

**BY-LAWS
OF THE
INWOOD HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I
Name and Location**

The name of the corporation is the **InWood Homeowners Association, Inc.**, hereinafter referred to as the "Association". The registered office of the Association shall be located at 941 NE Hillwind Road, Suite 300, Fridley, MN 55432, but meetings of members and directors may be held at such places as may be designated by the Board of Directors.

**ARTICLE II
Definitions**

Section 1. "Declarant" shall mean **Hans Hagen Homes, Inc.**, a Minnesota corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Unit from Declarant for the purpose of development.

Section 2. "Unit" shall mean and refer to a separate platted Unit intended for or containing a single living unit.

Section 3. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Property" shall mean and refer to that real property as defined in the Declaration and such additions thereto as hereafter may be expressly brought within the jurisdictions of the Association, but shall not include any other Units or outlots within said subdivision not so expressly named.

Section 5. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, Restrictions and Easements for the **InWood Homeowners Association, Inc.**, dated _____ and filed for record in the office of the County Recorder and the Registrar of Titles for **Washington** County, Minnesota on the _____ day of _____, 20____, as Document No. _____ (Abstract) and Document No. _____ (Torrens), and shall include any amended or supplemental Declaration executed in accordance with the provisions thereof.

Section 6. "Association" shall mean and refer to this corporation, which is also referred to as the "Association" in said Declaration.

Section 7. "Member" shall mean any person or entity holding membership in the Association as provided Article III hereof.

Section 8. "Common Area" shall mean and refer to each and all of those certain portions of the Property legally described and defined in the Declaration.

Section 9. "Common Elements" shall mean the walks, paths, landscaping, open spaces, other recreational facilities, exterior lighting, development signage and any other improvements or structures, if any, which may be from time to time or at any time located or constructed upon any part of the Common Area.

ARTICLE III **Membership and Voting**

Section 1. Membership. Every Owner of a Unit subject to assessment, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Unit is held by more than one person, each of such persons shall be a member. An Owner of more than one Unit shall be entitled to one membership for each such Unit. Each such membership shall be appurtenant to the Unit upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Unit. No person or entity other than an Owner or Declarant may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to that Unit.

Section 2. Transfer. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a Unit, and then only to such transferee, by assignment, intestate succession, testamentary disposition, foreclosure or mortgage of record, or other legal process. It shall be the responsibility of each Owner, upon becoming entitled to membership, to so notify the Association in writing, and until so notified, the Association may continue to carry the name of the former Owner as a member, in its sole discretion. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the transferee of title of such Unit, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Section 3. Voting. The Association shall have two classes of voting membership:

A. Class A. Class A members shall be all Owners of Units, with the exception of the Declarant, prior to termination of the Class B membership, and shall be entitled to one (1) vote for each Unit owned. When more than one person holds title to any Unit, all shall be members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Unit. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association the name of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-

Owner has filed a general voting authority with the Secretary applicable to all votes until rescinded.

B. Class B. The Class B member shall be the Declarant, who shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- i) When the total votes outstanding in the Class A membership equal the votes outstanding in the Class B membership; or
- ii) The tenth anniversary of the recording of the Declaration.

Section 4. Suspension of Voting Rights. In the event any Owner shall be in arrears in the payment of any amounts due under any of the provisions of the Declaration or these By-Laws for a period of thirty (30) days, or shall be in default in the performance of any of the terms of the Declaration or these By-Laws for a period of thirty (30) days, such Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments are brought current and all defaults are remedied.

Section 5. Quorum. The presence in person or by proxy of twenty-five percent (25%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement of the meetings until a quorum as aforesaid shall be present or represented.

Section 6. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary of the Association before the appointed time of each meeting of the members of the Association. No proxy shall be valid for more than eleven (11) months after its execution.

Section 7. Majority Required. A majority shall be sufficient for the transaction of all business of the Association except on matters where a greater vote is required by the Declaration, the Articles of Incorporation, the By-Laws or by statute.

Section 8. Meetings. Meetings of the Association shall be in accordance with the following provisions:

A. Annual Meetings. The first annual meeting of the members of the Association shall be held within twelve (12) months from the termination of Class B members, the exact date to be decided by the Board of Directors. At such first annual meeting of the members, the members may designate a regular date for successive annual meetings. If any designated date falls upon a legal holiday, it shall be understood that the actual date of the meeting shall be the next business day succeeding such designated date.

B. Special Meetings. A special meeting of the members shall be held within 120 days of the termination of Class B membership, at which time an election shall be had of a full slate of

directors who shall collectively replace the unexpired terms of the Board in office immediately prior to such election. It shall be the duty of the President to call a special meeting of the members when requested in writing by three (3) members of the Board of Directors or upon a petition signed by members who are entitled to vote twenty-five percent (25%) of all of the Class A membership. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths (4/5) of the votes present in person or by proxy at such meeting.

C. Notice of Meetings. It shall be the duty of the Secretary to serve a notice of each annual or special meeting, stating the purposes thereof as well as the time and place where it is to be held, upon each member of record, at least ten (10) days, but not more than fifty (50) days, prior to such meeting. The mailing of a notice to each member at the address shown for such member on the Association's records shall be deemed notice served.

ARTICLE IV **Nomination and Election of Directors**

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations also may be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the board of Directors, and two or more members of the Association. The nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election the members of their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE V **Board of Directors**

Section 1. Number and Qualification. The affairs of Association shall be governed by a Board of Directors composed of five (5) persons (except for the first Board of Directors, which shall be composed of three (3) persons). Directors need not be members of the Association.

Section 2. First Board of Directors. The first Board of Directors named in the Articles of Incorporation shall maintain, manage and administer the affairs, the real estate and other property of the Association, until the first annual meeting of the members and until their successors have been duly elected and qualified, unless said Directors sooner resign, be removed or are otherwise disqualified to serve. The first Board of Directors need not be members of the Association.

Section 3. Powers. The Board of Directors shall have the following powers:

A. To adopt and publish rules and regulations governing the use of the facilities of the Association, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

B. To suspend the voting rights of a member, but not rights of access and easements necessary for the use of his Lot, during any period in which such member shall be in default for a period of thirty (30) days in the payment of any assessment levied by the Association, or the payment of any other amount or the performance or any other term of the Declaration or these By-Laws. Such rights also may be suspended after notice and hearing, for a period not to exceed 30 days for infraction of published rules and regulations;

C. To assess reasonable service charges for tardy payment of assessments and for returned checks.

D. To exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, or the Articles;

E. To declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meeting of the Board of Directors; and

F. To employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties, subject to the subject to the limitations set forth in the Declaration.

Section 4. Duties. The Board of Directors shall have the following duties:

A. To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the membership entitled to vote;

B. To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

C. To establish the annual assessment period and fix the amount of the annual assessment against each member for each Unit owned and against the Declarant, if any, for the following fiscal year preceding the start of such fiscal year, all in accordance with the terms of the Declaration and these By-Laws;

D. To fix the amount of any special assessment against each member for each Unit owned and against the Declarant all in accordance with the terms of the Declaration and these By-Laws;

E. To send written notice to all members of any meeting of the members called for the purpose of voting upon increases in annual assessments above the maximum set by the Declaration or voting upon a proposed special assessment;

F. To send written notice of each assessment for the following fiscal year to every Owner and, where appropriate, to the Declarant, not later than thirty (30) days preceding the start of such fiscal year, and levy all such assessments as liens;

G. To foreclose by action in the manner provided by Minnesota Statutes the lien against any Unit for which assessments are not paid within thirty (30) days after due date and to bring an action at law against the Owner or other person personally obligated to pay the same;

H. To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

I. To procure and maintain, as directed by the Board of Directors, liability and fire and other hazard insurance on property owned by the Association which shall include fire and extended coverage on insurable common property on a current replacement cost basis in an amount not less than 100% of the insurable value (based on current replacement only); and to use proceeds of such hazard insurance solely for the repair, replacement or reconstruction of such insurable common property including insured improvements and to procure and maintain other insurance as required or authorized by the Declaration;

J. To cause all officers or employees having fiscal responsibilities to be covered by fidelity insurance, as it may deem appropriate, and at least as required by the Declaration;

K. To cause all of the Community Facilities, Common Area, Landscape Easement Area, etc. to be maintained.

L. To perform the other functions of the Association as set forth in the Declaration.

Section 5. Term of Office. At the first annual meeting the members shall elect two (2) Directors for a term of one year, two (2) Directors for a term of two years, and one (1) Director for a term of three years; and at each annual meeting thereafter the members shall elect Directors for a term of three years to fill the vacancies created by expiring terms. There shall be no limit on the number of times a Director may serve.

Section 6. Vacancies. Any vacancy in the Board of Directors shall be filled by vote of the majority of remaining Directors, even though they may constitute less than a quorum. Each person so elected shall be a Director for the unexpired term of his predecessor, or until his successor is elected.

