



STAFF REPORT

DATE: February 2, 2021

DISCUSSION

AGENDA ITEM: Royal Gold Development Agreement Amendments

TO: Mayor and Council

SUBMITTED BY: Kristina Handt, City Administrator

REVIEWED BY: Ken Roberts, Planning Director

BACKGROUND:

On September 19, 2017 the City Council approved the Development Agreement for Royal Golf 1st Addition. There are two items from that agreement the developer has asked the council to reconsider (1): The Developer shall pay the City a cash donation of \$1,000,000.00 upon the Royal Golf Club at Lake Elmo 3rd Addition final plat being approved by the City, or upon approval by the City of that phase of the development where the Tartan Park ballfields are no longer able to be used by the City, whichever happens first and

(2): as amended on March 20, 2018 that the required number of trees be reduced from 3800 to 2912 and that the developer pay \$500 per tree for another 969 trees they chose not to plant.

The City Council approved Royal Golf 3rd Addition Final Plat on December 4, 2018. However the plat has not been filed and the developer has been granted a number of extensions to file the plat. The current extensions expires on July 31, 2021.

ISSUE BEFORE COUNCIL:

Should Council make changes to the Royal Golf development agreements?

PROPOSAL DETAILS/ANALYSIS:

\$1 million for ballfield issue:

Since the 3rd addition final plat has not been filed, the city has not received the \$1 million for ballfield replacement as required in the development agreement. The developer is seeking a change in the timing of when the payment is made. They have asked for the obligation to be reduced or the timeline for payment to be pushed back, possibly over multiple phases.

In keeping with the original intent of the agreement, staff was not supportive of pushing the payment beyond the 3rd phase since that is when the ballfields will be impacted. In further conversations with the developer, staff would propose (and it has been deemed acceptable by the developer), to push the million dollar payment back to be due before building permits are released for the third phase. This will cut down on the amount of time the developer has to extend his line of credit since he wouldn't have to carry that cost through the development of the public infrastructure and would be able to recoup the costs within a few days of paying it when lots are sold to builders.

Cost for tree replacement issue:

As described in the attached staff report from the Royal Golf 1st Addition DA 1st amendment from March 2018, the tree planting requirements were originally about 4,600 per ordinance. Staff had discussions with the developer and lowered that amount to 3,800 when the 1st Addition DA was approved in 2017. Council action in 2018 further reduced the tree number to 2912. At that time, the developer agreed to pay \$500 per tree for any additional trees they would not plant. The developer had indicated they intended to plant 1,943 and so therefore would be paying for the 969 they didn't plant.

However, the developer has again approached the city about reducing the tree requirements/cost for future phases (3 and 4 likely). Staff has been researching issues related to the tree preservation ordinance since council direction in September. With respect to the issue of payment for not planting trees, staff found that a number of other cities have a similar provision in their ordinances. With respect to fees related to not planting fees, staff found that Lake Elmo is on the high side. See the attached summary of fees. If Council wanted to make changes to the tree portion of the development agreement, staff would recommend that the fee be lowered to \$120 per caliper inch or \$300 per tree. While the \$500 number was used to represent the cost of purchasing, planting and caring for a tree for 2 years, we recognize that if a developer is buying a significant number of trees, they may see the per unit costs reduced.

FISCAL IMPACT:

Per the First Amendment to Royal Golf 1st Addition DA, the payment for not planting 969 trees is \$484,500. The fee was to be paid out on a pro-rated basis across the different phases based upon the number of lot sin each phase. The developer paid \$121,541.23 with 1st Addition and \$106,557 with 2nd Addition. That leaves a remaining balance due of \$256,401.77 in future phases (3 and 4) or about 513 trees.

If Council reduced the fee to \$300 per tree as suggested that would leave the remaining balance at \$153,900 over the future phases or a reduction of \$102,501.77 from the current agreement.

OPTIONS:

Provide direction to staff on changes, if any, to bring to a regular meeting of the council for consideration and approval.

RECOMMENDATION:

- Amend development agreement to require \$1 million for ballfields be paid before building permits are issued in Royal Golf 3rd Addition.
- Amend development agreement to reduce fee per tree to \$120 per caliper inch. Direct staff to add this fee to the fee schedule.
- Any of these amendments should be contingent upon the developer paying the City for the additional turn lane costs. The actual costs was \$470k compared to the estimate of \$370k in the DA. At the rime of this writing, we are still awaiting the additional payment.

ATTACHMENT:

- Royal Golf 1st Addition Development Agreement, 9/19/17
- Staff Report and Amendment to Royal Golf 1st Addition Development Agreement, 3/20/18
- Tree Fee Examples

(reserved for recording information)

DEVELOPMENT AGREEMENT

(Public sewer and water)

Royal Golf Club at Lake Elmo 1st Addition

THIS DEVELOPMENT AGREEMENT is dated September __, 2017, by and between the **CITY OF LAKE ELMO**, a Minnesota municipal corporation (the “City”) and Royal Development, Inc., a Minnesota corporation (the “Developer”).

1. REQUEST FOR PLAT APPROVAL. The Developer has asked the City to approve a plat entitled “Royal Golf Club at Lake Elmo” (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** (the “Property”).

