, center medians, and other protrusions in the right-of-ways must be delineated with "High-vis" fiberglass stakes. 6) A site review must be scheduled and conducted with Public Works, and attended by the developer, to accept the streets for plowing prior to the commitment of plowing by the City. 7) The City shall not be responsible for any damage caused by snow plowing operations to the streets, curb and gutter, manholes, catch basins or other infrastructure. 8) The Developer shall enter into an Agreement with the City for plowing of the streets.

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

14. CONSTRUCTION ACCESS. Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the Subdivision via 32nd Street North and the Village Parkway. No construction traffic is permitted on other adjacent local streets.

15. CONSTRUCTION SEQUENCE AND COMPLIANCE. The City will require the Developer to construct the Subdivision Improvements in a sequence which will allow progress and compliance points to be measured and evaluated. The Developer and the Developer's representatives are required to supervise and coordinate all construction activities for all Subdivision 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. EROSION CONTROL. All construction regarding the Subdivision Improvements shall be completed in a manner designed to control erosion and in compliance with the City Code, the

City's Engineering Design and Construction Standards Manual, all watershed district permits, the Minnesota Pollution Control Agency's best management practices, and other requirements including the City's permit with the Minnesota Pollution Control Agency for the municipal separate storm sewer system program. Prior to initiating any work on the site, an erosion control plan must be implemented by the Developer and inspected and approved by the City. Erosion and sediment control measures shall be coordinated with the various stages of development. The City may impose additional erosion control requirements at any stage in development as deemed necessary to maintain a compliant site. All areas disturbed for site improvements must be reseeded by the Developer promptly after the work in the area is complete unless construction of the next stage of the improvements will begin in that area within seven (7) days. 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 by the City unless the Subdivision is in full compliance with the approved erosion control plan.

If building permits are issued prior to the acceptance of public Subdivision Improvements, the Developer assumes all responsibility for erosion control compliance throughout the Subdivision 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. SITE GRADING. In order to construct the Subdivision Improvements and otherwise prepare the Property for development, it will be necessary for the Developer to grade the Subdivision. All grading must be done in compliance with this Agreement and the approved grading plans. Within 30 days after completion of the grading, the Developer shall provide the City with an “as built” grading plan and a certification by a registered land surveyor or engineer as required in the City’s Engineering Design and Construction Standards Manual.

18. STREET AND UTILITY IMPROVEMENTS. All storm sewers, sanitary sewers, watermain, and streets, including turn lane and intersection improvements, shall be installed in accordance with the approved Plans, the City approvals, the City Code, and the City’s Engineering Design and Construction Standards Manual. Curb and gutter, the first lift of the bituminous streets, sidewalks, 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 the Developer’s 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 shall be installed by the Developer after the first bituminous course has weathered a winter season. Prior to placement of the final bituminous wear course, the Developer shall repair or replace all broken or failing curbs, sidewalks and damaged or settled streets as determined by the City from a pre-wear course walk through inspection.

19. LANDSCAPING AND TREE REPLACEMENT IMPROVEMENTS.

- A. The Developer agrees to install landscaping in accordance with the approved Plans, the City approvals, the City Code, the City’s Engineering Design and Construction Standards Manual, and the City’s Landscape and Irrigation Standards. All

landscaping materials such as trees, shrubs, grasses, or other vegetation installed by the Developer must be warranted and maintained for a period of two (2) years. The two (2) year warranty period shall be deemed to start once all required landscaping identified as responsibility of Developer in the approved Plans has received acceptance by the City. The Developer agrees to have the installer of the landscaping complete an inspection thirty (30) days prior to the end of the two (2) year warranty period and provide the City with a written report identifying the condition of all landscaping. In the event any landscaping installed by the Developer is deemed to be in poor condition or dead, the Developer is to replace the landscaping with like kind materials or as otherwise approved by the City.