Section 7. Compensation. No Director shall receive compensation for any service as a Director. However, any Director may be reimbursed for actual expenses incurred in the performance of duties.

Section 8. Removal of Directors. At any regular or special meeting of the Association duly called, any Director may be removed with or without cause by a majority of the Directors and a successor may then and there be elected to fill the vacancy thus created.

Section 9. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of its election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting provided a majority of the whole Board of Directors shall be present.

Section 10. Regular Meetings. Regular meeting of the Board of Directors shall be held monthly without notice, at such place and hour as may be determined from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not legal holiday.

Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each Director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least three (3) Directors.

Section 12. Telephone Conference. A meeting of the Directors or any committee of the Board may be conducted by a telephone conference or any means of communication through which the participants may simultaneously hear each other during the meeting, if notice of the meeting has been given and if the number of persons participating in the conference is sufficient to constitute a quorum. Participating in a conference constitutes personal presence at the meeting.

Section 13. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be deemed a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 14. Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors except as otherwise provided in the Declaration, Articles or these By-Laws. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 15. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

Section 16. No Proxies. Directors shall not vote by proxy.

ARTICLE VI

Officers and Their Duties

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary and a treasurer, and such other officer as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board of Directors, and each shall hold office for one (1) year unless he shall sooner resign, be removed or otherwise be disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of a secretary treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

The president shall preside at all meetings of the Board of Directors; he shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgage deeds and other written instruments (except to the extent that the Board of Directors authorizes or mandates the delegation of such authority). He shall have the power to appoint committees from among the members of the

Association from time to time as he may in his discretion deem appropriate to assist in conducting the affairs of the Association.

Vice President

The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Directors.

Secretary

The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; shall keep the corporate seal of the Association (if any be adopted) and affix it on all papers requiring said seal; shall serve notice of meetings of the Board and of the members; shall keep appropriate current records showing the members of the Association together with their address, and shall perform such other duties as required by the Board of Directors.

Treasurer

The treasurer shall receive and deposit in appropriate bank accounts all monies as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association (except to the extent that the Board of Directors authorizes or mandates the delegation of such authority); shall keep proper books of account, and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE VII

Committees

The Board of Directors shall appoint a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE VIII

Indemnification of Officers and Directors

To the full extent permitted by **Minnesota Statutes**, as amended from time to time, or by other provisions of law, each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, wherever brought, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, officer, employee, or agent of the association, or that he is or was serving at the specific request of the Board of Directors of the association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the association against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding; provided, however, that the indemnification with respect to a person who is or was serving as a director, officer employee or agent or another corporation, partnership, joint venture, trust or other enterprise shall apply only to the extent such person is not indemnified by such other corporation, partnership, joint venture, trust or other enterprise. The indemnification provided by

this section shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors, and administrators of such person and shall apply whether or not the claim, against such person arises out of matters occurring before the adoption of this section.

ARTICLE IX

Books of Account/Fiscal Year

Section 1. Books of Account. The Association shall keep detailed books of account showing all expenditures and receipts of administration which shall specify the maintenance and repair expenses, if any, and any other expenses incurred by or on behalf of the Association and the members. Such accounts, books, records, financial statements and other papers of the Association shall be open for inspection by the members and other persons having an interest in any Unit, including any Owner, and lender and any holder, insurer or guarantor of a first mortgage on any Unit, during reasonable business hours or under other reasonable circumstances. The Association shall not be obligated to prepare audited annual financial statements, but any mortgage holder shall be permitted, upon written notice, to have an annual audited financial statement of the Association for the immediately preceding fiscal year prepared at their expense (unless one is otherwise available, in which case it shall be provided free of charge to party so requesting). Current copies of the Declaration, the Articles of Incorporation, the By-Laws of the Corporation, and other rules concerning the project, shall be available for inspection by any Owner and lender, and to holders, insurers or guarantors of any first mortgage at the principal office of the Association during normal business hours or under other reasonable circumstances, where copies of the same may be purchased at reasonable cost.

Section 2. Fiscal Year. The fiscal year of the Association shall commence January 1 and end the following December 31 each year.

ARTICLE X

Assessments

As more fully provided in the Declaration, each member is obligated to pay the Association annual and special assessments which are secured by a continuing lien upon the Unit against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and if not paid within thirty (30) days after the due date the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property by action in the manner provided by the then current Minnesota Statutes, and interest, costs, reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided herein by nonuse of the Common Area or community elements or abandonment of his Unit.

ARTICLE XI
Personal Property for Common Use

The Association may acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and may dispose of the same by sale or otherwise. Such beneficial interest shall not be transferable except with the transfer of title to a Unit, provided that an Owner may delegate his right of enjoyment of such personal property to residents of his Unit. A transfer of title to a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Unit.

ARTICLE XII
Service Contracts

The Board of Directors, on behalf of the Association, may obtain and pay for the service of any persons or entities, to manage corporate affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as Board of Directors shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Board of Directors may contract for legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of the Declaration. Any agreement for professional management of the Property, or any other contract providing for services by Declarant or any entity owned or controlled by the same persons as Declarant, must provide for the termination by either party without cause or payment of a termination fee on ninety (90) days' or less written notice and by either party for cause upon thirty (30) days' or less written notice, and shall have a maximum contract term of three years, but may be renewable by agreement of the parties for successive terms.

ARTICLE XIII
Amendments

Section 1. These By-Laws may be amended at a regular or special meeting of the members, by the vote of 75% of each class of members, provided, that so long as there is Class B membership, the following actions will require the prior written approval (or waiver of this requirement) by the Federal Housing Administration (or the affidavit or Declarant that as of the date of such amendment neither the project nor any part thereof and been submitted to, or had been given project approval by, the Federal Housing Administration): annexation of additional property, mergers and consolidations, dissolution and amendment of these By-Laws.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLES OF INCORPORATION OF THE INWOOD HOMEOWNERS ASSOCIATION, INC.

The undersigned, being of full age, for the purpose of organizing a nonprofit corporation under the Minnesota Nonprofit Corporation Act, 317A, and acts amendatory thereto, does hereby adopt, sign and acknowledge the following Articles of Incorporation.

ARTICLE 1 NAME

The name of the corporation is the **InWood Homeowners Association, Inc.**, hereinafter called the "Association".

ARTICLE II REGISTERED OFFICE

The registered office of the Association is located at 941 NE Hillwind Road, Suite 300, Fridley, MN 55432.

ARTICLE III PURPOSE AND POWER

The specific purpose for which this Association is formed is to provide for maintenance, preservation and architectural control of the areas within those certain tracts of property which are either conveyed to the Association or are subjected to the authority of the Association for specified purposes by the Declaration hereinafter defined (herein called the "Property"); and to promote the health, safety and welfare of the residents within such Property and any additions thereto as hereafter may be brought within the authority of this Association and for this purpose to:

- a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions, Restrictions and Easements for the **InWood Homeowners Association, Inc.**, hereinafter called the "Declaration", applicable to the Property and recorded or to be recorded in the office of the County Recorder or Registrar of Titles in and for Washington County, Minnesota, and as the same may be amended from time to time as therein provided.
- b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

- c) Acquire (by gift, purchase or otherwise), own, hold, improve build upon, operate, maintain , convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association;
- d) Borrow money, and subject to limitations and conditions set forth in the Declaration, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- e) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and/or Common Area, provided that any such merger, consolidation or annexation shall have the assent required by the Declaration;
- f) Have and exercise any and all powers, rights and privileges which a corporation organized under Nonprofit Corporation Law of the State of Minnesota by law may now or hereafter have or exercise;
- g) Act as a “residential real estate management association” within the meaning of Section 528 of the Internal Revenue Code of 1954, as amended.
- h) Dedicate, sell or transfer all or any part of any Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members, subject, however, in any event, to the limitations and conditions set forth in the Declaration.

ARTICLE IV **MEMBERSHIP**

Every Owner of a lot subject to assessment, except as herein provided to the contrary, shall be entitled and required to be a member of the Association. If title to a Lot is held by more than one person, each of such persons shall be a member. An Owner of more than one Lot shall be entitled to one membership for each such Lot. Each membership shall be appurtenant to the Lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title of that Lot. No person or entity other than an Owner or Declarant may be a member of the Association, and a membership in the Association may not be transferred except in connection with the transfer of title to the Lot.

ARTICLE V **NO PECUNIARY GAIN; PROHIBITED ACTIVITIES**

The Association does not and shall not afford pecuniary gain, incidentally or otherwise, to its members, directors or officers, nor shall any part of the net earning of the Association in any way inure to the private benefit of any such members, directors or officers of the Association, or to any private shareholder or individual except as permitted by Section 528 (c) (1) (D) of the Internal Revenue Code, and except that the Association shall be authorized to make reasonable allowance and payment for actual expenditures incurred or services rendered on the behalf of the Association.

