



## STAFF REPORT

DATE: April 16, 2019  
CONSENT

**TO:** Mayor and City Council  
**FROM:** Ben Prchal, City Planner  
**AGENDA ITEM:** Boulder Ponds 4<sup>th</sup> Addition Development Agreement Amendment  
**REVIEWED BY:** Ken Roberts

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### **BACKGROUND:**

The City recently approved a platting time extension for the Boulder Ponds 4<sup>th</sup> Addition. They needed extra time to secure their funding and go through closing on the property before recording the final plat. Now that the property has been secured it is understood where responsibility will lie. The City needs to approve an amendment to the DA for the development of Boulder Ponds 4<sup>th</sup> to reflect the new owner/developer. The contract will be between Boulder Ponds Senior Living LLC and the City of Lake Elmo. This had happened once before but the previous DA was not recorded.

### **ISSUE BEFORE COUNCIL:**

Does the City Council have questions or comments about the amended Developer Agreement?

### **PROPOSAL:**

Amend the approved Developers Agreement so “Lake Elmo ALF Partners” is replaced with “Boulder Ponds Senior Living, LLC.”

### **FISCAL IMPACT:**

A minimal amount of staff time has been asserted towards reviewing the proposed amendment. This type of amendment can be expected and if need be, costs can be drawn from the escrow fund. The proposed change to the Developers Agreement will not require any additional City responsibilities.

### **OPTIONS:**

- 1) Approve the proposed amendments to the Development Agreement.
- 2) Deny amendments to the Development Agreement.

### **RECOMMENDATION:**

Staff believes that this will be the last time an approval for the DA will need to be reviewed for the Boulder Ponds 4<sup>th</sup> Addition and recommends that the Council approve the proposed amendments to the Development Agreement.

*“Motion to approve the proposed amendments to the Boulder Ponds 4<sup>th</sup> Addition Developers Agreement”*

### **ATTACHMENTS:**

- Amended Developers Agreement
- Approving Resolution

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

**RESOLUTION NO. 2019-024**

*A RESOLUTION APPROVING THE DEVELOPER'S AGREEMENT FOR BOULDER PONDS 4<sup>TH</sup>  
ADDITION*

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

**WHEREAS**, Trident Development, LLC, 3601 18<sup>th</sup> Street South #103, St. Cloud, MN 56301 ("Applicant") has previously submitted an application to the City of Lake Elmo ("City") for a Final Plat for Boulder Ponds; and

**WHEREAS**, the Lake Elmo City Council considered and approved the Preliminary Plat request for Boulder Ponds at a meeting held on September 16, 2014; and

**WHEREAS**, The Lake Elmo City Council adopted Resolution No. 2018-108 on September 18, 2018 approving the Final Plat for Boulder Ponds 4<sup>th</sup> Addition; and

**WHEREAS**, A condition of said Resolution No. 2018-108 establishes that, prior to the execution of the Final Plat by City officials, the Applicant is to enter into a Developer's Agreement with the City; and

**WHEREAS**, the Applicant and City have entered into such a contract, and a copy of the Developer's Agreement was submitted to the City Council for approval at its September 18, 2018 meeting.

**WHEREAS**, the contract that was approved has since been amended to reflect the current developer of the site so that "Boulder Ponds Senior Living LLC" will be recognized as the developer. Developer Agreements for Boulder Ponds 4<sup>th</sup> Addition identified as having a different developer shall not be considered the official approved agreement.

**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 Boulder Ponds 4<sup>th</sup> Addition and authorizes the Mayor and City Clerk to execute the document.

Passed and duly adopted this 16<sup>th</sup> day of April, 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)*

### ***Boulder Ponds 4<sup>th</sup> Addition***

**THIS DEVELOPMENT AGREEMENT** is dated \_\_\_\_\_, 2019, by and between the **CITY OF LAKE ELMO**, a Minnesota municipal corporation (the “City”) and Boulder Ponds Senior Living, LLC, a Minnesota limited liability company (the “Developer”).

**1. REQUEST FOR PLAT APPROVAL.** The Developer has asked the City to approve a plat for Boulder Ponds 4<sup>th</sup> 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 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 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 or the easements have been dedicated to the City on the plat;
- B. this Agreement has been executed by the Developer and the City;
- C. the required Security (as hereinafter defined) have been received by the City from or on behalf of the Developer;
- D. final construction plans and specifications have been submitted by the Developer and approved by the City Engineer;
- E. 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;
- F. the Developer has paid any outstanding assessments and taxes for the property or property being deeded to the City;
- G. the Developer has fulfilled any park dedication requirements as specified under this Agreement;
- H. 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;
- I. the Developer has provided the City with a certificate of insurance required by this Agreement;

- J. 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;
- K. the final plat has been recorded with Washington County;
- L. a title insurance policy has been issued in the amount of \$100,000 in favor of the City insuring the City's interest as they appear on the plat; and
- M. the City has issued a written notice that all above conditions have been satisfied and that the Developer may proceed.

**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 years after preliminary plat approval.

**6. 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.

**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. 2018-108, 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. Underground private utilities;
- F. Landscaping;
- G. Tree preservation and reforestation; and
- H. 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 34 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 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 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, 2019. 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.

**12. MAINTENANCE DURING CONSTRUCTION.** The Developer shall be responsible for all maintenance of the Subdivision Improvements until the Subdivision Improvements are accepted by the City in writing. The Developer is also responsible to locate all underground utilities until the Subdivision 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. Jade Trail North and Hudson Boulevard must remain open to traffic at all times unless a right-of-way obstruction permit is obtained from the City. The Developer shall be responsible for keeping streets within and outside of 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 and on a daily basis during heavy tracking days.

