



STAFF REPORT

DATE: 12/17/2019

REGULAR

MOTION

TO: City Council
FROM: Ken Roberts, Planning Director
AGENDA ITEM: **Springs of Lake Elmo - Development Agreement**
REVIEWED BY: Jack Griffin, City Engineer
Sarah Sonsalla, City Attorney

BACKGROUND:

On October 1, 2019, the City Council adopted Resolution 2019-072 approving the Final Plat and Final PUD plans for the Springs of Lake Elmo. An executed developer's agreement is a condition of final plat approval and is required before the developer records the final plat with Washington County.

ISSUE BEFORE CITY COUNCIL:

The City Council is being asked to adopt Resolution 2019-096 approving the developer agreement for the Springs of Lake Elmo.

REVIEW/ANALYSIS:

A condition of approval of the Springs of Lake Elmo Final Plat is that the developer enter into a Developer's Agreement with the City before the execution of the plat by City officials. The key aspects of the agreement include the following components:

- That all public improvements to be completed by December 1, 2022 due to phasing within the development.
- That the developer provide a letter of credit in the amount of \$3,325,185 related to the cost of the proposed project improvements.
- That the developer provide the City with a cash deposit of \$504,216 for sewer and water availability charges, park dedication and engineering administration escrow.

City staff is in the process of reviewing and approving the final construction plans for the project, subject to changes and corrections. Upon execution of this Agreement, receipt of all fees and securities, recording of the final plat and the completion of a preconstruction meeting with the City, the applicant may start site grading and construction.

FISCAL IMPACT:

The future financial impacts include maintenance of sanitary sewer mains, watermains and other public infrastructure, maintenance of storm water ponding areas (after warranty period), and other public financial responsibilities typically associated with a new development. The City will collect any necessary building permit fees, Sewer Accessibility Charges and Water Accessibility Charges and property taxes at the time of building permit application for each building as they develop.

OPTIONS:

The City Council is being asked to consider the approval of the developer's agreement and has the following options:

- 1) Adopt Resolution 2019-096 approving the developer agreement for Springs of Lake Elmo; or
- 2) Direct Staff to amend the draft developer agreement to bring back to a future City Council meeting.

RECOMMENDATION:

Staff recommends the City Council adopt Resolution 2019-096 approving the developer's agreement for the Springs of Lake Elmo with the following motion:

“Move to adopt Resolution 2019-096 approving the developer's agreement for the Springs of Lake Elmo”

ATTACHMENTS:

- Resolution 2019-096
- Springs of Lake Elmo Development Agreement

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

RESOLUTION NO. 2019-096

***A RESOLUTION APPROVING A DEVELOPER'S AGREEMENT FOR THE SPRINGS OF
LAKE ELMO FINAL PLAT***

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

WHEREAS, Continental 483 Fund LLC (Continental), Menominee Falls, Wisconsin ("applicant") has previously submitted an application to the City of Lake Elmo ("City") for a Final Plat for the Springs of Lake Elmo; and

WHEREAS, the Lake Elmo City Council approved the 300-unit Springs of Lake Elmo Preliminary Plat and Preliminary PUD on June 18, 2019; and

WHEREAS, Continental is now proposing to final plat the 300-unit Springs of Lake Elmo residential development; and

WHEREAS, the Lake Elmo City Council adopted Resolution 2019- 072 on October 1, 2019 approving the Final Plat for the Springs of Lake Elmo Addition; and

WHEREAS, a condition of approval of said Resolution 2019-072 , establishes that prior to execution of the Final Plat by City officials, the Applicant shall enter into a Developer's Agreement with the City; and

WHEREAS, the Applicant and the City have agreed to enter into such a contract and a copy of the Developer's Agreement was submitted to the City Council for consideration at its December 17, 2019 meeting;

NOW, THEREFORE, BE IT RESOLVED THAT the City Council does hereby approve the Developer's Agreement for Springs of Lake Elmo Addition and authorizes the Mayor and City Clerk to execute the document.

Passed and duly adopted this 17th day of December, 2019 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)

SPRINGS AT LAKE ELMO

THIS DEVELOPMENT AGREEMENT is dated _____, 2019, by and between the **CITY OF LAKE ELMO**, a Minnesota municipal corporation (the “City”) and **CONTINENTAL 483 FUND LLC**, a Wisconsin limited liability company (the “Developer”).