ARTICLE VI

VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners of Lots, with the exception of the Declarant, prior to the termination of the Class B membership, and shall be entitled to one vote for each Lot owned. When more than one person holds title to any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no respect to any one Lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-Owner or other person entitled to a vote at such meeting shall file with the Secretary of the Association theme of the voting co-Owner or other person entitled to a vote at such meeting, unless such co-Owner or other person has filed a general voting authority with the Secretary applicable to all votes until rescinded.

Class B. The Class B member shall be the Declarant (as defined in the Declaration), who shall be entitled to three (3) votes for each Parcel owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) The twelfth anniversary of the recording of the Declaration.

ARTICLE VII

BOARD OF DIRECTORS

- a) The number or Directors constituting the first Board of Directors shall be three (3), their names and addresses being as follows:

John Rask

C/O Hans Hagen Homes, Inc.
941 NE Hillwind Road
Suite 300
Fridley, MN 55432

Daniel Mosow

C/O Hans Hagen Homes, Inc.
941 NE Hillwind Road
Suite 300
Fridley, MN 55432

Jodi Byers

C/O Hans Hagen Homes, Inc.

941 NE Hillwind Road
Suite 300
Fridley, MN 55432

b) Said Directors shall serve until the first annual meeting of the members or until their successors have been duly elected and qualified, unless said Directors sooner resign.

c) The affairs of this Association shall be managed by a Board of five (5) directors, except with first Board, which shall consist of three (3) Directors), who need not be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association. At the first annual meeting, the members shall elect two (2) Directors for a term of one year, two (2) Directors for a term of two years and one (1) Director for a term of three years; Directors for a term of three years to fill the vacancies created by expiring terms. There shall be no limit on the number of times a Director may serve.

d) Officers shall be elected as provided for in the By-Laws.

ARTICLE VIII **INCORPORATOR**

The name and address of the incorporator is:

John Rask
C/O Hans Hagen Homes, Inc.
941 NE Hillwind Road
Suite 300
Fridley, MN 55432

ARTICLE IX **NO STOCK**

The Association is organized upon a non-stock basis.

ARTICLE X **PERSONAL LIABILITY OF MEMBERS**

The members of this Association shall have no personal liability for obligations of the Association.

ARTICLE XI **DISSOLUTION**

The Association may be dissolved with the assent given in writing and signed by not less than 75% of each class of members.

ARTICLE XII
DURATION

The duration of the corporation existence shall be perpetual.

ARTICLE XIII
AMENDMENTS

Amendment of these Articles shall require the assent of 75% of each class of members. Note however that amendments affecting the Declaration or the rights and obligations thereunder may not be effective as to such rights and obligations unless the requirements for amendments set forth in the Declaration are followed.

ARTICLE XIV
DEFINITIONS

All words used herein which are defined in the Declaration shall have the meaning there ascribed to them.

ARTICLE XV
FHA/VA APPROVAL

As long as there is a Class B membership, the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments of these Articles.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this _____ day of _____, 2015.

John Rask

STATE OF MINNESOTA)
)ss.
COUNTY OF ANOKA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by John Rask.

Notary Public

Document drafted by:
Hans Hagen Homes, Inc.
941 N.E. Hillwind Road, #300
Fridley, MN 55432
(763) 586-7200

Lifestyle Homes



SCALE IN FEET
0 2 4 6 8 16

ILLUSTRATION & PHOTOGRAPHY BY PUTMAN PLANNING & DESIGN

Lifestyle Homes



Photos by Putman Planning and Design

Homes of high quality design, detail, and materials.

**Hans
Hagen
Homes**

InWood- Rear Yard Gardens



Photo by Hans Hagen Homes or John Rask

**Hans
Hagen
Homes**

INWOOD FRONT YARD SITTING AREA / PATIO DESIGN CHOICES

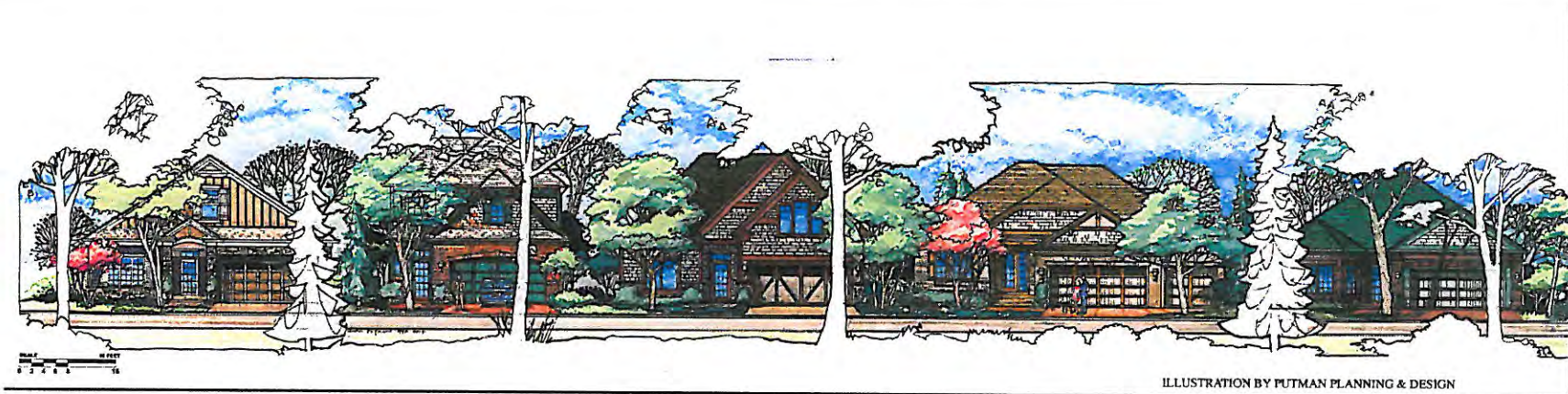
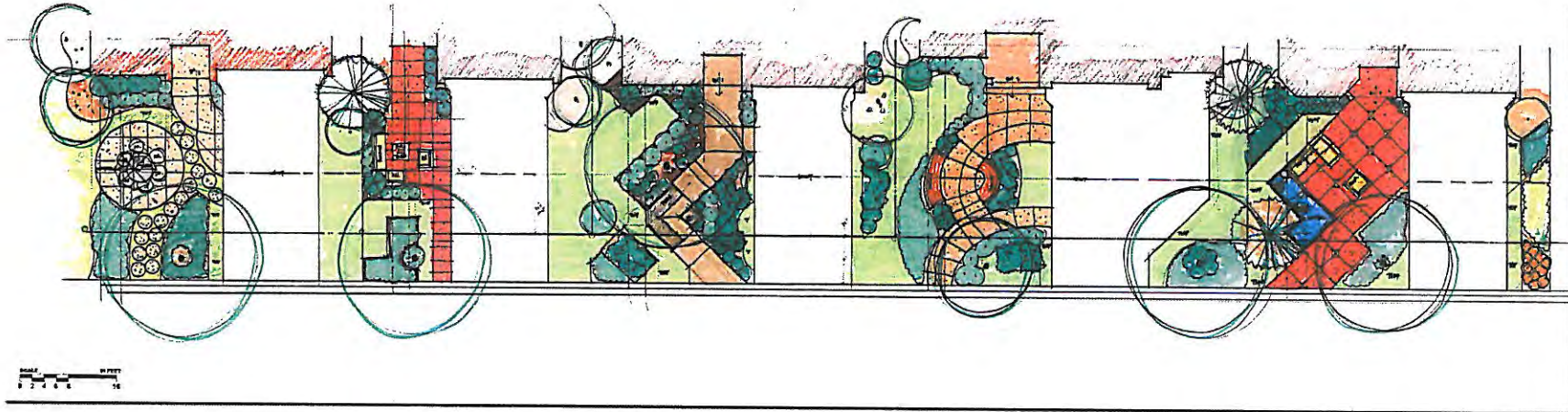
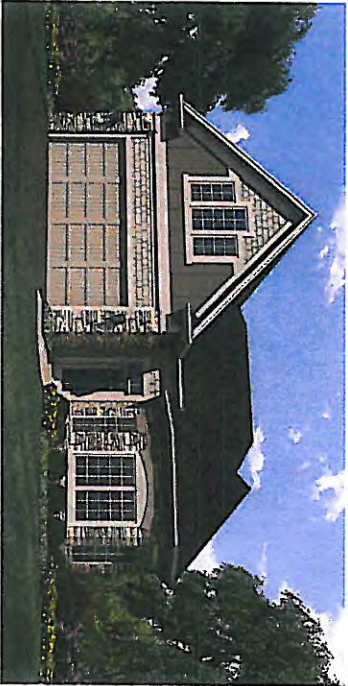
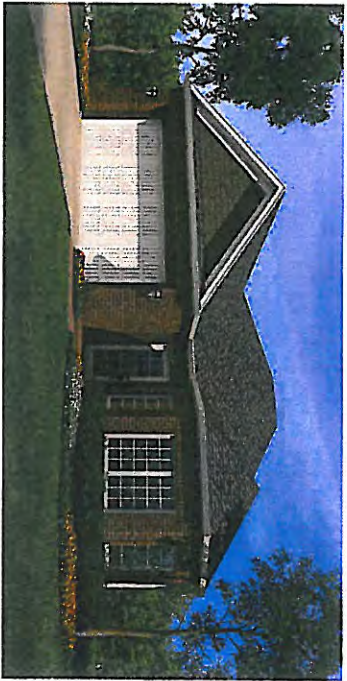