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

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

may not grade or otherwise disturb the earth, remove trees, or construct public or private improvements or any buildings within the Subdivision, unless such work is permitted under separate agreement, until all the following conditions precedent have been satisfied:

- A. the Developer has caused H.C. Golf Land, LLC to provide the executed warranty deeds conveying fee title to Outlots A, C, E, H, J, M, N, and Q to the City and provided copies of the executed warranty deeds to the City for recording with Washington County;
- B. the Developer has executed and recorded with Washington County all drainage and utility easements required for the Subdivision by the City Engineer and Public Works Director in the City's standard form or the easements have been dedicated to the City on the plat;
- C. the Developer has executed and recorded with Washington County the storm water maintenance and easement agreement in the City's standard form;
- D. this Agreement has been executed by the Developer and the City;
- E. the required Security (as hereinafter defined) have been received by the City from or on behalf of the Developer;
- F. final construction plans and specifications have been submitted by the Developer and approved by the City Engineer;
- G. the Developer has paid the City for all legal, engineering, and administrative expenses incurred by the City regarding the City approvals and has given the City the additional City Engineering Administration Escrow required by this Agreement;
- H. the Developer has paid any outstanding assessments and taxes for the Property including the property being deeded to the City;
- I. the Developer has fulfilled any park dedication requirements as specified under this Agreement;

- J. the Developer has received all necessary permits from the Minnesota Pollution Control Agency (“MPCA”), the Minnesota Department of Health (the “MDH”), the Department of Natural Resources (the “DNR”), applicable watershed districts, Washington County, and any other government entity or agency having jurisdiction over the Subdivision;
- K. the Developer has provided the City with a certificate of insurance required by this Agreement;
- L. the Developer or the Developer’s engineer and the Developer’s contractor(s) have initiated and attended a preconstruction meeting with the City Engineer, and City staff;
- M. the final plat has been recorded with Washington County;
- N. the homeowners’ association declaration, covenants, and restrictions and other related documents have been submitted, reviewed, and approved by the City Attorney; and
- O. the Developer has provided a title insurance policy for all property being deeded to the City and all easements being dedicated to the City in the plat; and
- P. 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, including, but not limited to, any platting or dedication requirements enacted after the date of this Agreement.

7. DEVELOPMENT PLANS. The Developer agrees to develop the Property in accordance with the City approvals, including the terms and conditions of approval of the final plat as detailed in City Council Resolution No. 2017-093 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**. The Plans may not be modified by the Developer without the prior written approval of the City.

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

- A. Grading and erosion control;
- B. Sanitary sewer;
- C. Water system improvements;

- D. Stormwater improvements (storm sewer pipe, control structures, ponds, BMPs, etc.)
- E. Streets and sidewalks;
- F. Trails;
- G. Underground private utilities;
- H. Landscaping;
- I. Street lighting and signage;
- J. Intersection improvements (turn lanes, by-pass lanes, traffic control, etc.);
- K. Tree preservation and reforestation;
- L. Wetland mitigation and buffers; and
- M. Monuments required by Minnesota Statutes.

All improvements shall be installed in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. The Developer shall instruct its engineer to provide adequate field inspection personnel to assure an acceptable level of quality control to the extent that the Developer's engineer will be able to certify that the construction work meets the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards as a condition of City acceptance. In addition, the City may, at the City's discretion and at the Developer's expense, have one or more City inspectors or a soil engineer inspect the Developer's work on a full or part-time basis. The Developer's engineer shall provide for on-site project management. The Developer's engineer is responsible for design changes and contract administration between the Developer and the Developer's contractor.

9. CITY ADMINISTRATION AND CONSTRUCTION OBSERVATION.

At the time of the City's approval of the final plat for the Subdivision, the Developer shall submit to the City an amount to be escrowed by the City for City administration and construction observation costs in an amount provided under paragraph 36 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 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, 2018, with the exception of the final wear course of asphalt on streets. The Developer shall install the bituminous wearing course of streets after the first course has weathered a winter season, consistent with warranty requirements, however, final acceptance of the Subdivision Improvements by the City will not be granted until all work is completed, including the final wear course. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the Security posted by the Developer to reflect cost increases and amending this Agreement to reflect the extended completion date. Final wear course placement outside of this time frame must have the written approval of the City Engineer.

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

place on a weekly basis.

Prior to the City's acceptance of the streets, the City may agree, at the City's sole discretion, to keep the streets open during winter months by plowing snow. The City will consider snow plowing streets on a case-by-case basis and under the following conditions: 1) the Developer must request in writing the streets in question to be plowed by the City, with such request received prior to October 1st of each winter season that plowing is requested; 2) the streets must be occupied by residents of the City; 3) for streets that do not have the bituminous wear course placed, the Developer must install paved wedges along all curb lines and catch basins; 4) gate valves and manholes must be level with the pavement surface; 5) street curves, center medians, and other protrusions in the right-of-ways must be delineated with "High-vis" fiberglass stakes; 6) a site review must be scheduled and conducted with the Public Works Department, and attended by the Developer, to accept the streets for plowing prior to the commitment of plowing by the City; 7) the City shall not be responsible for any damage caused by snow plowing operations to the streets, curb and gutter, manholes, catch basins or other infrastructure; and 8) the Developer shall enter into an Agreement with the City for plowing of the streets.

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

14. CONSTRUCTION ACCESS. Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the Subdivision via 10th Street North and 20th Street North as identified on the approved construction plans. No construction traffic is permitted on other adjacent local streets including loading and unloading of equipment.

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 MPCA's best management practices, and other requirements including the City's permit with the MPCA 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 Engineer.

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

18. STREET AND UTILITY IMPROVEMENTS. All storm sewers, sanitary sewers, watermain, and streets, including turn lane and intersection improvements, shall be installed in accordance with the approved Plans, the City approvals, the City Code, and the City's Engineering Design and Construction Standards Manual. Curb and gutter, the first lift of the bituminous streets, sidewalks, the grading of boulevards, the installation of street signs, and all restoration work on the site shall be completed in accordance with the approved Plans. Once the work is completed, the Developer or the Developer's representative shall submit a written request to the City asking for an inspection of the initial improvements. The City will then schedule a walk-through to create a punch list of outstanding items to be completed. Upon receipt of the written punch list provided by the City, the punch list items must be completed by the Developer and the City must be notified to re-inspect the improvements. The final bituminous wear course shall be installed by the Developer after the first bituminous course has weathered a winter season. Prior to placement of the final bituminous wear course, the Developer shall repair or replace all broken or failing curbs, sidewalks, and damaged or settled streets as determined by the City from a pre-wear course walk through inspection.