- B. The Developer shall be responsible for maintaining regular watering, fertilizing, and over-seeding necessary to establish final lawns and yards as identified in the approved Plans for outlots, public rights-of-way, and any disturbed areas outside the Subdivision boundaries according to a landscape maintenance plan approved by the City. The Developer agrees to achieve “substantial performance” on all seeded or sodded lawns and yards disturbed during the construction of Subdivision Improvements. For the purpose of this agreement “substantial performance” shall be defined for areas seeded or sodded with a turf or lawn mix as “square foot turf areas with an average blade height of three (3) inches free of eroded, bare, or dead spots and free from perennial weeds or unwanted grasses with no visible surface soil.” For areas seeded with a native grass or flower mix “substantial performance” shall be defined as “square foot native grass or flower areas with an average height of eight (8) inches free of eroded, bare, or dead spots and no visible surface soil.”

20. SIGNAGE, STREET LIGHTING AND OTHER UTILITIES. The Developer agrees to install street signs, traffic and parking signs, and pavement markings within the Subdivision all in accordance with the approved Plans and the City Engineering Design Standards Manual. Street

and traffic sign details shall be submitted by the Developer to the City for approval prior to installation. In addition, the Developer shall be responsible for the cost and all coordination work to extend private utilities along with street lighting within the Subdivision all in accordance with the approved plans and right-of-way permits.

21. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction required by this Agreement, the Subdivision Improvements lying within public easements shall become City property. Prior to acceptance of the public Subdivision Improvements by the City, the Developer must furnish the City with a complete set of reproducible "record" plans and 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 Agreement. 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 that the public Subdivision Improvements have been completed in accordance with the terms of this Agreement, the City Engineer will accept the completed public Subdivision Improvements.

22. PARK DEDICATION. The Developer is required to dedicate 9.84 acres of land for public park purposes for the entire development. The Developer dedicated 3.99 acres with Easton Village 1st Addition. The Developer provided a Letter of Credit in the amount of \$10,854 which represented fee in lieu of park dedication for the Easton Village 2nd Addition final plat. The Developer shall dedicate Outlots B, I and J, satisfying the remaining required 5.85 acres park land consistent with the Lake Elmo Subdivision Ordinance. Upon recording of warranty deeds for the Outlots B, I and J, the Letter of Credit in the amount of \$10,854 which represented fee in lieu of park dedication for the Easton Village 2nd Addition final plat shall be released by the City.

23. VILLAGE AREA AUAR FEE. The Developer shall be responsible for the payment of the Village Area Alternative Urban Areawide Review (AUAR) fee as adopted by the City Council with respect to the environmental review completed by the City. The Village Area Alternative Urban Areawide Review (AUAR) fee in the amount of \$230.00 per REC shall be paid by the Developer prior to the City recording the final plat. The total amount to be paid by the Developer is \$6,440.00

24. 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 Subdivision 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 REC shall be paid by the Developer to the City prior to recording the final plat. The total amount to be paid by the Developer is \$84,000.00.

The water availability charge (WAC) in the amount of \$3,000.00 per REC shall be paid by the Developer to the City prior to recording the final plat. The total amount to be paid by the Developer is \$84,000.00.

In addition, a sewer connection charge in the amount of \$1,000.00 per REC, a Metropolitan Council sewer availability charge in the amount of \$2,485.00 per REC, and a water connection charge in the amount of \$1,000.00 per REC will be payable by the Developer and collected by the City at the time the building permit is issued for each lot.

25. STREET LIGHTS. The Developer is responsible for the cost of street light installation consistent with a street lighting plan approved by the City. Before the City signs the final plat, the Developer shall post a Security for street light installation consistent with the approved plan. The required Security is \$12,000 and consist of two (2) decorative lights at \$6000 each, a Developer shall also pay the City \$258 to reimburse the City for the first year operating costs for the street

lights.

26. WETLAND MITIGATION. The Developer shall complete wetland mitigation/restoration in accordance with the approved Plans 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 to perform the work if the Developer fails to take corrective measures after being provided reasonable notice by the City.

27. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

- A. No building permit shall be issued for any lot within the Subdivision, or within a completed phase of the Subdivision in a City preapproved phasing plan, until such time that sanitary sewer, water, storm sewer, curbing and one lift of asphalt has been installed and tested for all public streets; ~~sidewalks have been installed;~~ street and traffic control signs are installed; property monuments have been installed and grading as-built plans have been submitted and approved by the City. A "preapproved phasing plan" is defined as a phased construction plan that has been submitted by the Developer and approved by the City in advance of the preconstruction meeting for the Subdivision. Once the construction has started, the City will not consider revisions to the phasing plan for the purpose of issuing building permits.
- B. Issuance of a single building permit for a "model home" may be authorized by the City Planning Director prior to the completion of the Subdivision Improvements described in paragraph 27 (A) above, if there is safe public access to the lot that is sufficient to allow construction to proceed and there is a grading as-built plan approved by the City for the lot and all downstream storm water drainage facilities. However, the City will not issue a certificate of occupancy for any "model home" until

all conditions identified in paragraph 27 (A) above have been completed. The Developer shall use the model home only for real estate sales purposes and no other purposes.