ILLUSTRATION BY PUTMAN PLANNING & DESIGN





MAYOR & COUNCIL COMMUNICATION

DATE: May 19, 2015
REGULAR
ITEM # 20

AGENDA ITEM: InWood (Phase 1) Developer's Agreement

SUBMITTED BY: Kyle Klatt, Community Development Director

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Jack Griffin, City Engineer
Dave Synder, City Attorney
Cathy Bendel, Finance Director
Nick Johnson, City Planner

SUGGESTED ORDER OF BUSINESS:

- Introduction of ItemCommunity Development Director
- Report/Presentation.....Community Development Director
- Questions from Council to Staff Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECCOMENDER: Staff is recommending that the City Council approve a developer's agreement associated with the first phase of the InWood development. The agreement has been drafted based on a model agreement previously reviewed by the Council.

FISCAL IMPACT: Direct Payments to Developer – None: there are no City payments for oversizing of utilities or for other reasons included in the agreement. Future financial impacts include maintenance of streets, trails, sanitary sewer mains, watermains and other public infrastructure, maintenance of storm water ponding areas (after three years), monthly lease payments for street lights, and other public financial responsibilities typically associated with a new development. The agreement requires a contribution from the developer for future signalization of 5th Street at Inwood Avenue.

SUMMARY AND ACTION REQUESTED: The City Council is being asked to authorize execution of a developer's agreement for the first phase of the InWood Planned Unit Development. The attached agreement has been reviewed by the City Staff, and all recommend changes specific to the InWood project have been incorporated into the document as drafted.

This agreement must be executed before any construction activity, outside of the previously authorized grading work, may proceed on the site. The recommended motion to take action on the request is as follows:

“Move to adopt Resolution No. 2015-41 approving the developer’s agreement for InWood”

LEGISLATIVE HISTORY/STAFF REPORT: One of the conditions attached to the resolution approving the InWood Final Plat and Plan specifies that the developer enter into a Developer’s Agreement prior to the execution of the plat by City officials. Staff has drafted such an agreement consistent with the City’s developer’s agreement template, and this document is attached for consideration by the City Council. Please note that the document as drafted contains some modifications to the original template based on some of the unique aspects of the InWood development. The key aspects of the agreement include the following components:

- That all improvements to be completed by July 1, 2016.
- That the developer provide a letter of credit in the amount of \$3,714,873 related to the cost of the proposed improvements.
- That the developer provide a cash deposit of \$335,725 for SAC and WAC charges, engineering administration, one year of street light operating costs and other City fees. These fees include a payment for half of the City’s anticipated costs associated with a future traffic signal at 5th Street and InWood Avenue. Under County policy, the City will be required to contribute 1/3 of the overall signalization costs; half of this amount is the 16.5% referenced in the agreement.
- The land dedication for park purposes to be included with the first phase of InWood exceeds the amount required for all of the single-family residential areas of the development. The developer is asking to apply the excess park land dedication to the future multi-family development areas.

The proposed project does not include any specific City payments for utility oversizing or other reasons. The City Engineer has not approved the final construction plans for the project, and no work will be allowed to commence on the site until these plans are approved by the City (this plan review is close to being completed).

BACKGROUND INFORMATION (SWOT):

Strengths: The developer’s agreement has been drafted to guarantee that the improvements associated with the InWood development plans will installed in accordance with City specifications.

Execution of the developer’s agreement and compliance with all conditions in the agreement will allow the developer to record the Final Plat.

The developer will be constructing all of 5th Street that lies within the InWood PUD boundaries. This will provide an immediate connection into Boulder Ponds and will minimize the impact of construction for future homeowners in this area.

Weaknesses: The City will assume responsibility for future maintenance of the public improvements.

Opportunities: The proposed improvements will provide for infrastructure connections to adjacent properties.

The developer has agreed to pay a portion of the costs that would otherwise be incurred by the City for the future signalization of 5th Street and Inwood Avenue.

Threats: The City will need to provide construction observation throughout the course of the project (these costs will be covered under an Engineering Administration Escrow).

RECOMMENDATION: Based on the above Staff report, Staff is recommending that the City Council approve the Developer's Agreement for InWood and that the Council direct the Mayor and Staff to execute this document. The suggested motion to adopt the Staff recommendation is as follows:

"Move to adopt Resolution No. 2015-41 approving the developer's agreement for InWood"

ATTACHMENTS:

1. Resolution No. 2015-41
2. InWood Developer's Agreement – Final Draft

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

RESOLUTION NO. 2015-41

*A RESOLUTION APPROVING THE DEVELOPER'S AGREEMENT FOR
INWOOD (PHASE 1)*

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

WHEREAS, Hans Hagen Homes, 941 NE Hillwind Road, Suite 300, Fridley, MN ("Applicant") has previously submitted an application to the City of Lake Elmo ("City") for a Final Plat for InWood; and

WHEREAS, the Lake Elmo City Council considered and approved the Preliminary Plat request for InWood at a meeting held on December 2, 2014; and

WHEREAS, The Lake Elmo City Council adopted Resolution No. 2015-40 on May 19, 2015 approving the Final Plat for InWood; and

WHEREAS, Condition (3) of said Resolution No. 2015-40 establishes that, prior to the execution of the Final Plat by City officials, the Applicant is to enter into a Developer's Agreement with the City; and

WHEREAS, the Applicant and City have agreed to enter into such a contract, and a copy of the Developer's Agreement was submitted to the City Council for consideration at its May 19, 2015 meeting.

NOW, THEREFORE, based on the information received, the City Council of the City of Lake Elmo does hereby approve the Developer's Agreement for InWood and authorizes the Mayor and City Clerk to execute the document.

Passed and duly adopted this 19th day of May 2015 by the City Council of the City of Lake Elmo, Minnesota.

Mike Pearson, Mayor

ATTEST:

Adam Bell, City Clerk

(reserved for recording information)

DEVELOPMENT CONTRACT

(Public sewer and water)

Inwood

AGREEMENT dated _____, 2015, by and between the **CITY OF LAKE ELMO** a Minnesota municipal corporation ("City"), and Hans Hagen Homes, Inc., a Minnesota corporation (the "Developer").

1. REQUEST FOR PLAT APPROVAL. The Developer has asked the City to approve the plat for Inwood (referred to in this Contract as the "plat"). The land is situated in the County of Washington, State of Minnesota, and is legally described as:

The West Half of the Southeast Quarter of Section 22, Township 29 North, Range 21 West, lying north of the north right of way line as shown on State Highway Right-of-way Plat No. 4 of 12, State Project 8282 (94-392) 902, Washington County, Minnesota.

And

The Northeast Quarter of Section 33, Township 29, Range 21, less and except:
Parcel No. 4 of Washington County Highway Right-of-way Plat No. 41; and
Parcel No. 3 of Washington County Highway Right-of-way Plat No. 42, Washington County, Minnesota.

2. CONDITIONS OF PLAT APPROVAL. The City hereby approves the plat on condition that the Developer enter into this Contract, furnish the security required by it, and record the plat with the County Recorder or Registrar of Titles within (180) days after the City Council approves the final plat.

3. RIGHT TO PROCEED. Unless separate written approval has been given by the City, within the plat or land to be platted, the Developer may not grade or otherwise disturb the earth, remove trees, construct sewer lines, water lines, streets, utilities, public or private improvements, or any buildings until all the following conditions have been satisfied: 1) this agreement has been fully executed by both parties and filed with the City Clerk, 2) the necessary security has been received by the City, 3) the plat and required homeowner's association documents have been recorded with the Washington County Recorder's Office, and 4) the City's Community Development Director has issued a letter that all conditions have been satisfied, a preconstruction conference has been held, and that the Developer may proceed.

4. PHASED DEVELOPMENT. This plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached this Contract and the breach has not been remedied. Development of subsequent phases may not proceed until Development Contracts for such phases are approved by the City. Except as provided for herein, park charges and area charges for sewer and water referred to in this Contract are not being imposed on outlots, if any, in the plat that are designated in an approved preliminary plat for future subdivision into lots and blocks. Such charges will be calculated and imposed when the outlots are final platted into lots and blocks.

5. PRELIMINARY PLAT STATUS. The plat 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 eight (8) years after preliminary plat approval.