19. LANDSCAPING AND TREE REPLACEMENT IMPROVEMENTS.

- A. The Developer agrees to install landscaping in accordance with the approved Plans, the City approvals, the City Code, the City's Engineering Design and Construction Standards Manual, and the City's Landscape and Irrigation Standards. All landscaping materials such as trees, shrubs, grasses, or other vegetation installed by the Developer must be 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 that any landscaping installed by the Developer is deemed to be in poor condition or dead, the Developer is to replace the landscaping with like kind materials or as otherwise approved by the City.
- B. The Developer shall be responsible for maintaining regular watering, fertilizing, and over-seeding necessary to establish final lawns and yards as identified in the approved Plans for outlots, public rights-of-way, and any disturbed areas outside the Subdivision boundaries according to a landscape maintenance plan approved by the City. The Developer agrees to achieve "substantial performance" on all seeded or sodded lawns and yards disturbed during the construction of Subdivision Improvements. For the purpose of this Agreement "substantial performance" shall be defined for areas seeded or sodded with a turf or lawn mix as "square foot turf areas with an average blade height of three 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.”

- C. Notwithstanding anything herein to the contrary, the Developer may reduce the number of trees it is required to plant within the Subdivision, as such number is reflected currently in the landscape plan referenced in Exhibit C attached hereto, by (i) implementing woodland management and/or pollinator friendly native seeding practices within the Subdivision, in a manner approved by the City's Landscape Architect, provided that the number of trees that may be removed from the Developer's plantings will be agreed upon by the Developer and the City at the time such practices are approved, and/or (ii) paying to the City a per-tree parkland dedication fee of \$500.00 per 2.5 caliper inch tree that the Developer elects not to plant within the Subdivision. In the event the Developer elects to utilize either or both of the foregoing to reduce its tree planting requirements and the Developer and the City reach agreement on mutually acceptable terms relating to the same, the City and the Developer shall execute an amendment to this Agreement that memorializes the parties' agreement relating to such reduction in tree planting requirements and that includes a revised landscape plan for the Subdivision that reflects the reduced number of trees that will be planted.

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 dedicate 8.8 acres of land or pay a cash contribution of \$611,457.00 in satisfaction of the City's park dedication requirements for the entire Subdivision, all phases, to be dedicated incrementally with each phase of development. The park dedication for the entire Subdivision was calculated as follows: \$800,000.00 (10 percent of \$8,000,000 (the total appraised value of the entire Subdivision), less \$188,543 for the total appraised value of the land being conveyed to the City for trails (8,085 lineal feet of trail with a 30 foot wide corridor, less 5,010 square feet of buffer encroachment).

In the first phase, the Developer shall cause H.C. Golf Land, LLC to deed Outlots A and C (1.03 gross acres of land) to the City upon the recording of the final plat and shall pay a cash contribution of \$153,373 to satisfy the City's park dedication requirements for the first phase. The first phase park dedication was calculated as follows: 73 lots at \$2,101.00 per lot (\$2,749.00 per lot, less \$648.00 for the appraised value of land for the trails being conveyed to the City per lot).

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 paid by the Developer to the City prior to recording the final plat. The total amount to be paid by the Developer for the first phase of the Subdivision is \$219,000.00. This shall include 73 residential units. The sewer availability charge (SAC) for future connections to clubhouse and maintenance buildings, any semi-transient accommodations, and the fitness/recreation facility, to be located on Lot 2, Block 1 of the plat, shall be paid prior to the issuance of a building permit for each facility.

The water availability charge (WAC) in the amount of \$3,000.00 per REC shall be paid by the Developer to the City prior to recording the final plat. The total amount to be paid by the Developer for the first phase of the Subdivision is \$219,000.00. This shall include 73 residential units. The water availability charge (WAC) for the future clubhouse and maintenance buildings, any semi-transient accommodations, and the future fitness/recreation facility, to be located on Lot 2, Block 1 of the plat, shall be paid prior to the issuance of a building permit for each facility, or, with respect to the future connections to the clubhouse and maintenance buildings, at the time such hook-ups occur.

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

24. STREET LIGHTS. The Developer is responsible for the cost of street light installation consistent with a street lighting plan approved by the City. Before the City signs the final plat, the Developer shall post a Security for street light installation consistent with the approved plan. The required Security is \$36,000.00 and consists of six decorative lights at \$6,000.00 each. The Developer shall also pay the City \$774.00 to reimburse the City for the first year operating costs for the street lights.

25. 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.

26. 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 and water mains have been tested and approved by the City, storm sewer inverts have verified by the City, curb and gutter and one lift of asphalt have been installed and tested for all public streets; property monuments have been installed, and lot grading and lot drainage has been verified and approved by the City through as-built lot corner elevations and as-built elevations for all emergency overflow elevations and downstream drainage systems. Driveways are not permitted for any lot until sidewalks are in place. If a preapproved phasing plan is in place, the Developer is only obligated to complete the items listed in this paragraph with respect to that phase in order to receive building permits. A “preapproved phasing plan” is defined as a phased construction plan that has been submitted by the Developer and approved by the City in advance of the preconstruction meeting for the Subdivision. Once the construction has started, the City will not consider revisions to the phasing plan for the purpose of issuing building permits.
- B. Issuance of building permits for six “model homes” may be authorized by the City Planning Director prior to the completion of the Subdivision Improvements described

in paragraph 26 (A) above, if there is safe public access to the lot that is sufficient to allow construction to proceed and there is a grading as-built plan approved by the City for the lot and all downstream storm water drainage facilities. However, the City will not issue a certificate of occupancy for any “model home” until all conditions identified in paragraph 26 (G) below have been completed. The Developer shall use the model home only for real estate sales purposes and no other purposes.