- C. 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 Planning Department.
- D. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and withholding of other permits, inspection or actions and the halting of all work in the Subdivision.
- E. If building permits are issued prior to the acceptance of the public Subdivision Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of public Subdivision Improvements and damage to public Subdivision Improvements caused by the City, Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any 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. No certificate of occupancy will be issued for any lot within the Subdivision in a City preapproved phasing plan until such time that sidewalks have been installed continuously from end of street to end of street in such phase without exceptions. The Developer is responsible for installing sidewalks to the approved grading plan.
- F.

28. RESPONSIBILITY FOR COSTS.

- A. In the event that the City receives claims from labor, materialmen, or others that work

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required by this Agreement has been performed and the amounts due to 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 Security 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 letter of credit deposited with the District Court, except that the Court shall retain jurisdiction to determine attorneys' fees pursuant to this Agreement.

- 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 Subdivision, including but not limited to legal, planning, engineering, and inspection expenses incurred in connection with the City's approval and acceptance of the plat and the Subdivision, the preparation of this Agreement, the City's review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting development of the Subdivision. All amounts incurred and due to the City at the time of the recording of the final plat must be fully paid by the Developer prior to the City executing and releasing the final plat for recording.
- C. The Developer shall hold the City and its officials, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from the City's approval of the plat and the development of the Subdivision. The Developer shall indemnify the City and its officials, 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 Agreement, 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 Agreement. 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 Property, or any portion of it.

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

29. RAILROAD CROSSING IMPROVEMENTS. The Developer shall be required to pay for a portion of the costs to secure, build and install a public rail crossing at the location shown in Exhibit B to specifications required by the City, the Minnesota Department of Transportation, the Union Pacific Rail Road and any other regulatory agency having jurisdiction over the crossing and the track in accordance with the specifications of the City of Lake Elmo. The Developer's portion of these costs shall be calculated based on the percentage of the overall number of Residential Equivalency Connection (REC) units planned for developments that will directly access the Village Parkway minor collector road between Washington County Highway 14 and 30th Street divided by the estimated overall project costs. The City will request that all future development projects connecting directly to Village Parkway contribute towards said crossing improvement. The Developer shall provide all property in fee and/or easements as required by the City necessary to establish the railroad crossing. The Developer paid \$63,000 out of the estimated \$193,000 to the City for its share of the estimated cost railroad crossing improvements with the final plat of Easton Village 1st Addition. The Developer paid \$16,902 with the final plat of Easton Village 2nd Addition.

- A. The amount of the cash payment for Easton Village 3rd Addition shall be \$24,897 which was calculated as follows: \$193,000 (Easton Village's share of the estimated project costs multiplied by 12.9% (28 Lots / 217 Lots in all phases) = \$24,897.

B. The calculation for future railroad crossing costs has been determined as follows:

Parcel ID(s)	Percentage	Total Costs
Easton Village 13.029.21.14.0002 13.029.21.42.0001 13.029.21.41.0001 13.029.21.13.0001	38.6%	\$193,000
13.029.21.43.0004 13.029.21.44.0002	17.8%	\$89,000
13.029.21.12.0001 13.029.21.14.0002	30.2%	\$151,000
13.029.21.24.0001	13.4%	\$67,000
Totals	100%	\$500,000

C. If the construction amount of the railroad crossing installation exceeds \$500,000, the additional cost shall be allocated proportionally to the parcels listed above upon consent of all property owners and the City. The Developer agrees to pay its proportionate share of the additional cost with respect to the parcels owned by the Developer. The City may participate in the additional costs of construction of the railroad crossing if it is deemed to be necessary as a matter of public safety.