6. CHANGES IN OFFICIAL CONTROLS. For two (2) years from the date of this Contract, no amendments to the City's Comprehensive Plan or official controls shall apply to or affect the residential 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 Contract to the contrary, to the full extent permitted by state law, the City may require compliance with any amendments to the City's Comprehensive Plan, official controls,

platting or dedication requirements enacted after the date of this Contract.

7. DEVELOPMENT PLANS. The plat shall be developed in accordance with the following plans and at the Developer's sole expense. The plans shall not be attached to this Contract. If the plans vary from the written terms of this Contract, the written terms shall control. The plans are:

Plan A – Final Plat

Plan B – Final Grading, Drainage, and Erosion Control Plans

Plan C – Final Sanitary Sewer, Water Main, Storm Sewer, and Street Plans

Plan D – Final Landscape Plan

8. IMPROVEMENTS. The Developer shall install and pay for the following:

- A. Streets
- B. Sanitary Sewer
- C. Watermain
- D. Surface Water Facilities (pipe, ponds, rain gardens, etc.)
- E. Grading and Erosion Control
- F. Sidewalks/Trails
- G. Street Lighting
- H. Underground Utilities
- I. Street Signs and Traffic Control Signs
- J. Landscaping and Street Trees
- K. Tree Preservation and Reforestation
- L. Wetland Mitigation and Buffers
- M. Monuments Required by Minnesota Statutes

The improvements shall be installed in accordance with the City subdivision ordinance and the City's Engineering Design and Construction Standards Manual and pursuant to the direction of the City Engineer. The Developer shall submit plans and specifications which have been prepared by a competent registered professional engineer to the City for approval by the City Engineer. 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 City 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 and a soil engineer inspect the 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. The Developer or his engineer shall schedule a pre-construction meeting at a mutually agreeable time at the Lake Elmo Public Works Building with all parties concerned, including the City staff, to review the program for the construction work.

All labor and work shall be done and performed in the best and most workmanlike manner and in strict conformance with the approved plans and specifications. No deviations from the approved plans and specifications will be permitted unless approved in writing by the City Engineer. The Developer agrees to furnish to the City a list of contractors being considered for retention by the Developer for the performance of the work required by the Contract. The Developer shall not do any work or furnish any materials not covered by the plans and specifications and special conditions of this Contract, for which reimbursement is expected from the City, unless such work is first ordered in writing by the City Engineer as provided in the specifications.

9. CITY ENGINEERING ADMINISTRATION AND CONSTRUCTION

OBSERVATION. Prior to the commencement of any construction activity authorized under this agreement, the Developer shall submit an escrow for City Engineering Administration and Construction Observation in an amount provided under paragraph 36. Summary of Cash Requirements. Thereafter, the Developer shall reimburse the City each month, within 30 days of receiving an invoice, for all engineering administration and construction observation performed during the construction of the plat. After 30 days of the invoice, the City may draw upon the escrow and stop the work on site until said escrow has been replenished in its full amount. City engineering administration will include monitoring of construction progress and construction observation, consultation with Developer and his engineer 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 security. Construction observation may be performed by the City's in-house staff or consulting engineer. 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 on an hourly basis.

The direction and review provided through the inspection of the improvements should not be considered a substitute for the Developer required management of the development. Developer will cause the contractor(s) to furnish the City with a schedule of proposed operations at least five (5) days prior to the commencement of construction of each type of Improvement. City shall inspect all Developer Installed Improvements during and after construction for compliance with approved plans and specifications. Developer will notify the City Engineer at such times during construction as the City Engineer 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 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% ownership interest or in which they are an officer or director may not act as contractors or subcontractors for the public improvements identified in Paragraph 8 above.

11. PERMITS. The Developer shall obtain or require its contractors and subcontractors to obtain all necessary permits, including but not limited to:

- A. Right-of-Way Excavations and Obstructions:
 - City of Lake Elmo, Right-of-Way Utility Installation(s)
 - City of Lake Elmo, Right-of-Way Obstruction(s)
 - Washington County, Utility Installations(s)
 - Washington County, Street or Driveway Access(s)
 - Minnesota Department of Transportation, Utility Installation
 - Minnesota Department of Transportation, Right-of-Way Permit
- B. Watermain Extensions:
 - Minnesota Department of Health
- C. Sanitary Sewer Extensions:
 - Minnesota Pollution Control Agency
 - Metropolitan Council Environmental Services
- D. Stormwater Management:
 - Valley Branch, Brown's Creek or South Washington Watershed District Permit
- E. Erosion, Sedimentation Control:
 - Minnesota Pollution Control Agency, General NPDES Stormwater Permit
 - SWPPP (Stormwater Pollution Prevention Plan)

F. Wetland Mitigation:

- Board of Water and Soil Resources, WCA (no impacts are proposed and thus no permit is required.)

G. Construction Dewatering:

- Minnesota Department of Natural Resources

12. TIME OF PERFORMANCE. The Developer shall install all required public improvements by July 1, 2016, with the exception of the final wear course of asphalt on streets. The Developer shall have the option of installing the wearing course of streets within one (1) year following initial commencement of work on the required basic improvements or installing it after the first course has weathered a winter season, consistent with warranty requirements, however final acceptance of the improvements 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.

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

14. CONSTRUCTION ACCESS. Construction traffic access and egress for grading, public utility construction, and street construction is restricted to access the subdivision via the planned construction access off of Inwood Avenue at 9th Street. No construction traffic is permitted on other adjacent local streets.

15. CONSTRUCTION SEQUENCE AND COMPLIANCE. The City will require the developer to construct the improvements in a sequence which will allow progress and compliance points to be measured and evaluated. The Developer and/or their representatives are required to supervise and coordinate all construction activities for all 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., 17. and 18. For the purpose of this paragraph, Electronic message (email) shall be deemed an acceptable method of notification provided it is captioned "Notice pursuant to Development Agreement".

16. EROSION CONTROL. Prior to initiating site grading, the erosion control plan, Plan B, shall be implemented by the Developer and inspected and approved by the City. Erosion control practices must comply with the approved plans and specifications for the plat, with all watershed district permits and with Minnesota Pollution Control Agency's Best Management Practices. The City may impose additional erosion control requirements as deemed necessary. 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 ten (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 unless the plat is in full compliance with the approved erosion control plan.

If building permits are issued prior to the acceptance of public improvements, the developer assumes all responsibility for erosion control compliance throughout the plat and the City may take such action as allowed by this agreement against the Developer for any noncompliant issue as stated above. Erosion control plans for individual lots will be required in accordance with the City's building permit requirements, or as required by the City or City Engineer.

17. GRADING PLAN. The plat shall be graded in accordance with the approved grading drainage and erosion control plan, Plan "B". The plan shall conform to Engineering Design and Construction Standards Manual. All grading shall be completed within the Subdivision prior to the preparation and submittal of the as-constructed grading plan.

Within thirty (30) days after completion of the grading, the Developer shall provide the City with a "record" grading plan certified by a registered land surveyor or engineer that all trails, ponds, swales, and ditches have been constructed on public easements or land owned by the City. The "record" plan shall contain site grades and field verified elevations of the following: a) cross sections of ponds; b) location and elevations along all swales, emergency overflows, wetlands, wetland mitigation areas if any, ditches, locations and dimensions of borrow areas/stockpiles; c) lot corner elevations and house pads; and d) top and bottom of retaining walls. The City will not issue any building permits until the approved certified record grading plan is on file with the City.

18. STREET AND UTILITY IMPROVEMENTS. All storm sewers, sanitary sewers, watermain, and streets shall be installed in accordance with the approved Plans and Specifications for Public Improvements, Plan "D". The plan shall conform to the City's Engineering Design and Construction Standards Manual. Curb and gutter and the first lift of the bituminous streets, sidewalks, the boulevards graded, street signs installed, and all restoration work on the site shall be completed in accordance with the approved plans. Once the work is completed, the developer or its representative shall submit a written request to the City asking for an inspection of the initial improvements. The City will then schedule a walk-through to create a punch list of outstanding items to be completed. Upon receipt of the written punch list provided by the City, the punch list items must be completed by the Developer and the City notified to re-inspect the improvements. The final bituminous wear course may be installed in accordance with paragraph 12. above.

19. STREET MAINTENANCE DURING CONSTRUCTION. The Developer shall be responsible for all street maintenance until the streets are accepted by the City in writing. Warning signs shall be placed when hazards develop in streets to prevent the public from traveling on same and to direct attention to detours. If and when streets become impassable, such streets shall be barricaded and closed. In the event residences are occupied prior to completing streets, the Developer shall maintain a smooth surface and provide proper surface drainage to insure that the streets are passable to traffic and emergency vehicles. The Developer shall be responsible for keeping streets

within and without the subdivision clean of dirt and debris that may spill, track, or wash onto the street from Developer's operation. The Developer may request, in writing, that the City keep the streets open during the winter months by plowing snow from the streets prior to final acceptance of said streets. The City shall not be responsible for repairing the streets because of snow plowing operations. Providing snow plowing service does not constitute final acceptance of the streets by the City. The Developer shall contract for street cleaning within and immediately adjacent to the development. At a minimum, scraping and sweeping shall take place on a weekly basis. A copy of this contract shall be approved by the City before grading is started. The contract shall provide that the City may direct the contractor to clean the streets and the contractor will bill the Developer.