- C. Prior to issuance of building permits, wetland buffer monuments shall be placed in accordance with the City’s zoning ordinance. The monument design shall be approved by the Planning Department.
- D. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and withholding of other permits, inspections, or actions and the halting of all work in the Subdivision.
- E. If building permits are issued prior to the acceptance of the public Subdivision Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of public Subdivision Improvements and damage to public Subdivision Improvements caused by the City, the Developer, the Developer’s contractors, subcontractors, materialmen, employees, agents, or any third parties.
- F. No sewer and water connection permits will be issued until the streets needed for access have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.
- G. No certificate of occupancy will be issued for any lot within the Subdivision in a City preapproved phasing plan until such time that street and traffic control signs have been installed in such phase; grading as-built plans have been submitted and approved by the City in such phase; sidewalks have been installed continuously from end of street to end of street in such phase without exceptions; and lift stations must

be operational.

27. 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 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.

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

- A. Implementation of the recommendations listed in the August 24, 2017 Engineering memorandum.
- B. Upon the recording of the final plat, the Developer shall cause H.C. Golf Land, LLC to convey Outlots A, C, E, H, J, M, N, and Q to the City by warranty deed, free and clear of any and all encumbrances, unless otherwise agreed to by the City.
- C. The Developer must obtain a sign permit from the City Building Official prior to installation of any subdivision identification signs.
- D. All public trails shall be located within outlots that are at least 30' wide and must be deeded to the City by warranty deed. A title insurance policy shall be provided for the outlots.

- E. The Developer shall enter into a License and Maintenance Agreement for Landscaping Improvements with the City that clarifies the individuals or entities responsible for maintenance of any landscaping installed in areas outside of land deeded to the City or dedicated as public park and open space on the final plat.
- F. The Developer shall reimburse the City for all "City Costs" incurred by the City for the City's cost participation in the CSAH 10 and CSAH 17 turn lane improvements to be designed and constructed by Washington County. The Developer shall pay the City up front, when payment is due under the terms of this Agreement, a cash contribution of \$370,000.00, the estimated City cost share of turn lanes on CSAH 10 and CSAH 17 (\$203,000.00 for CSAH 10 and \$167,000.00 for CSAH 17). If the actual City cost share exceeds this estimated amount, the Developer shall be responsible for reimbursing the City for all "City costs" associated with the City's cost participation in the CSAH 10 and CSAH 17 turn lane construction within 30 days of being invoiced for such amounts by the City.
- G. The Developer shall pay the City a cash donation of \$1,000,000.00 upon the Royal Golf Club at Lake Elmo 3rd Addition final plat being approved by the City, or upon approval by the City of that phase of the development where the Tartan Park ballfields are no longer able to be used by the City, whichever happens first.
- H. The Developer shall pay the City a cash contribution of \$50,000.00 for the future maintenance costs of two of the three lift stations that will be serving the Subdivision. The contribution shall be paid prior to the City signing the final plat.
- I. A temporary access road providing access to the Outlot N lift station and sanitary manhole structures along Outlot R must be provided by the Developer. The Developer also hereby agrees to pave such road within one year from the date that the lift station is operational.

29. 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. Homeowners' association documents, covenants, and restrictions and other documents related to the homeowners' association 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 the 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.

30. 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.

31. 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.

32. 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.

33. WARRANTY. During the warranty period, the Developer warrants that all Subdivision Improvements will be free from defects and that they will continue to meet all technical specifications and standards. During the warranty period, the Developer agrees to repair or replace any Subdivision Improvement, or any portion or element thereof, which shows signs of failure, normal wear and tear excepted. If the Developer fails to repair or replace a defective Subdivision Improvement during the warranty period, the City may repair or replace the defective portion and may use the Security to reimburse itself for such costs. The Developer agrees to reimburse the City fully for the cost of all Subdivision Improvement repair or replacement if the cost thereof exceeds the remaining amount of the Security. Such reimbursement must be made within 45 days of the date upon which the City notifies the Developer of the cost due under this paragraph. The Developer hereby agrees to permit the City to specially assess any unreimbursed costs against any lots in the Subdivision which have not been sold to home buyers if the Developer fails to make required payments to the City. The Developer, on behalf of itself and its successors and assigns, acknowledges the benefit to the lots within the Subdivision of the repair or replacement of the Subdivision Improvements and hereby consents to such assessment and waives the right to a hearing or notice of hearing or any appeal thereon under Minnesota Statutes, Chapter 429.

- A. The required warranty period for all work relating to the public sewer and water shall be two years from the date of final written City acceptance of the work.
- B. The required warranty period for all work relating to street construction, including concrete curb and gutter, sidewalks and trails, materials and equipment shall be one year from the date of final written City acceptance of the work.
- C. The required warranty period for sod, trees, and landscaping is two years from the date of final written City acceptance of the installation.

34. 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 \$3,570,389.00. 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.

35. 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 \$0.00, 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 \$1,024,111.50 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 \$1,219,884.00 may be released when all streets, sidewalks, and storm sewer have been installed and tested, and have been found to be complete to the satisfaction of the City Engineer including all corrective work for any identified punch list items and including verification of storm sewer as-built inverts, but not including the final wear course.
3. Construction Categories 6-10 and 14-17: The amount of \$200,280.00 may be released when all remaining Developer's obligations under this Agreement have been completed including: (1) bituminous wear course; (2) street lighting and private utilities; (3) trails; (4) bio retention facilities; (5) iron monuments for lot corners have been installed, if required; (3) all financial obligations to the City have been satisfied; (4) the required "record" plans in the form of the City standards have been received and approved by the City; and (5) the public

Subdivision Improvements are accepted by the City Engineer and the City Council.