30. CITY PAYMENTS. The City shall reimburse the Developer in the amount of \$3,960 for oversizing costs associated with the installation of 8 inch water main as identified on the Plans. City payments shall be made within thirty (30) days of the City's final acceptance of the Improvements, but only if the Developer is not in default to this Contract. 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.

31. SPECIAL PROVISIONS. The following special provisions shall apply to the

Subdivision:

- A. Implementation of the recommendations listed in the May 25 2017, Engineering memorandum.
- B. The Developer shall install a temporary turnaround on the north end of Lilac Avenue N to remain until it Lilac Avenue N is extended to the north with the future phase of the Easton Village development.
- C. The Developer shall install a temporary road access a from 33rd Street North to the Village Parkway to remain until Outlot C, Easton Village 3rd Addition is platted into lots.
- D. The Developer must obtain a sign permit from the City Building Official prior to installation of any subdivision identification signs.
- E. The Developer shall enter into a Landscape License Agreement with the City that clarifies the individuals or entities responsible for maintenance of any landscaping installed in areas outside of land dedicated as public park and open space on the final plat.

32. MISCELLANEOUS.

- A. The Developer may not assign this Agreement without the written permission of the City Council. The Developer's obligations hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire Property, or any portion of it.
- B. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a professional 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. All retaining walls identified on

the Plans or by special conditions referred to in this Agreement shall be constructed before any other building permit is issued for a lot on which a retaining wall is required to be built.

- C. Legal documents regarding homeowner association documents, covenants, and restrictions shall be submitted to the City prior to recording of the final plat for review and approval by the City Attorney.
- D. The 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 Subdivision 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 \$1,500,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a combination single limit policy of \$1,500,000 or more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate of insurance 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 Agreement.
- F. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
- G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. 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 Agreement shall not be a waiver or release.

- H. This Agreement shall run with the land and may be recorded against the title to the Property at the Developer's expense. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the Property being final platted and has obtained consents to this Agreement, in the form attached hereto, from all parties who have an interest in the Property, including, but not limited to, mortgagees; 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 Subdivision and the Subdivision Improvements comply or will comply 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 Subdivision is not in compliance, the City may, at its option, refuse to allow construction or development work in the Subdivision until it is brought into compliance. Upon the City's demand, the Developer shall cease work until there is compliance.

33. 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 the Developer to commence and complete construction of the public Subdivision Improvements pursuant to the terms, conditions and limitations of this Agreement.
- B. Failure by the Developer to substantially observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

34. 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 the Developer, deemed adequate by the City, that Developer will cure its default and continue its 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 the Developer, or immediately draw on the Security, as set forth in this Agreement.

35. ENFORCEMENT BY CITY; DAMAGES. The Developer acknowledges the right of the City to enforce the terms of this Agreement against the Developer, by action for specific performance or damages, or both, or by any other legally authorized means. In the event of a default by the Developer as to construction or repair of any of the Subdivision Improvements or

any other work or undertaking required by this Agreement, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek an order from any court for permission to enter the Subdivision for such purposes. If the City does such work, the City may, in addition to its other remedies, levy special assessments against the land within the Subdivision to recover the costs thereof. For this purpose, the Developer, for itself and its successors and assigns, expressly waives any and all procedural and substantive objections to the special assessments, including, but not limited to, hearing requirements, and any claim that the assessments exceed the benefit to the land so assessed. The Developer, for itself and its successors and assigns, also waives any appeal rights otherwise available pursuant to Minnesota Statutes Section 429.081.

The Developer also acknowledges that its failure to perform any or all of the Developer's obligations under this Agreement may result in substantial damages to the City; that in the event of default by the Developer, 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.

36. WARRANTY. During the warranty period, the Developer warrants that all Subdivision Improvements will be free from defects and that they will continue to meet all technical specifications and standards. During the warranty period, the Developer agrees to repair or replace any Subdivision Improvement, or any portion or element thereof, which shows signs of failure, normal wear and tear excepted. If the Developer fails to repair or replace a defective Subdivision Improvement during the warranty period, the City may repair or replace the defective portion and may use the Security to reimburse itself for such costs. The Developer agrees to reimburse the City fully for the cost of all Subdivision Improvement repair or replacement if the cost thereof exceeds the remaining amount of the Security. Such reimbursement must be made

within 45 days of the date upon which the City notifies the Developer of the cost due under this paragraph. The Developer hereby agrees to permit the City to specially assess any unreimbursed costs against any lots in the Subdivision which have not been sold to home buyers if the Developer fails to make required payments to the City. The Developer, on behalf of itself and its successors and assigns, acknowledges the benefit to the lots within the Subdivision of the repair or replacement of the Subdivision Improvements and hereby consents to such assessment and waives the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.