1. REQUEST FOR PLAT APPROVAL. The Developer has asked the City to approve a plat for the Springs at Lake Elmo (referred to in this Agreement as the “Development”). 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 Development on the condition that the Developer (i) acquire title to the property being platted, (ii) enter into this Agreement, (iii) furnish the security required by this Agreement, and (iv) record the plat with the County Recorder or Registrar of Titles within 180 days after the City Council approves the final plat.

3. RIGHT TO PROCEED. 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 Development 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 Development by the City Engineer and Public Works Director in the City's standard form or the easements have been dedicated by the Developer to the City in the plat ;
- B. the Developer has executed and recorded with Washington County the storm water maintenance and easement agreement in a form approved by the City;
- C. this Agreement has been executed by the Developer and the City;
- D. the required Security (as hereinafter defined) have been received by the City from or on behalf of the Developer;
- 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 City Engineering Administration 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 Development;

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 attend a preconstruction meeting with the City Engineer, and City staff;

L. the final plat has been recorded with Washington County; and

M. A title insurance policy has been issued in the amount of \$50,000 in favor of the City insuring the City's interests as they appear on the plat; and

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

4. CHANGES IN OFFICIAL CONTROLS. For five 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.

5. 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. 2019-072, 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.

6. IMPROVEMENTS. In developing the Development in accordance with the Plans, the Developer shall make or install at its sole expense the following public and private improvements (collectively, the "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;
- M. Monuments required by Minnesota Statutes; and
- N. PUD Amenity and Miscellaneous Improvements (decorative fencing, benches, clubhouse, plaza).

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 on-site project management. The Developer's Engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor.

7. CITY ADMINISTRATION AND CONSTRUCTION OBSERVATION. At the time of the City's approval of the final plat for the Development, 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 33 of this Agreement - Summary of Security 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 Development 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, periodic inspection of proposed public utilities and public street construction. The City will bill the Developer for these services on an hourly basis.

The direction and review provided by the City through the inspection of the Development Improvements should not be considered a substitute for the Developer-required management of the construction of the Development Improvements. The Developer must require the Developer's contractor(s) to furnish the City with a schedule of proposed operations at least five days before the commencement of construction of each type of Development Improvement. The City shall

inspect all Developer-installed public 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

8. CONTRACTORS/SUBCONTRACTORS. City Council members, City employees, and City Planning Commission members, and corporations, partnerships, and other entities in which such individuals have greater than a 25 percent ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the Development Improvements identified in Paragraph 6 above.

9. TIME OF PERFORMANCE. The Developer shall install all required Development Improvements by October 31, 2022, with the exception of the final wear course of asphalt on public streets. The Developer shall install the bituminous wearing course on public streets after the first course has weathered a winter season, consistent with warranty requirements, however, final acceptance of the Development 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 to complete the required Improvements or construction. If the City grants an extension, 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.

10. MAINTENANCE DURING CONSTRUCTION. The Developer shall be responsible for all maintenance of the Development Improvements including the snow plowing of the public streets, roads and alleys until the Development Improvements are accepted by the City in writing. The Developer also is responsible to locate all underground utilities until the Development is

accepted in writing by the City. The Developer shall place warning signs on all streets and private driveways when hazards develop in the streets or private driveways to prevent the public from traveling on same and to direct driver's attention to detours. If and when any street becomes impassable, such street shall be barricaded and closed by the Developer. In the event residences are occupied before the Developer completing the streets and private driveways, the Developer shall maintain a smooth surface and provide proper surface drainage to ensure the street and private driveways are passable for traffic and emergency vehicles. The Developer shall be responsible for keeping all streets and private driveways within and without the Development clean and clear of dirt and debris that may spill, track, or wash onto the public street from the Developer's operations. The Developer shall contract for street cleaning for all streets within and immediately adjacent to the Development. At a minimum, scraping and sweeping of the streets shall take place on a weekly basis.

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

- 1) the Developer must request in writing the public streets it is requesting to be plowed by the City, with such request received by the City before October 1st of each winter season that plowing is requested;
- 2) there must be residences along the public street or the public street must be required for emergency access purposes;
- 3) for public streets that do not have the bituminous wear course placed, the Developer must install paved wedges along all curb lines and catch basins of the public street;
- 4) gate valves and manholes must be level with the pavement surface;
- 5) public street curves, center medians, and other protrusions in the rights-of-way must be delineated with "HI-VIS" fiberglass stakes;
- 6) a site review must be scheduled by the Developer and conducted with the City's Public Works Department with the Developer in attendance to review the public streets that are being requested to be plowed before the City will commit to the

requested public street plowing by the City; 7) the Developer must agree not to hold the City responsible for any damage caused by snow plowing operations to the public streets, curb and gutter, manholes, catch basins or other infrastructure; and 8) the Developer shall enter into a written agreement with the City for plowing of the public streets.