20. OWNERSHIP OF IMPROVEMENTS. Upon completion of the work and construction required by this Contract, the improvements lying within public easements shall become City property. Prior to acceptance of the improvements by the City, the Developer must furnish the City with a complete set of reproducible "record" plans, 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 Contract. 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, the City Engineer will accept the completed public improvements.

21. PARK DEDICATION. The Developer shall dedicate Outlot L, Inwood prior to the release of the final plat for recording. The dedication of Outlot L shall satisfy the City's park dedication requirements for this plat. Outlot L is 12.11 gross acres, or 10.73 acres of net parkland. The Inwood Preliminary Plat includes 95.71 acres of single family land, including storm water ponds. The required park dedication requirement for the single family portion of Inwood Preliminary Plat is 9.57 acres. Outlot L shall satisfy the park dedication requirements for all the area

planned for single family lots as depicted in the Inwood Preliminary Plat and the Developer shall not be responsible for any additional park fees or improvements. No additional fees in lieu of land dedication will be charged for future developments within the Inwood single family preliminary plat area. The 1.16 acres of excess park dedication above that required for areas to be platted for single family development ("Park Credit") shall be applied to the future multi-family residential area lying south of 5th Street as conceptually shown on the approved Inwood PUD concept plan.

22. 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 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 REU shall be paid by the Developer prior to the City recording the final plat. The total amount to be paid by the Developer is \$120,000.00.

The water availability charge (WAC) in the amount of \$3,000.00 per REU shall be paid by the Developer prior to the City recording the final plat. The total amount to be paid by the Developer is \$120,000.00 .

In addition, a sewer connection charge in the current amount of \$1,000.00 per REU, a Met Council sewer availability charge in the current amount of \$2,435.00 per REU, and a water connection charge in the current amount of \$1,000.00 per REU will be collected by the City at the time the building permit is issued for each lot. These amounts are charged at the time of building permit in accordance with the latest city fee schedule.

23. TRAFFIC CONTROL SIGNS. Traffic control signs shall be included as part of the public street improvements, and the installation costs shall be included in the street construction calculations.

24. STREET LIGHTS. The Developer is responsible for the installation of street lights consistent with a street lighting plan approved by the City. The Developer shall coordinate the

installation of street lights with Xcel Energy in conjunction with the other improvements, and agrees to pay Xcel Energy for all upfront costs associated with the street lighting system, including underground cables, posts, lamps, ballasts, starters, photocells, and glassware. All street lights will be leased by the City upon final acceptance of the system. The Developer shall also pay \$1,000 in payment for the first year operating costs for street lights.

25. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

A. Public sewer and water, curbing, and one lift of asphalt shall be installed on all public and private streets prior to issuance of any building permits, except two model homes on lots located on Lot 2 and Lot 3, Block 1, Inwood.

B. 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 Community Development Department.

C. Written certification of the as-constructed grading must be on file at the City for the block where the building is to be located.

D. Breach of the terms of this Contract by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits and/or withholding of other permits, inspection or actions, including lots sold to third parties, and the halting of all work in the plat.

E. If building permits are issued prior to the acceptance of public improvements, the Developer assumes all liability and costs resulting in delays in completion of public improvements and damage to public improvements caused by the City, Developer, their contractors, subcontractors, materialmen, employees, agents, or third parties.

F. No sewer and water connection permits may be issued until the streets needed for access have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.

G. The City will not issue a certificate of occupancy for any building constructed on any lot or parcel in the Plat, including any model homes authorized under this agreement, until Public

sewer and water, curbing, and one lift of asphalt is installed on all public and private streets; all utilities are tested and approved by the City Engineer; and the as-constructed grading must be on file at the City for the block where the building is to be located.

26. RESPONSIBILITY FOR COSTS.

A. In the event that the City receives claims from labor, materialmen, or others that work required by this Contract has been performed, the sums due 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 letters of credit 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 letters of credit deposited with the District Court, except that the Court shall retain jurisdiction to determine payment of attorneys' fees pursuant to this Contract.

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 plat, including but not limited to legal, planning, engineering and inspection expenses incurred in connection with approval and acceptance of the plat, the preparation of this Contract, review of construction plans and documents, and all costs and expenses incurred by the City in monitoring and inspecting development of the plat. All amounts incurred and due at the time, must be fully paid prior to execution and release of the final plat for recording.

C. The Developer shall hold the City and its officers, employees, and agents harmless from claims made by itself and third parties for damages sustained or costs incurred resulting from plat approval and development. The Developer shall indemnify the City and its officers, 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 Contract, 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 Contract. 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 plat, or any part of it.

F. The Developer shall pay in full all bills submitted to it by the City for obligations incurred under this Contract within thirty (30) days after receipt. Bills not paid within thirty (30) days shall be assessed a late fee per the City of Lake Elmo adopted Fee Schedule. Upon request, the City will provide copies of detailed invoices of the work performed.

27. SPECIAL PROVISIONS. The following special provisions shall apply to plat development:

A. Implementation of the recommendations listed in the April 23, 2015 Engineering memorandum and subject to approval of the final construction plans by the City Engineer.

In conjunction with the recording of the final plat, the developer shall convey Outlots C, D, and L to the City by warranty deed. These areas represent storm water infiltration basins or land to be used for park purposes.

B. The Developer must obtain a sign permit from the City Building Official prior to installation of any permanent subdivision identification signs.

C. The Developer shall dedicate a minimum of 100 feet along the east property line of the Inwood Preliminary Plat as part of Developer's park dedication. This park dedication is part of Outlot L, Inwood.

D. All trails shall be located on outlots to be deeded to the City or within easements dedicated to the City of Lake Elmo. Title commitments shall be provided for all land so dedicated.

E. The Developer shall be responsible for the construction of all improvements within the Inwood Avenue (CSAH 13) right-of-way as required by Washington County and further described in the review letter received from the County dated November 17, 2014 or any subsequent direction from the County. The required improvements shall include, but not be limited to: construction of a new median

crossing in this area, turn lanes, and other improvements as required by the County. The Developer shall pay its proportionate share of the future traffic signal at the intersection of Inwood and 5th Street (half of the City's share of this cost based County reimbursement policies concerning new traffic signals). The estimated cost of the signal is \$265,000. The Developers share of this signal is 16.5% of the estimated cost, or \$43,725. Developer shall pay \$43,725 prior to recording the final plat, and Developer shall have no further obligations to the City of Lake Elmo or Washington County for the construction or payment of a future traffic signal associated with this plat or future phases of the Inwood PUD.

F. The Developer shall observe all other County requirements as specified in the Washington County review letter dated November 17, 2014 or any subsequent direction from the County.

G. The Developer shall record a Declaration of Covenants, Conditions, Restrictions, and Easements (hereinafter "Declaration") along with the plat. The Declaration shall require the Inwood Homeowners Association to be responsible for maintenance of landscaping installed in areas outside of land dedicated as public park and open space on the final plat.

H. Any land under which public trails are located will be accepted as park land provided the Developer constructs said trails within the dedicated areas as part of the public improvements for the subdivision and easements are provided where required by the City.

28. MISCELLANEOUS.

A. The Developer may not assign this Contract without the written permission of the City Council. The Developer's obligation hereunder shall continue in full force and effect even if the Developer sells one or more lots, the entire plat, or any part of it.

B. Retaining walls that require a building permit shall be constructed in accordance with plans and specifications prepared by a structural or geotechnical 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 and specifications. All retaining walls identified on the development plans or by special conditions referred to in this Contract shall be constructed before any other building permit is issued for a lot on which a retaining

wall is required to be built.

C. Appropriate legal documents regarding Homeowner Association documents, covenants and restrictions relating to the plat approval and outlots and conveyances, as approved by the City Attorney, shall be filed with the final plat. No third- party beneficiary status is hereby conferred. All outlots and common areas, including Outlots G, H, F and I shall be maintained in good order and repair by a homeowner's association, and, if it does not do so, then the City may perform the work and assess the costs against the individual lots within the plat of Inwood and without regard to the formalities or requirements of Minn. Stat. § 429.

D. Developer shall take out and maintain or cause to be taken out and maintained until six (6) months after the City has accepted the public 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 \$1,000,000 for each occurrence; limits for property damage shall be not less than \$200,000 for each occurrence; or a combination single limit policy of \$1,000,000 or more. The City shall be named as an additional insured on the policy, and the Developer shall file with the City a certificate evidencing coverage prior to the City signing the plat. The certificate shall provide that the City must be given thirty (30) days advance written notice of the cancellation of the insurance.