4. Construction Categories 11, 12, and 13: The amount of \$233,515.50 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. 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.
- F. It is the intent of the parties that the City at all times have available to it Security in an amount adequate to ensure completion of all elements of the Subdivision Improvements and other obligations of the Developer under this Agreement,

including fees or costs due to the City by the Developer. To that end and notwithstanding anything herein to the contrary, all requests by the Developer for a reduction or release of the Security shall be evaluated by the City in light of that principle.

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

Sewer Availability Charge (SAC):	\$219,000.00
Water Availability Charge (WAC):	\$219,000.00
Park Dedication:	\$153,373.00
Street Light Operating Fee:	\$774.00
City Base Map Upgrading:	\$1,775.00
City Engineering Administration Escrow	\$50,000.00
Lift Station Maintenance Cost Fee:	\$50,000.00
City Cost Share of Turn Lane Improvements:	\$370,000.00
TOTAL CASH REQUIREMENTS:	\$1,063,922.00

37. NOTICES. Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: 11074 Radisson Road NE, Blaine, MN 55449, Attn: Hollis Cavern. Notices to the City shall be in writing and shall be either hand delivered to the City Administrator, or mailed to the City by certified mail in care of the City Administrator at the following address: Lake Elmo City Hall, 3800 Laverne Avenue N., Lake Elmo, Minnesota 55042.

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

39. 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.

40. 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.

41. 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.

42. 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 _____, 2017, by Mike Pearson and Julie Johnson, the Mayor and City Clerk, respectively, of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

NOTARY PUBLIC

Royal Development, Inc.

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____, day of _____, 2017, by _____, the _____ of Royal Development, Inc., a Minnesota corporation on behalf of the corporation.

NOTARY PUBLIC

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

**MORTGAGE CONSENT TO
DEVELOPMENT AGREEMENT**

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

Dated this _____ day of _____, 2017.

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

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

NOTARY PUBLIC

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

**EXHIBIT A TO
DEVELOPMENT CONTRACT**

**Legal Description of Property Being Final Platted as
THE ROYAL GOLF CLUB AT LAKE ELMO**

The North Half of the Northeast Quarter of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota, except therefrom that portion of the Northeast Quarter lying North and East of the public highway known as County State Aid Road No. 15.

AND

Government Lot 2 of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

Government Lot 1 of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

The Northwest Quarter of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

The Northeast Quarter of the Southwest Quarter of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

Government Lot 3 of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

The Southwest Quarter of the Southeast Quarter of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

That part of Government Lot 4, Section 25, Township 29, Range 21, Washington County, Minnesota, described as follows:

Commencing at the Southwest corner of said Government Lot 4; thence North 00 degrees 08 minutes 17 seconds East, assumed bearing, along the West line of said Government Lot 4, a distance of 1119.38 feet to the point of beginning of the parcel to be described; thence continuing northerly along said West line of Government Lot 4, a distance of 584 feet, more or less, to the shoreline of Horseshoe Lake; thence southeasterly, southerly, and southwesterly along said shoreline to the intersection with a line that bears South 89 degrees 51 minutes 43 seconds East from the point of beginning; thence North 89 degrees 51 minutes 43 seconds West, 21.5 feet, more or less, to the point of beginning.

AND

That part of Government Lot 4, Section 25, Township 29, Range 21, Washington County, Minnesota, lying southwesterly, southerly, and westerly of the following described line:

Commencing at the Southwest corner of said Government Lot 4; thence North 00 degrees 08 minutes 17 seconds East, assumed bearing, along the West line of said Government Lot 4, a distance of 482.61 feet to the point of beginning of the line to be described; thence southeasterly 221.89 feet along a non-tangential curve concave to the southwest having a radius of 490.00 feet, a central angle of 25 degrees 56 minutes 46 seconds, a chord length of 220.00 feet, and a chord bearing of South 43 degrees 56 minutes 35 seconds East; thence North 63 degrees 42 minutes 45 seconds East, not tangent to the last described curve, a distance of 10.23 feet; thence South 32 degrees 27 minutes 51 seconds East, 334.35 feet; thence South 00 degrees 08 minutes 17 seconds West, 45.00 feet to the South line of said Government Lot 4 and said line there terminating.

Parcel Identification Numbers:

25-029-21-12-0001
25-029-21-13-0001
25-0 29-21-14-0001
25-029-21-21-0001
25-029-21-31-0001
25-029-21-42-0001
25-029-21-43-0001

25-029-21-43-0002
25-029-21-44-0002

EXHIBIT B TO DEVELOPMENT CONTRACT

List of Plan Documents

The following documents prepared by Carlson McCain, and Pioneer Engineering, collectively constitute the Plans:

THOSE DOCUMENTS BY

AS FOLLOWS:

<u>SHEET</u>	<u>TITLE</u>	<u>REVISION DATE</u>
The Royal Golf Club at Lake Elmo 1st Addition Sanitary Sewer, Water Main, Storm Sewer and , Street Construction Plans, Lake Elmo MN 1 of 37	Cover	
The Royal Golf Club at Lake Elmo 1st Addition Sanitary Sewer, Water Main, Storm Sewer and , Street Construction Plans, Lake Elmo MN 2-3 of 37	Index	
The Royal Golf Club at Lake Elmo 1st Addition Sanitary Sewer, Water Main, Storm Sewer and , Street Construction Plans, Lake Elmo MN 4 of 37	Sanitary Sewer & Watermain – Sheet Index	
The Royal Golf Club at Lake Elmo 1st Addition Sanitary Sewer, Water Main, Storm Sewer and , Street Construction Plans, Lake Elmo MN 5-17 of 37	Sanitary Sewer & Watermain –	
The Royal Golf Club at Lake Elmo 1st Addition Sanitary Sewer, Water Main, Storm Sewer and , Street Construction Plans, Lake Elmo MN 18 of 37	Storm Sewer Sheet Index	
The Royal Golf Club at Lake Elmo 1st Addition Sanitary Sewer, Water Main, Storm Sewer and , Street Construction Plans, Lake Elmo MN 19-26 of 37	Storm Sewer	
The Royal Golf Club at Lake Elmo 1st Addition Sanitary Sewer, Water Main, Storm Sewer and , Street Construction Plans, Lake Elmo MN 27-29 of 37	Street Construction	
The Royal Golf Club at Lake Elmo 1st Addition Sanitary Sewer, Water Main, Storm Sewer and , Street Construction Plans, Lake Elmo MN 30-31 of 37	Signing, Striping & Lighting Plan	
The Royal Golf Club at Lake Elmo 1st Addition Sanitary Sewer, Water Main, Storm Sewer and , Street Construction Plans, Lake Elmo MN 32-33 of 37	Trail Construction	