11. 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-

12. CONSTRUCTION ACCESS. Construction traffic access and egress for all improvements, both public and private, is restricted to access the Development via Hudson Boulevard or Julia Avenue via Hudson Boulevard. Construction traffic must access the Development from Julia Avenue via Hudson Boulevard after the City grants certificate of occupancy for the first residential building in the Development. The City does not permit any construction traffic on any other adjacent local streets. The Developer is [UG1] required to manage all construction-related parking (including parking for laborers), construction staging and material deliveries internal to the Development. No parking or construction staging, including the loading and unloading of materials and equipment along Hudson Boulevard North or along Julia Avenue is allowed at any time during the construction of the Development Improvements and buildings and structures within the Development. The Developer shall be responsible for repairing or replacing all public street, curb and boulevard damage caused by construction activities at no cost to the City. The Developer shall provide a stable area on-site for large trucks and emergency vehicles to turn-around and/or provide a secondary access route for vehicles to access the Hudson Boulevard entrance. The secondary access could be provided by connecting the parking area and driveway in front of the clubhouse to the driveway to the west of the clubhouse (that is east of Building [11][UG2]). The Developer shall use and keep this secondary vehicle access route in place at least until such time as the Developer has installed the concrete curb and gutter and

bituminous base course along Julia Avenue.

At all times throughout the course of construction, in accordance with the “preapproved phasing plan”, the Developer shall be responsible for providing adequate access to all parts of the Development for fire apparatus and other emergency vehicles and for providing adequate areas for turning around fire apparatus and other large vehicles within the Development.

13. CONSTRUCTION SEQUENCE AND COMPLIANCE. The City will require the Developer to construct the Development 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 Development 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.

14. EROSION CONTROL. All construction regarding the Development 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. Before initiating any work on the site, the Developer must implement an erosion control plan and have the erosion control measures inspected and approved by the City. Erosion and sediment control measures shall be coordinated and installed 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 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 10 days of invoice, the City may draw down the Security to pay any costs. No development, utility or street construction will be allowed, and the City will not issue any building permits unless the Development is in full compliance with the approved erosion control plan.

If the City issues building permits before the acceptance of public Development Improvements, the Developer assumes all responsibility for erosion control compliance throughout the entire Development and along the public rights-of-way and the City may take such action as allowed by this Agreement against the Developer for any noncompliant issue as stated above.

15. SITE GRADING. In order to construct the Development Improvements and otherwise prepare the Property for development, it will be necessary for the Developer to grade the Development. 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.

16. STREET AND UTILITY IMPROVEMENTS. All storm sewers, sanitary sewers, watermain, and public 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 public streets, sidewalks, boulevards graded, public 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 Developer must complete the punch list items and shall notify the City to re-inspect the Development and the Improvements. The Developer shall install the final bituminous wear course after the first bituminous course has weathered a winter season. Before placement of the final bituminous wear course, the Developer shall repair or replace all broken or failing curbs, sidewalks and damaged or settled public streets as determined by the City from a pre-wear course walk through inspection.

17. 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 years. The two-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 30 days before the end of the two-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 in a timeframe approved by the City or by the City's Landscape Architect.

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 Development 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 Development 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 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 inches free of eroded, bare, or dead spots and no visible surface soil.”

18. SIGNAGE, STREET LIGHTING AND OTHER UTILITIES. The Developer agrees to install street signs, traffic, no parking, other signage as may be required by the Fire Chief and parking signs, and pavement markings within the Development all in accordance with the approved Plans and the City Engineering Design Standards Manual. The Developer shall submit street and traffic sign details to the City for approval before 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 Development all in accordance with the approved plans and right-of-way permits.

19. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction required by this Agreement, the Development Improvements lying within public easements shall become City property. Before acceptance of the public Development 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 Development Improvements have been completed in accordance with the terms of this Agreement, the City Engineer will accept the completed public Development Improvements.

20. PARK DEDICATION. The Developer shall pay the City a cash contribution of \$453,700 in satisfaction of the City's park dedication requirements.

