



DATE: October 19, 2021

CONSENT

TO: Mayor and City Council
FROM: Molly Just, Planning Director
AGENDA ITEM: **The Royal Golf Club at Lake Elmo 3rd Addition - Development Agreement Amendment**
REVIEWED BY: Sarah Sonsalla, City Attorney

INTRODUCTION:

Lennar, the developer of The Royal Golf Club at Lake Elmo 3rd Addition is proposing an Amendment to the Development Agreement for The Royal Golf Club at Lake Elmo 3rd Addition.

BACKGROUND:

On June 6, 2017, the Lake Elmo City Council adopted Resolution 2017-47 approving the Preliminary Plat and PUD Plans for The Royal Golf Club at Lake Elmo.

On December 4, 2018, the City Council approved the Final Plat and Final PUD plans for The Royal Golf Club at Lake Elmo 3rd Addition.

On July 6, 2021, the Lake Elmo City Council adopted Resolution No. 2021-076 approving the Development Agreement for The Royal Golf Club at Lake Elmo 3rd Addition.

ISSUE BEFORE THE CITY COUNCIL:

The City Council is being asked to adopt Resolution 2021 – 110 A Resolution Approving the First Amendment to the Development Agreement for The Royal Golf Club at Lake Elmo 3rd Addition.

REVIEW/ANALYSIS:

Since the Development Agreement was approved and executed by the City and Lennar on July 6, 2021, the cost estimates for the amount of security required have changed. Due to these changes, Exhibit C of the Development Agreement needed to be replaced with a new exhibit which is attached to the First Amendment. In addition, the Development Agreement needed to be amended concerning the reduction of security to reflect the new security amounts. The new cost estimates and security reduction provisions have been reviewed and approved by the City Engineer.

Also, the plans have been revised and therefore, Exhibit B of the Development Agreement needed to be replaced with a new exhibit. The revised plans have been reviewed and approved by the City Engineer.

Finally, it was determined by the City and the Developer that a stormwater maintenance and easement agreement was not required due to there not being any stormwater facilities in this particular addition. The amendment to the Development Agreement removes references to the stormwater maintenance and easement agreement from the Development Agreement.

OPTIONS:

The City Council has the following options:

- 1) Adopt Resolution 2021-110 Approving the First Amendment to the Development Agreement for The Royal Golf Club at Lake Elmo 3rd Addition; or
- 2) Direct Staff to revise the First Amendment to bring back to a future City Council meeting.

RECOMMENDATION:

Staff recommends the City Council adopt Resolution 2021-110 Approving the First Amendment to the Development Agreement for The Royal Golf Club at Lake Elmo 3rd Addition.

“Move to adopt Resolution 2021-110 Approving the First Amendment to the Development Agreement for The Royal Golf Club at Lake Elmo 3rd Addition.”

ATTACHMENTS:

- First Amendment to the Development Agreement
- Resolution 2021 - 110

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement (“First Amendment”) is made and entered into this _____ day of September, 2021, by and between the City of Lake Elmo, a municipal corporation under the laws of Minnesota (the “City”) and U.S. Home Corporation, a Delaware corporation d/b/a Lennar (the “Developer”).

RECITALS:

A. The City and the Developer have entered into a Development Agreement dated _____, 2021 and recorded with Washington County on _____, 2021 as Document No. _____ (the “Development Agreement”); and

B. The Development Agreement relates to that subdivision located in Lake Elmo, Minnesota known as Royal Golf Club at Lake Elmo 3rd Addition and the property is legally described on Exhibit A attached hereto; and

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. Paragraph 3(B) of the Development Agreement is hereby removed in its entirety and the subsequent paragraphs of Paragraph are hereby renumbered accordingly.
2. Paragraph 34 of the Development Agreement is replaced in its entirety with the following new Paragraph 34.

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 \$5,044,448. 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 forty-five (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 forty-five (45) days with a substitute letter of credit from an issuing bank satisfactory to the City, the City may draw under the existing letter of credit.

This breakdown is for historical reference; it is not a restriction on the use of the Security. The City may draw down the Security, without notice, for any violation of the terms of this Agreement or if the Security is allowed to lapse prior to the end of the required term. If the required public Subdivision Improvements are not completed at least thirty (30) days prior to the expiration of the Security, the City may also draw it down. If the Security is drawn down, the proceeds shall be used by the City to cure the default.

3. Paragraph 35 of the Development Agreement is replaced in its entirety with the following new Paragraph 35.

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. 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 \$1,002,248 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 \$1,454,585 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 \$222,364 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; (6) all financial obligations to the City satisfied; (7) the required "record" plans in the form of the City standards have been received and approved by the City; and (8) the public Subdivision

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

4. Construction Categories 11, 12 and 13: The amount of \$237,459 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.
- B. 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.
 - C. 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.
 - D. In addition to the above project milestone based Security reductions, the Developer may submit a written request and upon receipt of proof satisfactory to the City Engineer that work is progressing in accordance with the approved Plans and the terms of this Agreement and that all financial obligations to the City have been satisfied, the City Engineer may approve a one-time reduction in the Security for Construction Categories 2-5 in an amount not to exceed 50 percent of the initial Security amount. This one-time Security reduction does not apply to Categories 4-5 if boulevard sidewalks or trails have not been installed.
 - 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.