The Royal Golf Club at Lake Elmo 1st Addition Sanitary Sewer, Water Main, Storm Sewer and , Street Construction Plans, Lake Elmo MN 34-36 of 37	Details	
The Royal Golf Club at Lake Elmo 1st Addition Sanitary Sewer, Water Main, Storm Sewer and , Street Construction Plans, Lake Elmo MN T1-T4	Turn Lane Plans	
L1-L4	Landscape Plan	
L5	Groundcover Plan	
L6	Irrigation Connection Points	
L7	City Planting Details	

EXHIBIT C TO DEVELOPMENT CONTRACT

Subdivision Improvements Cost/Security Amount Estimate

<u>CONSTRUCTION CATEGORY</u>		<u>COST</u>	<u>125 percent</u>
1	<u>Grading</u>	Addressed in Site Grading Agreement Security	Addressed in Site Grading Agreement Security
2	<u>Sanitary Sewer</u>	\$723,897.00	\$904,871.00
3	<u>Watermain</u>	\$368,489.00	\$460,611.00
4	<u>Storm Sewer (includes pond structures and outfall pipes)</u>	\$429,087.00	\$536,359.00
5	<u>Streets and Sidewalks</u>	\$872,122.00	\$1,090,153.00
6	<u>Trails</u>	\$76,050.00	\$95,063.00
7	<u>Surface Water Facilities (ponds, infiltration basins, other BMPs)</u>	Addressed in Site Grading Agreement Security	Addressed in Site Grading Agreement Security
8	<u>Street Lighting</u>	\$36,000.00	\$45,000.00
9	<u>Street and Traffic Signs</u>	\$11,403.00	\$14,253.00
10	<u>Private Utilities (electricity, natural gas, telephone, and cable)</u>	\$0.00	\$0.00
11	<u>Landscaping Improvements</u>	\$249,083.00	\$311,354.00
12	<u>Tree Preservation and Restoration</u>	Addressed in Site Grading Agreement Security	Addressed in Site Grading Agreement Security
13	<u>Wetland Mitigation and Buffers</u>	Addressed in Site Grading Agreement Security	Addressed in Site Grading Agreement Security
14	<u>Monuments</u>	\$7,300.00	\$9,125.00
15	<u>Erosion and Sedimentation Control</u>	\$71,880.00	\$89,850.00

16	<u>Miscellaneous Facilities</u>	\$0.00	\$0.00
17	<u>Developer's Record Drawings</u>	\$11,000.00	\$13,750.00
<u>TOTALS</u>		\$2,856.310.00	\$3,570,389.00

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 _____, 2017, of (Name of Bank)";
- b) Be signed by the Mayor or City Administrator of the City of Lake Elmo.
- c) Be presented for payment at _____ (Address of Bank), on or before 4:00 p.m. on November 30, 20____.

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

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

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

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

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

BY: _____

Its _____



STAFF REPORT

DATE: March 20, 2018

REGULAR

ITEM #: 20

MOTION

TO: City Council

FROM: Emily Becker, Planning Director

AGENDA ITEM: Royal Golf Club at Lake Elmo Development Agreement Amendment

REVIEWED BY: Sarah Sonsalla, City Attorney
Kristina Handt, City Administrator

BACKGROUND:

The Royal Golf Club at Lake Elmo Preliminary Landscape Plans included the need for 3800 trees within the entire Royal Golf Club at Lake Elmo Preliminary Plat per Tree Preservation and Landscape requirements. The original number of trees that were required to be planted within the development was approximately 4600, but because the area is heavily wooded and because the language within the tree preservation ordinance requires a minimum of five trees to be planted for every one acre of land that is developed *or* disturbed, the City made some concessions, and an agreement was made to require that 3800 trees be planted within the development. The Developer and City have been working on coming to an agreement for trees required within the development, as both the Developer and City believe that the required number of trees within the development would cause tree overcrowding.

The updated preliminary landscape plans provide that a total of 888 trees are to be planted on single family lots. Of these, four are to be planted within each large single family lot, and two are to be planted within each small single family (villa) lots. The Development Agreement for Royal Golf Club at Lake Elmo 1st Addition required that security be in place for the cost of all trees, including those to be planted within single family lots to be installed on single family lots by builders. Other developments within the City (i.e. Hunter's Crossing) have landscaping that is warrantied within private lots. The Developer is requiring the builders to plant these trees and is requesting that the City not govern, warrant, or dictate those trees and simply ensure that they are planted. They also have communicated that they are planning to reduce the number of trees to be planted within the development by an additional 969 beyond the required 2912 (2912 subtracted by a proposed 1943 trees), paying \$500 per each 2.5 caliper inch tree that the developer elects not to plant within the subdivision

The Council discussed this request at the January 9, 2018 workshop and directed Staff to draft an amendment to the Royal Golf Club at Lake Elmo which will reduce the number of trees required to be planted within the development from 3800 to 2912 (the 888 to be planted within single family lots subtracted from the agreed-upon number of trees to be planted within the development). There was consensus that simply not requiring warranty on these trees would leave the City with no way to enforce the requirement that these trees be planted. This direction was given to Staff under the understanding that the developer would be paying park dedication fees totaling \$484,500 (\$500 per 2.5 caliper inch tree X 969 trees to be reduced). Additionally, it should be clarified and was discussed at the workshop

that these trees will still be warranted by way of contracts entered in to between landscapers and builders/buyers of these lots.