21. 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 Development 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 Residential Equivalent Charges ("REC") shall be paid by the Developer or the Developer's contractor on behalf of the Developer to the City at the time the City issues a building permit for each building within the Development. The water availability charge (WAC) in the amount of \$3,000.00 per REC shall be paid by the Developer or the Developer's Contractor on behalf of the Developer to the City at the time the City issues a building permit for each building within the Development.

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 City issues a building permit for each building, including the club house.

22. STREET LIGHTS. The Developer is responsible for the cost of public 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 public street light installation consistent with the approved plan. The required Security is \$26,000 and consists of one 15-foot-tall Washington Fluted black aluminum pole with traditional Colonial LED light at \$6,000 and two 25-foot-tall fluted black aluminum poles with Xcel Evans fixtures (black) at \$10,000 each^[3]. The Developer also shall pay the City \$129/light (\$516) to reimburse the City for the first-year operating costs for the public street lights.

23. 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.

24. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

A. The City will not issue any footing and foundation or any other building permit for any lot or building site within the Development, or within a completed phase of the Development in a City preapproved phasing plan, until such time that sanitary sewer, water, ^[4]storm sewer (excluding building yard drains), and one lift of asphalt has been installed and tested for all streets (public and private) providing access to the building location including emergency turnaround access, all Hudson Boulevard Improvements are completed including turn-lanes; grading has been completed within the entire public street right-of-ways; public street and traffic control signs are installed, property monuments have been installed or all property corners and building sites have been staked with the property corner and building elevations

noted on the stake; and the building foundations are verified to be within 0.1 feet of approved grading plan elevations. [5]The City will only issue vertical construction permits (for building work above the footings and foundations), in accordance with the preapproved phasing plan, after the Developer has installed footings and foundations and the footings and foundations are inspected and approved by the City and the Developer has submitted as-built grading plans to the City and the City has approved the grading plans for each building and/or phase of the Development, including all temporary or permanent downstream storm water drainage facilities from the building or phase of the Development as 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 Development. Once the construction has started, the City will not consider revisions to the phasing plan for the purpose of issuing building permits.

- B. The City Planning Director may authorize the issuance of a permit to allow one “leasing trailer” to be placed within the Development before the completion of the Development Improvements described in paragraph 24 (A) above, if there is safe public access to the lot or location with the leasing trailer 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 are in place. The Developer shall use the leasing trailer only for rental or leasing purposes and for no other purposes.
- C. Before the City approves or issues any building permits, the Developer shall have placed wetland buffer monuments in accordance with the City’s zoning ordinance. The City Planning Department shall approve the wetland monument design before

the Developer places the wetland monuments.

- 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 Development.
- E. If the City issues building permits before the acceptance of the public Development Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of public Development Improvements and damage to public Development Improvements caused by the City, the Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any third parties.
- F. The City will not issue sanitary sewer or water connection permits for the buildings within the Development until the streets and driveways needed for access to the building sites have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.
- G. The City may issue building permits for a maximum of five residential buildings (a maximum of 100 dwelling units) and one clubhouse in the Development after the Developer has installed the Hudson Boulevard turn lane and the primary site entrance on Hudson Boulevard. The City will only issue building permits for additional buildings beyond the first five buildings (for more than 100 dwelling units) after the Developer has installed the required site access driveway to Julia Avenue and has constructed Julia Avenue (with all utilities, curb and gutter, turn lane(s) and the first lift of asphalt (base course of bituminous)) adjacent to the Development. Once Julia Avenue is constructed, all construction access and egress shall take place at Julia Avenue via Hudson Boulevard. The Developer shall install curb and gutter on all private drives adjacent to each building in the Development phasing plan as approved by the City and shall install all storm sewer facilities for and

adjacent to the building and the storm water facilities down-stream from the building before the City's issuance of a Certificate of Occupancy for each building.

25. RESPONSIBILITY FOR COSTS.

- 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 funds 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 Development , 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 Development, 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 Development . 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 before 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

Development. 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, inspection 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 the Property or any portion of it.
- F. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Agreement within 30 days after receipt. Bills not paid within 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.

26. CITY PAYMENTS. The City shall not reimburse the Developer for any public improvements.

27. SPECIAL PROVISIONS. The following special provisions shall apply to the Development:

- A. Implementation of the changes and recommendations listed in the August 28, 2019, Engineering memorandum. This City will not release the final plat for recording until the City has granted approval of the construction plans.
- B. The Developer must obtain a sign permit from the City Building Official before the installation of any Development identification signs.
- C. 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 designated as a public park or open space in the Development.