4. Exhibit B of the Development Agreement shall be replaced with the attached Exhibit B.
5. Exhibit C of the Development Agreement shall be replaced with the attached Exhibit C.
6. 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: _____
Charles Cadenhead, Mayor

By: _____
Julie Johnson, City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Charles Cadenhead 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

U.S. HOME CORPORATION

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of U.S. Home Corporation, a Delaware corporation, on behalf of the corporation.

Notary Public

This document was drafted by:

Kennedy & Graven, Chartered (SJS)
Fifth Street Towers
150 South 5th Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A

Legal Description of the Property

All lots and outlots located within the plat of The Royal Golf Club at Lake Elmo 3rd Addition, according to the recorded plat thereof, County of Washington, State of Minnesota.

EXHIBIT B

EXHIBIT B TO DEVELOPMENT AGREEMENT

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>
1-66	Royal Golf Club at Lake Elmo Preliminary Plans	7/15/2021
1-22	Royal Golf Club at Lake Elmo Phase 2 Grading, Development & Erosion Control Plans	7/15/2021
1-24	Royal Golf Club at Lake Elmo 3 rd Addition Sanitary Sewer, Water Main, Storm Sewer and Street Construction Plans	7/15/2021
	Royal Golf Club at Lake Elmo 3 rd , Project #6036-00 Specifications	6/10/2021

EXHIBIT C

EXHIBIT C TO
DEVELOPMENT AGREEMENT

Subdivision Improvements Cost/Security Amount Estimate

<u>CONSTRUCTION CATEGORY</u>	<u>COST</u>	<u>125 percent</u>
1 <u>Grading</u>	\$924,460	\$1,155,575
2 <u>Sanitary Sewer</u>	\$485,113	\$606,391
3 <u>Watermain</u>	\$583,951	\$729,939
4 <u>Storm Sewer (includes pond structures and outfall pipes)</u>	\$666,871	\$833,589
5 <u>Streets and Sidewalks</u>	\$884,687	\$1,105,858
6 <u>Trails</u>	\$44,125	\$55,156
7 <u>Surface Water Facilities (ponds, infiltration basins, other BMPs)</u>	\$23,149	\$28,936
8 <u>Street Lighting</u>	\$48,000	\$60,000
9 <u>Street and Traffic Signs</u>	\$5,779	\$7,224
10 <u>Private Utilities (electricity, natural gas, telephone, and cable)</u>	\$0	\$0
11 <u>Landscaping Improvements</u>	\$253,289	\$316,611
12 <u>Tree Preservation and Restoration</u>	\$0	\$0
13 <u>Wetland Mitigation and Buffers</u>	\$0	\$0
14 <u>Monuments</u>	\$7,300	\$9,125
15 <u>Erosion and Sedimentation Control</u>	\$103,835	\$129,794
16 <u>Miscellaneous Facilities</u>	\$0	\$0
17 <u>Developer's Record Drawings</u>	\$5,000	\$6,250
<u>TOTALS</u>	\$4,035,559	\$5,044,448

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

RESOLUTION NO. 2021-110

*A RESOLUTION APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT
AGREEMENT FOR THE ROYAL GOLF CLUB AT LAKE ELMO 3RD ADDITION*

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

WHEREAS, H.C. Golf Land, LLC, 11074 Radisson Road NE, Blaine, MN 55449 previously submitted an application to the City of Lake Elmo (the “City”) for a final plat for The Royal Golf Club at Lake Elmo 3rd Addition; and

WHEREAS, the Lake Elmo City Council adopted Resolution No. 2019-008 on December 4, 2018 approving the final plat for The Royal Golf Club at Lake Elmo 3rd Addition; and

WHEREAS, U.S. Home Corporation, a Delaware corporation d/b/a Lennar (the “Applicant”) subsequently acquired The Royal Golf Club at Lake Elmo 3rd Addition; and

WHEREAS, the Lake Elmo City Council adopted Resolution No. 2021-075 on July 6, 2021, approving the Development Agreement for The Royal Golf Club at Lake Elmo 3rd Addition; and

WHEREAS, the Applicant and City have agreed to make certain non-substantive amendments to the approved Development Agreement.

NOW, THEREFORE, based on the information received, the City Council of the City of Lake Elmo does hereby approve the First Amendment to Development Agreement for The Royal Golf Club at Lake Elmo 3rd Addition and authorizes the Mayor and City Clerk to execute the First Amendment.

Passed and duly adopted this 19th day of October 2021 by the City Council of the City of Lake Elmo, Minnesota.

Charles Cadenhead, Mayor

ATTEST:

Julie Johnson, City Clerk