ISSUE BEFORE COUNCIL:

Should the City amend the Royal Golf at Lake Elmo 1st Addition Development agreement, allowing reduction of the total number of trees required within the development from 3800 to 2912 with the understanding that the developer will also pay the City park dedication fees of \$500.00 per 2.5 caliper inch tree in lieu of planting 969 trees within the development?

REVIEW/ANALYSIS:

The proposed amendments to the Royal Golf Club at Lake Elmo 1st Addition include the following:

- That the trees planted within single family lots are not required to be warrantied.
- That the City has agreed to reduce the number of trees required to be warrantied within the development from 3800 to 2912.
- That the developer will plant at least two trees on villa lots and four trees on single family home lots.
- All trees within villa and single family lots must be planted prior to release of building permit escrow.
- That the developer may reduce the number of trees required to be planted within the development by either implementing woodland management or pollinator friendly native seeding practices or a per-tree parkland dedication fee of \$500.00 per 2.5 caliper inch tree that the Developer elects not to plant.
- The Developer will be required to pay \$121,541.00 in parkland dedication fees for the 1st Addition for reduction of the number of trees required. This fee was calculated as follows: \$500.00 X 969 2.5-caliper inch trees reduced within the entire preliminary plat area / 291 residential lots within the entire preliminary plat area X 73 residential lots within the 1st Addition.

Security Reduction. The developer's amended plan indicates that 422 trees will be planted within the 1st Addition, which would only require a security of \$263,750 (\$500 per 2.5 inch caliper tree X 422 trees X 125%), reduced from the previously required security of \$311,354.00. If the Council chooses to amend the Development Agreement to not warranty the trees within the single family lots, it should also motion to approve the security reduction of \$47,604.

FISCAL IMPACT:

The Developer will be required to pay a park dedication fee of \$121,541 for 244 trees not planted within the development.

OPTIONS:

The City Council has the following options:

- 1) Adopt Resolution 2018-028 approving the First Amendment to Development Agreement for Royal Golf Club at Lake Elmo; or

- 2) Amend Resolution 2018-028 approving the First Amendment to the Development Agreement for Royal Golf Club at Lake Elmo and adopt as amended.
- 3) Do not adopt Resolution 2018-028 approving the First Amendment to Development Agreement for Royal Golf Club at Lake Elmo.

RECOMMENDATION:

Staff recommends the City Council adopt Resolution 2018-028 approving the Development Agreement for Royal Golf Club at Lake Elmo.

“Move to adopt Resolution 2018-028 approving the development agreement for Royal Golf Club at Lake Elmo Final Plat”

Additionally, because security reductions would need to be made as a result of this amendment, the following motion should also be made:

“Move to approve security reduction for landscaping for the Royal Golf Club 1st Addition by \$47,604.”

ATTACHMENTS:

1. Resolution 2018-028
2. First Amendment to Royal Golf Club at Lake Elmo Development Agreement
3. Amended Preliminary Landscape Plans

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement (Amendment) is made and entered into this ____ day of _____, 2018, by and between the City of Lake Elmo, a municipal corporation under the laws of Minnesota (the “City”) and Royal Development, Inc., a Minnesota corporation (the “Developer”).

RECITALS:

A. The City and the Developer have entered into a Development Agreement dated August 31, 2017 and recorded with Washington County on September 19, 2017 as Document No. 4129865 (the “Development Agreement”).

B. The Development Agreement relates to that subdivision located in Lake Elmo, Minnesota known as Royal Golf Club at Lake Elmo 1st Addition and the property is legally described on Exhibit A attached hereto.

C. The Development Agreement required that all landscaping materials such as trees, shrubs, grass, or other vegetation installed by the Developer must be warrantied and maintained for a period of two years.

D. The City and the Developer have agreed to amend the Development Agreement so that trees planted within lots on which single family and villa homes will be constructed (collectively the “Single Family Lots” do not need to be warrantied in recognition of the Developer agreeing to reduce by 969 the number of trees it is required to plant throughout all phases of the development by paying a parkland dedication fee of \$500.00 per 2.5 caliper inch tree as permitted under Section 19 (C) of the Development Agreement.

NOW, THEREFORE, in consideration of the above recitals, which are expressly incorporated herein, and for other good and valuable consideration, the receipt and sufficiency

which is hereby acknowledged, the City and the Developer agree to amend the Development Agreement as follows:

1. Capitalized terms used but not defined herein have the meanings assigned to them in the Development Agreement.

2. Section 19 (A) of the Development Agreement shall be changed to read as follows:

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, with the exception of trees planted on lots that have single family homes, which are not required to be warrantied. The City has agreed to not require the Developer to warranty the trees planted within single family lots recognizing that the Developer has agreed to reduce by 969 the total number of trees it is required to plant within all phases of the Subdivision by paying the City a per-tree parkland dedication fee of \$500.00 per 2.5 caliper inch tree as permitted under Section 19 (C) below. The Developer will pay a proportionate share of the total per-tree parkland dedication fee for each phase of the Subdivision based upon the number of Single Family Lots contained within each such phase. For the 1st Addition, the Developer will be required to pay \$121,541.00 in parkland dedication fees $[(\$500 \times 969 \text{ 2.5-caliper inch trees reduced within the entire preliminary plat area}) / 291 \text{ Single Family Lots within all phases of the Subdivision} \times 73 \text{ Single Family Lots within the 1}^{\text{st}} \text{ Addition}]$. The two year warranty period for landscaping materials located within each phase of the Subdivision for which the Developer is providing a warranty under this Section 19 (A) shall be deemed to start once all required landscaping identified as responsibility of Developer in the approved Plans for such phase 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 that any landscaping installed by the Developer is deemed through this inspection 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.