- A. The required warranty period for all work relating to the public sewer and water 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 of the work.
- C. The required warranty period for sod, trees, and landscaping is two (2) years from the date of final written City acceptance of the installation.

37. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public Subdivision Improvements, and construction of all public Subdivision Improvements, the Developer shall furnish the City with an irrevocable letter of credit or a cash escrow or a combination of a cash escrow and letter of credit (the "Security") in the amount of **\$1,104,400**. The bank originating the letter of credit shall be determined by the City to be solvent and creditworthy. The letter of credit shall substantially be in the form attached to this Agreement and must be approved by the City. The amount of the Security was calculated as itemized on Exhibit C. If at any time the City reasonably determines that the bank issuing the letter of credit no longer satisfies the City's requirements regarding solvency and creditworthiness, the City shall notify the

Developer and the Developer shall provide to the City within 45 days a substitute for the letter of credit from another bank meeting the City's requirements. If the Developer fails to provide the City within 45 days with a substitute letter of credit from an issuing bank satisfactory to the City, the City may draw under the existing letter of credit.

This breakdown is for historical reference; it is not a restriction on the use of the Security. The City may draw down the Security, without notice, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term. If the required public Subdivision 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 by the City to cure the default.

38. REDUCTION OF SECURITY. Upon written request by the Developer and upon receipt of proof satisfactory to the City Engineer that work has been completed in accordance with the approved Plans and the terms of this Agreement and that all financial obligations to the City have been satisfied, the City Engineer may approve reductions in the Security in the following instances:

- A. Upon completion of grading operations, including temporary site restoration. The Developer must submit an as-built grading survey to the City that at a minimum establishes the as-built grades at all lot corners and downstream drainage conveyance systems and storm water ponds. Upon inspection of the site and approval of the as-built survey by the City, one hundred (100) percent, or \$245,306, of the Security associated with grading may be released. This Security reduction does not include amounts related to erosion and sedimentation control.
- B. Up to 75 percent of the Security associated with the itemization on Exhibit C may be released upon completion of the following key milestones of the project as determined by the City Engineer:
 - 1. Construction Categories 2 and 3: The amount of \$231,200 may be released

when all sanitary sewer and watermain utilities have been installed, all testing and televising has been successfully completed, sanitary sewer as-built inverts have been verified, and the utilities are considered ready for use by the City Engineer.

2. Construction Categories 4 and 5: The amount of \$258,617 may be released when all streets, sidewalks, and storm sewer 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 and including verification of storm sewer as-built inverts, but not including the final wear course.
 3. Construction Categories 6-10 and 14-17: The amount of \$62,092 may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) bituminous wear course; (2) street lighting and private utilities; (3) trails; (4) bio retention facilities; (5) iron monuments for lot corners have been installed; (3) all financial obligations to the City satisfied; (4) the required "record" plans in the form of the City standards have been received and approved by the City; and (5) the public Subdivision Improvements are accepted by the City Engineer and the City Council.
 4. Construction Categories 11, 12 and 13: The amount of \$92,412 may be released when landscaping Subdivision Improvements have been installed to the satisfaction of the City Landscape Architect including all corrective work for any identified punch list items.
- C. Twenty-five (25) percent of the original Security amount, excluding grading and landscaping improvements shall be retained until: (1) all Subdivision Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items; (2) all financial obligations to the

City have been satisfied; and (3) the warranty period has expired.

- D. Twenty-five percent (25%) of the original Security amount associated with landscaping shall be retained by the City until: (1) all landscaping Subdivision Improvements have been fully completed and accepted by the City, including all corrective work and warranty punch list items being completed by the Developer; (2) all financial obligations to the City have been satisfied; and (3) the warranty period has expired.
- E. In addition to the above project milestone based Security reductions, the Developer may submit a written request and upon receipt of proof satisfactory to the City Engineer that work is progressing in accordance with the approved Plans and the terms of this Agreement and that all financial obligations to the City have been satisfied, the City Engineer may approve a one-time reduction in the Security for Construction Categories 2-5 in an amount not to exceed fifty (50) percent of the initial Security amount.
- F. It is the intent of the parties that the City at all times have available to it Security in an amount adequate to ensure completion of all elements of the Subdivision Improvements and other obligations of the Developer under this Agreement, including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of the Security shall be evaluated by the City in light of that principle.

