



STAFF REPORT

DATE: February 20, 2024

CONSENT

TO: Mayor and City Council
FROM: Jenni Faulkner Consulting City Planner
AGENDA ITEM: Ebertz Addition Development Agreement- First Amendment
REVIEWED BY: Jason Stopa, Community Development Director
Sarah Sonsalla, City Attorney

BACKGROUND:

On May 16, 2023, the City Council adopted Resolution 2023-046 approving the Development Agreement for the Ebertz Addition (Drake Motor Partners). The agreement was recorded on July 6, 2023, and subsequent permits have been issued for the Tesla facility. The Developers Agreement requires that all public improvements be installed and accepted by the City prior to issuance of a Certificate of Occupancy for the Tesla building. The building items are nearing completion, and it is the developer's intention to have the building items completed and sign-off from the Building Official in mid-March for occupancy. However, the outstanding public improvements include a trail and required landscaping as well as submittal of as-builts and review and acceptance by the City Engineer.

The developer has asked for a 180-day temporary Certificate of Occupancy to allow occupancy of the Tesla building prior to completion and city acceptance of the public improvements. It is their intention to install the trail and landscaping first thing in the spring and then to immediately submit the as-builts to engineering for review and acceptance.

ISSUE BEFORE COUNCIL:

The City Council is being asked to adopt Resolution 2024-023 approving the First Amendment to the Development Agreement for Ebertz Addition.

REVIEW/ANALYSIS:

The only item changing in the agreement is Section 23 Building Permits/Certificates of Occupancy. A sentence is being added to Item C noting that the City will issue a temporary certificate of occupancy for 180-days and that all public improvements will need to be installed and accepted by the city within that timeframe.

There are no outstanding issues.

FISCAL IMPACT:

None. The City is retaining all required securities until the public improvements have been installed and accepted.

RECOMMENDATION:

Staff recommends the City Council adopt Resolution 2024-023 approving the first amendment to the developer’s agreement with the following motion:

“Move to adopt Resolution 2024-023 approving the First Amendment to Development Agreement for Ebertz Addition”

ATTACHMENTS:

- Resolution 2024-023
- Resolution 2023-046
- First Amendment to Development Agreement

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

RESOLUTION NO. 2024-023

*A RESOLUTION APPROVING THE FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
FOR EBERTZ ADDITION*

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

WHEREAS, the Lake Elmo City Council adopted Resolution No. 2023-046 on May 16, 2023 approving the Development Agreement related to the final plat and final PUD plan for EBERTZ Addition; and

WHEREAS, the executed Development Agreement was recorded on July 6, 2023; and

WHEREAS, Section 23 of the Development Agreement requires all public improvements to be installed and accepted by the City prior to issuance of a Certificate of Occupancy for Lot 1, Block 2;

WHEREAS, construction of the building on Lot 1, Block 2 is nearing completion, but there remains construction of public improvements (a trail), installation of landscaping, and submittal of as-built drawing and acceptance by the City Engineer; and

WHEREAS, the Developer has requested an amendment to the Development Agreement to allow for a temporary 180-day Certificate of Occupancy to occupy the building on Lot 1, Block 2 while completing the outstanding public improvements and related items; and

NOW, THEREFORE, the City Council of the City of Lake Elmo hereby approves the First Amendment to Development Agreement for EBERTZ Addition and authorizes the Mayor and City Clerk to execute it.

Passed and duly adopted this 20th day of February 2024 by the City Council of the City of Lake Elmo, Minnesota.

Charles Cadenhead, Mayor

ATTEST:

Julie Johnson, City Clerk

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (EBERTZ ADDITION)

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “First Amendment”) is entered into this ___ day of _____, 2024, by Drake Motor Partners LE LLC, a Colorado limited liability company (the “Developer”) and the City of Lake Elmo, a Minnesota municipal corporation (the “City”).

R E C I T A L S

WHEREAS, the City and the Developer entered into that certain Development Agreement on June 13, 2023, recorded as Document No. _____ (the “Agreement”), relating to the development of Lot 1, Block 1, Lots 1-3, Block 2, Ebertz Addition, according to the recorded plat thereof, County of Washington, State of Minnesota; and

WHEREAS, the City and the Developer desire to amend the Agreement in order to allow for the Developer to obtain a temporary certificate of occupancy for the building to be located on Lot 1, Block 2, Ebertz Addition prior to the completion of all of the Subdivision Improvements as more specifically set forth herein; and

NOW, THEREFORE, in consideration of the foregoing and the covenants and obligations contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between the City and the Developer as follows:

1. Section 23 of the Development Agreement shall be amended to read as follows:

23. **BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.**

A. The City will issue building permits for all buildings within the Subdivision provided that the final plat has been recorded with Washington County.