E. Third parties shall have no recourse against the City under this Contract.

F. If any portion, section, subsection, sentence, clause, paragraph, or phrase of this Contract is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Contract.

G. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Contract. 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 Contract shall not be a waiver or release.

H. This Contract shall run with the land and may be recorded against the title to the property. The Developer covenants with the City, its successors and assigns, that the Developer has fee title to the property being final platted and/or has obtained consents to this Contract, in the form attached hereto, from all parties who have an interest in the property; that there are no unrecorded interests in the property being final platted; and that the Developer will indemnify and hold the City harmless for any breach of the foregoing covenants.

I. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.

J. The Developer represents to the City that the plat complies 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 plat does not comply, the City may, at its option, refuse to allow construction or development work in the plat until the Developer does comply. Upon the City's demand, the Developer shall cease work until there is compliance.

29. EVENTS OF DEFAULT. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

A. Subject to unavoidable delays, failure by Developers to commence and complete construction of the Public Improvements pursuant to the terms, conditions and limitations of this Agreement.

B. Failure by Developers to substantially observe or perform any material covenant, condition, obligation or agreement on their part to be observed or performed under this Agreement.

30. REMEDIES ON DEFAULT. Whenever any Event of Default occurs, the City, subject to any rights of third parties agreed to by the City pursuant to this Agreement, or otherwise by written, executed

instrument of the City, may take any one or more of the following:

A. The City may suspend its performance under the Agreement until it receives assurances from Developers, deemed adequate by the City, that Developers will cure their default and continue their 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 Developers, or immediately draw on the Letter of Credit, as set forth in this Agreement. In the event of any uncorrected failure to maintain any common area or landscape areas, the City may undertake to do the work and assess the costs to the individual lots within the plat without regard to the formalities or requirements of Minn. Stat. § 429..

31. ENFORCEMENT BY CITY: DAMAGES. The Developers acknowledge the right of the City to enforce the terms of this Agreement against the Developers, by action for specific performance or damages, or both, or by any other legally authorized means. The Developers also acknowledge that their failure to perform any or all of their obligations under this Agreement may result in substantial damages to the City; that in the event of default by the Developers, the City may commence legal action to recover all damages, losses and expenses sustained by the City; and that such expenses may include, but are not limited to, the reasonable fees of legal counsel employed with respect to the enforcement of this Agreement.

32. WARRANTY. The Developer warrants all improvements required to be constructed by it pursuant to this Contract against poor material and faulty workmanship. The Developer shall submit either a letter of credit for twenty-five percent (25%) of the amount of the original cost of the improvements.

A. The required warranty period for materials and workmanship for the utility contractor installing public sewer and water mains shall be two (2) 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 subject to one (1) year

from the date of final written acceptance, unless the wearing course is placed during the same construction season as the bituminous base course. In those instances, the Developer shall guarantee all work, including street construction, concrete curb and gutter, sidewalks and trails, material and equipment for a period of two (2) years from the date of final written City acceptance of the work.

C. The required warranty period for sod, trees, and landscaping is two growing seasons following installation.

D. The required warranty for landscaping within HOA storm water infiltration areas (Outlots F, G, H, and I) shall be three (3) years following installation. The Inwood Homeowners Association shall be responsible for the infiltration areas (Outlots F, G, H, and I) and shall include requirements for the proper care of native plantings and the elimination of weeds and invasive species.

E. The required warranty for landscaping within storm water infiltration areas to be deeded to the City (Outlots C and D) shall be three (3) years following installation. The developer shall also enter into a maintenance agreement with the City for a period of three (3) years prior to acceptance of the landscaping within these storm water infiltration areas. Said maintenance agreement shall include requirements for the proper care of native plantings and the elimination of weeds and invasive species.

33. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this agreement, payment of special assessments, payment of the costs of all public improvements, and construction of all public improvements, the Developer shall furnish the City with an irrevocable letter of credit, in the form attached hereto, from a bank, cash escrow or a combination cash escrow and Letter of Credit ("security") for **\$3,714,873**. The amount of the security was calculated as follows:

CONSTRUCTION COSTS:

Streets	\$1,114,212
Sanitary Sewer	\$412,585
Watermain	\$510,249
Surface Water Facilities (pipe, ponds, rain gardens, etc.)	\$599,736
Grading	Covered in grading agreement

Erosion Control	Covered in grading agreement
Sidewalks/Trails	\$212,175
Street Lighting	Xcel to Install, to be pre-paid directly by developer
Street Signs and Traffic Control Signs	\$18,705
Landscaping	\$97,236
Tree Preservation and Restoration	Coverd in grading agreement
Wetland Mitigation and Buffers	Separate letter of credit through Watershed District
Monuments	\$5,000
Miscellaneous Facilities	N/A
Developer's Record Drawings	\$2,000
Construction Sub-Total	\$2,971,898
Total Project Securities (at 125% Construction Costs)	\$3,714,873

This breakdown is for historical reference; it is not a restriction on the use of the security. The bank shall be subject to the approval of the City Administrator. The City may draw down the security for any violation of the terms of this Contract or if the security is allowed to lapse prior to the end of the required term. If the required public 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 to cure the default.

34. REDUCTION OF SECURITY. Upon written request by the Developer and upon receipt of proof satisfactory to the City Engineer that work has been completed and financial obligations to the City have been satisfied, with City Engineer approval the security may be reduced as follows:

A. Up to 50%, or \$1,857,437 of the security provided in accordance with paragraph 33 above may be released when: (1) Developer's obligations under this Agreement have been completed

and the Public Improvements have been found to be complete to the satisfaction of the City including all corrective work for any identified punch list items, but not including the final wear course; and (2) completion of the Improvements is done to the satisfaction of the City and evidence of such is provided by the City in writing and satisfactory evidence of payment, such as lien waivers are provided.

B. Up to an additional 25%, or \$928,718 of the security provided in accordance with paragraph 33. above may be released when: (1) Developer's obligations under this Agreement have been completed and the Improvements have been found to be complete to the satisfaction of the City including all corrective work for any identified punch list items and including the final wear course; and (2) Improvements are accepted by the City in writing and satisfactory evidence of payment, such as lien waivers, are provided.

C. Twenty percent (25%) of the amounts certified by the Developer's engineer shall be retained as security until: (1) all improvements have been completed, (2) iron monuments for lot corners have been installed, (3) all financial obligations to the City satisfied, (4) the required "record" plans have been received and approved by the City, (5) a warranty security is provided, and (6) the public improvements are accepted by the City.

35. SUMMARY OF CASH REQUIREMENTS. The following is a summary of the cash requirements under this Contract which must be furnished to the City at the time of final plat approval:

Sewer Availability Charge (SAC)	\$120,000
Water Availability Charge (WAC)	\$120,000
Park Dedication	N/A
Street Light Operating Fee	\$1,000
City Base Map Upgrading	\$1,000
Future Traffic Signal	\$43,725
City Engineering Administration Escrow	\$50,000 (Based on two months of administration/observation)
Total Cash Requirements	\$335,725

36. NOTICES. Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by certified mail at the following address: 941 NE Hillwind Road, Suite 300 Fridley, MN 55432. 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.

37. EVIDENCE OF TITLE. Developer shall furnish the City with evidence of its fee ownership of the property being platted by way of an attorney's title opinion or title insurance policy dated not earlier than thirty (30) days prior to the execution of the plat.

CITY OF LAKE ELMO

BY: _____, Mayor

(SEAL)

AND _____, City Clerk

DEVELOPER:

BY: _____
Its

STATE OF MINNESOTA)
 (ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this _____ day of _____,
2_____, by _____ and by _____, the
Mayor and City Clerk 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

STATE OF MINNESOTA)
 (ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day _____ of
_____, 2_____, by _____
the _____
of _____.

NOTARY PUBLIC

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

**FEE OWNER CONSENT
TO
DEVELOPMENT CONTRACT**

_____, fee owners of all or part of the subject property, the development of which is governed by the foregoing Development Contract, affirm and consent to the provisions thereof and agree to be bound by the provisions as the same may apply to that portion of the subject property owned by them.

Dated this _____ day of _____, 2_____.

STATE OF MINNESOTA)
 (ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2_____,
by _____.

NOTARY PUBLIC

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

**MORTGAGE CONSENT
TO
DEVELOPMENT CONTRACT**

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

Dated this _____ day of _____, 2_____.

STATE OF MINNESOTA)
 (ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2_____, by_____.

NOTARY PUBLIC

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

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 at its offices in Minnesota.

The draft must:

- a) Bear the clause, "Drawn under Letter of Credit No. _____, dated _____, 2 _____, 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, 2 _____.