- D. The Developer shall install in the public street right-of-way a bituminous trail and a concrete sidewalk along Julia Avenue and an eight-foot-wide trail along the north side of Hudson Boulevard.
- E. The Developer shall extend the public watermain to the northerly limits of the Development as required by the City Engineer.
- F. The Developer shall revise the landscape plans to meet the conditions of approval of the preliminary plat and the changes required by the City's Landscape Architect as outlined in his memo dated July 30, 2019. The City's Landscape Architect must review and approve these revised plans before the City will release the final plat for recording or before allowing the start of any construction or grading.
- G. The Developer shall address all Fire Chief and Building Official comments in its final development and building plans including the placement of the buildings and fire hydrants, street and driveway design, parking and emergency vehicle access within the Development.
- H. The Developer shall obtain any necessary approvals or easements from adjoining property owners for any private off-site work or impacts the development of the Property may have, including, but not limited to, storm water drainage and utility work.
- I. The Developer or its successor shall notify all renters about possible City outdoor watering restrictions or limits on outdoor water use including no vehicle washing and no watering of grass, landscaping or sod unless the Developer or its successor is notified by the City that this notice is no longer required. Said decision about whether or not this notice is no longer required shall be made at the sole discretion

of the City. The Developer shall have the City approve the notification message before recording the final plat.

- J. The final grading and drainage plans must provide sufficient emergency overland path flow for storm water that is adequately protected to prevent buildings within this Development from being flooded.
- K. All storm water facilities internal to the Development must be privately owned and maintained by the Developer or its successor.
- L. The Developer must install a five-foot-tall decorative fence around the entire Development perimeter. The Developer shall not use any chain link fencing on the perimeter of the Development property.
- M. The Developer shall be responsible for the construction of all the improvements within the Hudson Boulevard right-of-way (including, but not limited to, the trail and turn lanes) as required by the City and as further described in the City Engineer's construction plan review memo dated October 18, 2019. These improvements shall comply with the City's Hudson Boulevard Design Guidelines as may have been modified with the City's approval of the Springs of Lake Elmo final PUD plans and final plat.
- N. The Developer shall be responsible for the construction of all improvements for Julia Avenue (including, but not limited to, the trail, sidewalks, and turn-lanes) as required by the City and as further described in the City Engineer's construction plan review memo dated October 18, 2019. These improvements shall comply with the City's Design Standards for Julia Avenue as may have been modified with the City's approval of the Springs of Lake Elmo final PUD plans and final plat.
- O. The Developer shall install three pedestrian benches adjacent to the Development for public use. Two of the benches shall be installed along Julia Avenue and one

bench shall be installed near the Development entrance along the north side of Hudson Boulevard. The final location and style of the benches shall be approved by the City before the Developer installs the benches.

28. 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 the City issues any other building permit for a lot or a building site on which or adjacent to a retaining wall is required to be built.
- C. The Developer shall take out and maintain or cause to be taken out and maintained until six months after the City has accepted the public Development Improvements, public liability and property damage insurance covering personal injury, including death, and claims for property damage that 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 final plat. The certificate shall provide that the City must be given 30 days' advance written notice of the cancellation of the insurance.

- D. Third parties shall have no recourse against the City under this Agreement.
- E. 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.
- F. 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.
- G. 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.
- H. 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.

- I. The Developer represents to the City that the Development and the Development 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 the Development is not in compliance with any rules, laws or regulations, the City may, at its option, refuse to allow construction or development work in the Development until the Developer brings it into compliance. Upon the City's demand, the Developer shall cease work until there is compliance.

29. 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 Development 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.

30. 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 actions:

- 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.

31. 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 Development 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 Development 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 Development 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.

32. WARRANTY. During the warranty period, the Developer warrants that all public Development 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 Development Improvement, or any portion or element thereof that shows signs of failure, normal wear and tear excepted. If the Developer fails to repair or replace a defective public Development 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 public Development 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 the Development 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 Development of the repair or replacement of the public Development 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 public water shall be two years from the date of final written City acceptance of the work.
- B. The required warranty period for all work relating to public street construction, including concrete curb and gutter, sidewalks and trails, materials and equipment shall be subject to one year from the date of final written acceptance of the work.
- C. The required warranty period for sod, trees, and landscaping shall be two years from the date of final written City acceptance of the installation.

33. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Agreement, payment of special assessments, payment of the costs of all public Development Improvements, and construction of all public Development 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 \$3,325,185. 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, [6] for any violation of the terms of this Agreement or if the Security is allowed to lapse before the end of the required term. If the Developer has not completed the required public Development Improvements at least thirty (30) days before the expiration of the Security, the City also may draw it down. If the Security is drawn down, the proceeds shall be used by the City to cure the default.