B. The City will issue a certificate of occupancy for the building that is to be constructed on Lot 1, Block 1 (fast-food restaurant) provided that all Subdivision Improvements have been installed by the Developer and have

been accepted by the City. The City will not accept any Subdivision Improvements until as-built record drawings for the applicable Phase are submitted for review and are approved by the City verifying that the Subdivision Improvements within such Phase have been installed in accordance with the approved Plans.

C. The City will issue a temporary certificate of occupancy for the building that is to be constructed on Lot 1, Block 2 (automobile dealer) for a period of 180 days. All Subdivision Improvements must be installed by the Developer and be accepted by the City prior to the expiration of the 180-day period and before a permanent certificate of occupancy will be issued by the City. The City will not accept any Subdivision Improvements until as-built record drawings for the applicable Phase are submitted for review and are approved by the City verifying that the Subdivision Improvements within such Phase have been installed in accordance with the approved Plans.

D. No building permits shall be issued for Lot 2 and Lot 3, Block 2 until such time that all Subdivision Improvements have been installed by the Developer and have been accepted by the City.

E. Breach of the terms of this Agreement by the Developer beyond any applicable notice and cure periods 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.

F. If the City issues building permits before the acceptance of the Subdivision Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of the Subdivision Improvements caused by the City, the Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any third parties.

2. Amendment Controls; Ratification and Affirmation. In the event that the terms of this Amendment and the Agreement are held to be inconsistent, the terms of this Amendment shall control. The parties each agree and warrant that, in all other respects, the Agreement is unmodified, in full force and effect, and each party hereby ratifies and affirms the Agreement and any terms contained therein not otherwise modified by this Amendment.

3. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument. Each party may rely upon facsimile or electronic mail counterparts of this Amendment signed by the other party with the same effect as if such party had received an original counterpart signed by such other party.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date first written above.

DEVELOPER:

DRAKE MOTOR PARTNERS LE LLC

By: Drake Developments LLC, Manager

By: Drake Real Estate Services, Inc., Manager

By: _____

Jon Hauser

Its: General Manager

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2024, by Jon Hauser as General Manager of Drake Developments LLC and Drake Real Estate Services, Inc., the managers of Drake Motor Partners LE LLC, a Colorado limited liability company, on behalf of the company.

Notary Public

CITY:

City of Lake Elmo

By: _____
Charles Cadenhead
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 _____, 2024, by Charles Cadenhead and Julie Johnson, the Mayor and City Clerk, respectively, of the City of Lake Elmo, a Minnesota municipal corporation on behalf of the City.

Notary Public

This instrument was drafted by:

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

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

RESOLUTION NO. 2023-046

*A RESOLUTION APPROVING THE DEVELOPMENT AGREEMENT FOR EBERTZ
ADDITION*

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

WHEREAS, Drake Motor Partners LE LLC, a Colorado limited liability company (the “Applicant”) previously submitted an application to the City for a final plat and final PUD plan for Ebertz Addition; and


WHEREAS, the Lake Elmo City Council adopted Resolution No. 2023-047 on May 16, 2023 approving the final plat and final PUD plan for EBERTZ Addition; and

WHEREAS, the conditions of approval of the final plat and final PUD plan in the Resolution No 2023-047 included a requirement that the Applicant enter into a development agreement acceptable to the City Attorney and approved by the City Council that delineates who is responsible for the design, construction, and payment of the required improvements with financial guarantees therefore; and

NOW, THEREFORE, the City Council of the City of Lake Elmo hereby:

1. Approves the Development Agreement for EBERTZ Addition and authorizes the Mayor and City Clerk to execute it. The City Attorney is authorized to insert a list of the plan documents approved by the City Engineer in Exhibit B and insert the cost estimates for securities as approved by the City Engineer in Exhibit C of the Development Agreement.

Passed and duly adopted this 16th day of May, 2023 by the City Council of the City of Lake Elmo, Minnesota.


Charles Cadenhead, Mayor

ATTEST:


Julie Johnson, City Clerk