39. SUMMARY OF CASH REQUIREMENTS. The following is a summary of the cash requirements under this Agreement which must be paid to the City prior to recording the final plat:

Sewer Availability Charge (SAC):	\$84,000
Water Availability Charge (WAC):	\$84,000
Park Dedication	N/A
AUAR Fee:	\$6,440
Railroad Crossing Improvement Contribution:	\$24,897

Special Assessments Due:	\$0
Street Light Operating Fee:	\$258
City Base Map Upgrading (\$25.00 per REU):	\$700
City Engineering Administration Escrow:	\$50,000
TOTAL CASH REQUIREMENTS:	\$ 250,295

40. 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: 2140 County Rd 42 W, Burnsville, MN 55337. 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.

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

42. COMPLIANCE WITH LAWS. The Developer agrees to comply with all laws, ordinances, regulations, and directives of the state of Minnesota and the City applicable to the Subdivision. This Agreement shall be construed according to the laws of the Minnesota.

43. 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 provision of this Agreement.

44. NON-WAIVER. Each right, power, or remedy conferred upon the City by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the City at law or in equity, or under any other agreement. 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. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

45. COUNTERPARTS. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

CITY OF LAKE ELMO

By: _____

Its: Mayor

By: _____

Its: City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Mike Pearson and Julie Johnson, the Mayor and City Clerk, respectively, of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

Chase Development Inc

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2017, by _____, the _____ of
_____.

NOTARY PUBLIC

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

**FEE OWNER CONSENT TO
DEVELOPMENT AGREEMENT**

_____, fee owners of all or part of the subject property, the development of which is governed by the foregoing Development Agreement, 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 _____, 2017.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017.

NOTARY PUBLIC

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

**MORTGAGE CONSENT TO
DEVELOPMENT AGREEMENT**

_____, which holds a mortgage on the Property, the development of which is governed by the foregoing Development Agreement, agrees that the Development Agreement shall remain in full force and effect even if it forecloses on its mortgage.

Dated this _____ day of _____, 2017.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20017, by _____.

NOTARY PUBLIC

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

**CONTRACT PURCHASER CONSENT TO
DEVELOPMENT AGREEMENT**

_____,
which/who has a contract purchaser's interest in all or part of the Property, the development of which is governed by the foregoing Development Agreement, hereby affirms and consents to the provisions thereof and agrees to be bound by the provisions as the same may apply to that portion of the Property in which there is a contract purchaser's interest.

Dated this ____ day of _____, 2017.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
2017, 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:

Outlot F, Easton Village, Washington County, Minnesota, according to the recorded plat thereof, excepting all that part of Easton Village 2nd Addition, Washington County, Minnesota

**EXHIBIT B TO
DEVELOPMENT CONTRACT**

List of Plan Documents

The following documents prepared by Erickson Civil, and Pioneer Engineering, collectively constitute the Plans:

THOSE DOCUMENTS BY

AS FOLLOWS:

<u>SHEET</u>	<u>TITLE</u>	<u>REVISION DATE</u>
C1	Title Sheet	07/10/2017
C2-C4	Existing Conditions	07/10/2017
C5	Grading Standard Plan Notes	07/10/2017
C6-C8	Erosion Control and Site Restoration Plan	07/10/2017
C9-C11	Grading Plan	07/10/2017
C12	Site Layout, Lighting and Signing Plan	07/10/2017
C13-C14	Street Plan and Profile	07/10/2017
C15-C16	Sanitary Sewer & Watermain Plan & Profile	07/10/2017
C17	Storm Sewer Plan & Profile	07/10/2017
C18-C25	Details	07/10/2017
L1	Landscape Plan	07/17/2017
L2	Landscape Plan Details	07/17/2017

FORM OF 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.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. _____, dated _____, 20____, 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, 20____.

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 _____