**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 AND PARKING.** Construction traffic access and egress for all work on the site including grading, utility construction, building construction, and Subdivision Improvements is restricted to access the Subdivision via Jade Trail North at the designated rock construction entrance per the approved erosion control plans. No construction traffic is permitted on other adjacent local streets or at any other location along Jade Trail North.

All construction parking, and loading and unloading of equipment and supplies must be completed interior to the Subdivision and is not allowed to occur within any public right-of-way without a right-of-way obstruction permit.

**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 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, 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, and watermain 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. 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.

**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 warrantied 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 prior to 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.

- 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 areas 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 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.”

**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 pay a cash contribution of \$123,500 in satisfaction of the City's park dedication requirements. The amount of the cash contribution was calculated as follows: 10 percent of the agreed-to purchase price of the property for \$1,235,000.

**23. 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 payable and collected by the City at the time the building permit is issued for the building.

The water availability charge (WAC) in the amount of \$3,000.00 per REC shall payable and collected by the City at the time the building permit is issued for the building.

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 the building.

**24. 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, and storm sewer are 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. 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.
- C. 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, the Developer, the Developer’s contractors, subcontractors, materialmen, employees, agents, or any third parties.
- D. 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.

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

- A. Implementation of the recommendations listed in the August 16, 2018, Engineering memorandum.
- B. The Developer must obtain a sign permit from the City Building Official prior to installation of any subdivision identification signs.

**27. 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 any covenants and restrictions, if applicable, 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 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 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.

**28. 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.

**29. 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.

**30. 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.

**31. 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 the Subdivision 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 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 years from the date of final written City acceptance of the work.
- B. The required warranty period for sod, trees, and landscaping is two years from the date of final written City acceptance of the installation.

**32. 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 \$488,881. 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 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.

**33. 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, 100 percent, or \$133,125, 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 \$71,742 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 \$101,527 may be released when the storm sewer has been installed and tested, and has 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.
  3. Construction Categories 6-10 and 14-17: The amount of \$22,781 may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) iron monuments for lot corners have been installed, if required; (2) all financial obligations to the City satisfied; (3) 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 \$70,205 may be released when landscaping Subdivision 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 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 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. 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.

**34. 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:

Park Dedication:	\$123,500
Special Assessments Due:	\$0
City Engineering Administration Escrow:	\$10,000
<b>TOTAL CASH REQUIREMENTS:</b>	<b>\$133,500</b>

**35. 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: 3601 18<sup>th</sup> Street South #103, St. Cloud, MN 56301. 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.

**36. EVIDENCE OF TITLE.** The Developer shall furnish the City with evidence of fee ownership of the property being platted by way of a title insurance policy dated not earlier than 30 days prior to the execution of the plat.

**37. 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.

**38. SEVERABILITY.** In the event that any provision of this Agreement shall be held invalid,





NOTARY PUBLIC

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**Boulder Ponds Senior Living, LLC**

By: \_\_\_\_\_

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_, day of \_\_\_\_\_,  
20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of Boulder Ponds  
Senior Living, LLC, a Minnesota limited liability company on behalf of the company.

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

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



**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  
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 \_\_\_\_\_, 20\_\_.

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

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  
3800 Laverne Avenue North  
Lake Elmo, MN 55042  
(651) 747-3901

**EXHIBIT A TO  
DEVELOPMENT AGREEMENT**

**Legal Description of Property Being Final Platted**

Outlot B and Outlot C, Boulder Ponds, according to the recorded plat thereof, Washington County, Minnesota.

# EXHIBIT B TO DEVELOPMENT AGREEMENT

## List of Plan Documents

The following documents prepared by Carlson McCain constitute the Plans:

THOSE DOCUMENTS BY

AS FOLLOWS:

<u>SHEET</u>	<u>TITLE</u>	<u>REVISION DATE</u>
C1 of 9	Title Sheet	
C2 of 9	Existing Conditions & Removals Plan	
C3 of 9	Site & Sign Plan	
C4 of 9	Utility Plan	
C5 of 9	Grading, Drainage, & Erosion Control Plan	
C6 of 9	Stormwater Pollution Prevention Plan	
C7-C9 of 9	Details	
L1-L3 of L3	Landscape Plan	
SW1.0	SWPPP Existing Conditions	
SW1.1	SWPPP Proposed Conditions	
SW1.2	SWPPP Details	
SW1.3	SWPPP Narrative	



**EXHIBIT C TO  
DEVELOPMENT AGREEMENT**

**Subdivision Improvements Cost/Security Amount Estimate**

<b><u>CONSTRUCTION CATEGORY</u></b>	<b><u>COST</u></b>	<b><u>125 percent</u></b>
1 <u>Grading</u>	\$106,500	\$133,125
2 <u>Sanitary Sewer</u>	\$11,120	\$13,900
3 <u>Watermain</u>	\$65,405	\$81,756
4 <u>Storm Sewer (includes pond structures and outfall pipes)</u>	\$79,300	\$99,125
5 <u>Streets and Sidewalks</u>	\$28,995	\$36,244
6 <u>Trails</u>	\$NA	\$NA
7 <u>Surface Water Facilities</u>	\$NA	\$NA
8 <u>Street Lighting</u>	\$NA	\$NA
9 <u>Street and Traffic Signs</u>	\$NA	\$NA
10 <u>Private Utilities</u>	\$NA	\$NA
11 <u>Landscaping Improvements</u>	\$74,885	\$93,606
14 <u>Monuments</u>	\$600	\$750
15 <u>Erosion and Sedimentation Control</u>	\$19,300	\$24,125
17 <u>Developer's Record Drawings</u>	\$5,000	\$6,250
<b><u>TOTALS</u></b>	<b>\$391,105</b>	<b>\$488,881</b>

## 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: \_\_\_\_\_