2. Section 19 (C) of the Development Agreement shall be changed to read as follows:

(C) The City has agreed to reduce the number of required trees the Developer is required to plant within the Subdivision from 3800 to 2912 as such number is reflected in the revised landscape plan attached hereto as Exhibit D. However, in addition to planting the number of trees required by this

paragraph, the Developer agrees that it will require that at least two trees be planted on lots that have villa homes and at least four trees be planted on lots that have single family homes. These trees are not to be counted towards the number of trees that are required by this paragraph to be planted by the Developer. All trees planted on villa or single family home lots must be planted before the building permit escrow will be released by the City. The Developer may further reduce the number of trees that it is required to plant within the Subdivision by: (i) implementing woodland management or pollinator friendly native seeding practices within the Subdivision, in a manner approved by the City's Landscape Architect, provided that the number of trees that may be removed from the Developer's plantings will be agreed upon by the Developer and the City at the time such practices are approved; or (ii) paying to the City a per-tree parkland dedication fee of \$500.00 per 2.5 caliper inch tree that the Developer elects not to plant within the Subdivision.

3. A new Exhibit D to the Development Agreement is hereby added. The new Exhibit D is attached hereto as Exhibit 2.

4. All other terms and conditions of the Development Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and the Developer have executed this First Amendment to the Development Agreement as of the date first written above.

CITY OF LAKE ELMO

By: _____
Mike Pearson, Mayor

By: _____
Julie Johnson, City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Mike Pearson and Julie Johnson, the Mayor and the City Clerk, respectively of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the City.

Notary Public

ROYAL DEVELOPMENT INC.

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, the _____ of Royal Development Inc., a Minnesota corporation, on behalf of the corporation.

Notary Public

This document was drafted by:

Kennedy & Graven, Chartered (SJS)

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

EXHIBIT A

Legal Description of the Property

The property subject to the foregoing First Amendment to Development Agreement is legally described as follows:

The North Half of the Northeast Quarter of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota, except therefrom that portion of the Northeast Quarter lying North and East of the public highway known as County State Aid Road No. 15.

AND

Government Lot 2 of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

Government Lot 1 of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

The Northwest Quarter of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

The Northeast Quarter of the Southwest Quarter of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

Government Lot 3 of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

The Southwest Quarter of the Southeast Quarter of Section 25, Township 29 North, Range 21 West, Washington County, Minnesota.

AND

That part of Government Lot 4, Section 25, Township 29, Range 21, Washington County, Minnesota, described as follows:

Commencing at the Southwest corner of said Government Lot 4; thence North 00 degrees 08 minutes 17 seconds East, assumed bearing, along the West line of said Government Lot 4, a distance of 1119.38 feet to the point of beginning of the parcel to be described; thence continuing northerly along said West line of Government Lot 4, a distance of 584 feet, more or less, to the shoreline of Horseshoe Lake; thence southeasterly, southerly, and southwesterly along said shoreline to the intersection with a line that bears South 89 degrees 51 minutes 43 seconds East from the point of beginning; thence North 89 degrees 51 minutes 43 seconds West, 21.5 feet, more or less, to the point of beginning.

AND

That part of Government Lot 4, Section 25, Township 29, Range 21, Washington County, Minnesota, lying southwesterly, southerly, and westerly of the following described line:

Commencing at the Southwest corner of said Government Lot 4; thence North 00 degrees 08 minutes 17 seconds East, assumed bearing, along the West line of said Government Lot 4, a distance of 482.61 feet to the point of beginning of the line to be described; thence southeasterly 221.89 feet along a non-tangential curve concave to the southwest having a radius of 490.00 feet, a central angle of 25 degrees 56 minutes 46 seconds, a chord length of 220.00 feet, and a chord bearing of South 43 degrees 56 minutes 35 seconds East; thence North 63 degrees 42 minutes 45 seconds East, not tangent to the last described curve, a distance of 10.23 feet; thence South 32 degrees 27 minutes 51 seconds East, 334.35 feet; thence South 00 degrees 08 minutes 17 seconds West, 45.00 feet to the South line of said Government Lot 4 and said line there terminating.

Parcel Identification Numbers:

25-029-21-12-0001

25-029-21-13-0001

25-029-21-14-0001

25-029-21-21-0001

25-029-21-31-0001

25-029-21-42-0001

25-029-21-43-0001

25-029-21-43-0002
25-029-21-44-0002

	City	Fee	Notes	Trees needing replacement (100 trees or 100 inches)
Cities with replacment per tree.	Ramsey	\$125 per tree	Least expensive per tree	\$12,500
	Shakopee	\$400 per replacement tree	Most expensive per tree	\$40,000
	Rosemount	\$350 per replacement tree		\$35,000
	Roseville	In no instance shall a cash-in-lieu of payment exceed 10% of the Fair Market Value of the development site;	Not clear what the fee will be.	
Cities with replacmenet per inch.	Cottage Grove	\$150 per replacement inch. (See notes)	Qualifying tree inches removed beyond the permitted thresholds shall be replaced at a rate of fifty percent (50%), or one (1) replacement caliper inch for two (2) removed diameter inches.	\$7,500
	Eden Prairie	\$125 per caliper inch		\$12,500
	Forest Lake	\$75 per caliper inch	Lowest fee to pay per acliber inch.	\$7,500