34. 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 the site 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 and building corners and the downstream drainage conveyance systems and storm water ponds. Upon inspection of the site and approval of the as-built survey by the City, the City may release 100 percent, or \$1,186,625, of the Security associated with Development grading. 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 \$362,707 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 \$844,204 may be released when all public 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, 15 and 17: The amount of \$187,993 may be released when all remaining Developer's obligations under this Agreement have been installed and completed including: (1) bituminous wear course; (2) public 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 Development Improvements are accepted by the City Engineer and the City Council.

4. Construction Categories 11, 12 and 13: The City may release the amount of \$155,578 when landscaping Development Improvements have been installed to the satisfaction of the City including all corrective work for any identified punch list items.
5. Construction Category 16: The City may release the amount of \$53,438 when all the miscellaneous Development Improvements have been installed to the satisfaction of the City including all corrective work for any identified punch list items.

- C. Twenty-five percent of the original Security amount, excluding grading and landscaping improvements shall be retained until: (1) all public Development 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 of the original Security amount associated with landscaping shall be retained by the City until: (1) all landscaping Development 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 50 percent of the initial Security amount. This one-time Security reduction does not apply to Categories 4-5 if the Developer has not installed boulevard sidewalks or trails.

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 Development 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.

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

Sewer Availability Charge (SAC):	Per Section 21 \$	To be paid at time of building permit
Water Availability Charge (WAC):	Per Section 21 \$	To be paid at time of building permit
Park Dedication:		\$453,700.00
Street Light Operating Fee		\$516.00
City Engineering Administration Escrow:		\$50,000.00
TOTAL CASH REQUIREMENTS:		\$504,216.00 (estimated)

36. 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: W134N8675 Executive Parkway, Menomonee Falls, WI 53051. 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, 3880 Laverne Avenue N, Suite 101, Lake Elmo, Minnesota 55042.

37. EVIDENCE OF TITLE. The Developer shall furnish the City with evidence of fee ownership of the property being platted by way of a copy of its deed.

38. 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 Development. This Agreement shall be construed according to the laws of the Minnesota.

39. 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.

40. 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.

41. 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: _____
Mike Pearson
Its: Mayor

By: _____
Julie Johnson
Its: City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, 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

DRAFT

**MORTGAGEE 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 _____, 2_____.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____.

NOTARY PUBLIC

DRAFTED BY:
City of Lake Elmo
3880 Laverne Avenue North
Lake Elmo, MN 55042
(651) 747-3901

**EXHIBIT A TO
DEVELOPMENT AGREEMENT**

Legal Description of Property Being Final Platted

DRAFT

**EXHIBIT C TO
DEVELOPMENT AGREEMENT**

Development Improvements Cost/Security Amount Estimate [7]

<u>CONSTRUCTION CATEGORY</u>	<u>COST</u>	<u>125 percent</u>	
1	<u>Grading</u>	\$949,300	\$1,186,625
2	<u>Sanitary Sewer</u>	\$57,086	\$71,358
3	<u>Watermain</u>	\$329,801	\$412,251
4	<u>Storm Sewer (includes pond structures and outfall pipes)</u>	\$254,704	\$318,380
5	<u>Streets and Sidewalks (Julia and Hudson)</u>	\$645,780	\$807,225
6	<u>Trails</u>	\$NA	\$NA _[GW8]
7	<u>Surface Water Facilities (ponds, infiltration basins, other BMPs) (West End Detention)</u>	\$NA	\$NA
8	<u>Street Lighting</u>	\$26,000	\$32,500
10	<u>NA</u>	NA	NA
9	<u>Street and Traffic Signs</u>	\$6,645	\$8,306
11	<u>Landscaping Improvements</u>	\$160,950	\$201,188
12	<u>Tree Preservation and Restoration</u>	Included in landscaping	
13	<u>Wetland Buffers</u>	\$5,000	\$6,250
14	<u>Monuments</u>	\$1,500	\$1,875
15	<u>Erosion and Sedimentation</u>	\$112,681	\$140,851
16	<u>PUD Amenity Improvements</u>	\$57,000	\$71,250
17	<u>Developer's Record Drawings</u>	\$5,000	\$6,250
<u>TOTALS</u>		\$2,611,447	\$3,264,309

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, 3880 Laverne Ave. N., Suite 101, 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 _____