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 _____



MAYOR & COUNCIL COMMUNICATION

DATE: May 19, 2015
REGULAR
ITEM# 21

AGENDA ITEM: Approve Purchase of Spray Patcher

SUBMITTED BY: Mike Bouthilet, Director of Public Works

THROUGH: Mike Bouthilet, Director of Public Works

REVIEWED BY: Maintenance Advisory Commission
Cathy Bendel, Finance Director

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation.....Director of Public Works
- Questions from Council to Staff Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion..... Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECOMMENDER: Director of Public Works

FISCAL IMPACT: This item was approved in the 2015 CIP budget for \$55,000. During the summer of 2014, this same unit was rented and the City was offered a rental credit toward the purchase of \$7,650 if purchased before the 2015 season. The quoted net purchase price being considered is \$45,550, net of the 2014 rental credit, which is \$9,450 under budget.

As proposed in the 2015 Budget for CIP, the net cost for this purchase would be included with the 2015 bonding and the payments would be made from the General Fund operating budget.

SUMMARY AND ACTION REQUESTED: In the summer of 2014, the Public Works department was directed to focus on street repairs. Under the City Administrator's suggestion to be innovative, the Public Works Director researched various spray patching alternatives to maximize resources. Even though it is advertised as a pot hole patcher, this unit has proven to be extremely effective for small patch repairs, alligator cracking and sealing in catch basins and gate stops. It has also been proven to be extremely effective for preparing street surfaces prior to the annual seal coating.

Utilization of this equipment as a City Asset, removes the limits of the asphalt plant operational hours as well as the limitations imposed by renting a unit vs owning one.

A new spray patcher cost is approximately \$70,000 per state contract pricing. This unit is a 2011 SP10 Loadking and the typical life on this unit is 10 years with an anticipated payback of the purchase price in 4 more years.

BACKGROUND INFORMATION (SWOT):

Strengths	Four year payback and no time use restrictions. In addition, this is a proven alternative for street maintenance and there would be more flexibility due to no time constraints. (Extended patching season)
Weaknesses	Age of machine with no warranty
Opportunities	Unlimited use of the machine if City owned
Threats	Cost of repairs to machine

RECOMMENDATION: Based on the aforementioned, and the support of the MAC (voted 3-0), the staff recommends the following motion be made:

“Move to approve the purchase of the SP10 Loadking spray patcher at the cost of \$45,550 to be funded as presented; contingent upon the verification of hours on machine and an engine oil sample analysis as recommended by the MAC”

ATTACHMENT:

1. RCM invoice/quote

RCM Equipment Company LLC

12090 Margo Ave So Ste B

Hastings, MN 55033

651-480-8886

651-480-8808 fax

Invoice

Date	Invoice #
4/22/2015	3341

Bill To
City of Lake Elmo Public Works Streets Department 3800 Laverne Ave N. Lake Elmo, MN 55042

Ship To
City of Lake Elmo Public Works Streets Department 3800 Laverne Ave N. Lake Elmo, MN 55042

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project
	Due on receipt	FC	4/22/2015			

Quantity	Item Code	Description	Price Each	Amount
1	SP10	LOADMAX TRAILER PATCHER	53,200.00	53,200.00T
-9,000	Rental Rebate	85% of Rental Rate Applied to Sale of Equipment	0.85	-7,650.00T
		Sales Tax	0.00%	0.00

Thank you for your business.

Total

\$45,550.00



MAYOR & COUNCIL COMMUNICATION

DATE:
REGULAR
ITEM #

May 19, 2015

24

AGENDA ITEM: Future Growth Strategy/Phasing Plan Policy

SUBMITTED BY: Kyle Klatt, Community Development Director

THROUGH: Dean Zuleger, City Administrator

REVIEWED BY: Nick Johnson, City Planner

SUGGESTED ORDER OF BUSINESS:

- Introduction of ItemCommunity Development Director
- Report/Presentation.....Community Development Director
- Questions from Council to Staff Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECCOMENDER: As a follow-up to the previous Council meeting, Staff has prepared a draft policy document concerning the City's Staging Plan for consideration by the Council. This a draft document and intended for discussion purposes only at this time.

FISCAL IMPACT: TBD – the document includes a requirement that public risk be evaluated prior to accelerating development in later stages.

SUMMARY AND ACTION REQUESTED: The City Council is being asked to review a draft policy document concerning the City's Land Use Staging Plan. This document has been prepared in response to the City Council's discussion at its May 5, 2015 meeting. As the document has not undergone any internal or external review, Staff is not seeking formal approval of the policy document at this time, and is instead seeking Council input in order to further refine the draft.

No specific motion is requested for this time; and feedback or direction from the Council will be incorporated into a future draft.

LEGISLATIVE HISTORY/PLANNING COMMISSION REPORT: The Planning Commission reviewed the Staging Plan that was adopted as part of the Comprehensive Plan. The Commission has not conducted any further review of the Staging Plan since the adoption of the Land Use Plan.

BACKGROUND INFORMATION (SWOT):

- | | |
|----------------------|---|
| Strengths | <ul style="list-style-type: none">• A Staging Plan policy document will help clarify the City's review of future development projects that may be proposed in Stage 2 or 3 development areas. |
| Weaknesses | <ul style="list-style-type: none">• Major revisions to the Staging Plan will need to be considered as an amendment to the Comprehensive Plan |
| Opportunities | <ul style="list-style-type: none">• A policy document would help ensure that Staff, developers, and land owners on the same page moving forward concerning the timing of development within the City. |
| Threats | <ul style="list-style-type: none">• None |

RECOMMENDATION: Staff is not making any formal recommendation at this time, and is instead seeking Council input on this matter before making any further revisions to the document.

ATTACHMENTS:

1. Growth and Staging Plan Policy Document – DRAFT
2. Development Outlook – May 2015
3. Lake Elmo Staging Plan (from Comprehensive Plan)

City of Lake Elmo

Growth and Staging Plan Policy Document - DRAFT

Prepared by the Lake Elmo Planning Department

Reviewed and Approved by the City Council _____

Introduction and Summary

The City of Lake Elmo adopted a revised Land Use Plan as part of the 2012 update to the City's Comprehensive Plan. This plan included a section on development staging that also addressed the City's commitments under the terms of the Memorandum of Understanding (MOU) with the Met Council. With the recent termination of the MOU and approval of several public improvement and private development projects within the City, the City Council would like to clarify the purpose and intent of the Staging Plan, and to provide clarification concerning the implementation of this plan that was not addressed in the Land Use Plan. This policy document is not intended to replace or amend any existing provisions already adopted as part of the City's Comprehensive Plan.

Purpose and Intent

In order to help the City plan for and manage growth, the Lake Elmo Land Use Plan identifies three primary objectives for the staging plan as follows:

- Identify a logical pattern for future growth based on the amount of land planned for new development and the availability of infrastructure to serve this development
- Give the City additional control over the timing and location of new development to coincide with the City's ability to provide the required services.
- Provide additional opportunities and an official mechanism for the City to be able to plan, budget, and set goals for future development.

One of the tools that was created in order to help accomplish these objectives was a Staging Plan Map for the I-94 corridor planning area. This map identified three distinct phases for future growth and development, but did not link any of these phases to a specific time frame. The plan notes that the City will monitor growth by assessing market conditions, land capacity, and the availability of public infrastructure in order to determine when development may occur in stages subsequent to the first stage. It further includes criterion under which the City would consider allowing development in later stages, including the availability of infrastructure to serve new development and a commitment from developers to pay a proportionate share of the costs to extend services to new areas.

Development Activity

Since the adoption of an updated Land Use Plan, the City has taken action on several land use requests that have extended public services into planned sewer development areas. This activity has included the following projects:

- Constructing sewer and water trunk lines to service development within the Stage 1 planning area.

- Extending a sanitary sewer force main from the I-94 corridor to the Village Planning Area. A part of this project included the construction of a gravity sewer line along the southernmost extension of this project.
- Installing a water trunk line along Lake Elmo Avenue from the Village Planning area to 5th Street.
- Negotiating the location for a future water tower along Inwood Avenue that will service the western portion of the I-94 corridor.
- Approving plans for the construction of the several segments of the 5th Street minor collector road as part of private development projects.
- Constructing sanitary sewer service along 39th Street and south to the railroad right-of-way in the Village Planning Area.
- Working with Washington County on a comprehensive plan for road, sewer, water, and streetscape improvements along Lake Elmo Avenue and other streets in the Village Planning Area.

These public improvement projects, along with supporting private infrastructure investments, have made public services available to most of the Stage 1 planning area and the extreme eastern-most parcels within the Stage 2 planning area.

Policies

With the completion of the public and private development projects listed above and the approval of nearly 2,000 new sewered housing units at a concept level or above, the City Council has indicated that it would like to establish clear policies for managing growth under the terms of the City's approved Comprehensive Plan, including the Staging Plan. The City has also been notified that Lake Elmo's population and household forecasts for 2040 will be lowered from the numbers adopted as part the Comprehensive Plan. These policies are therefore intended to: 1) help the City begin addressing the reduced population forecast numbers that will be adopted as part of the Metropolitan Council 2015 Systems Statement; and 2) help ensure that future growth and development occur in a manner that does not overburden the public or lead to inefficient use of public improvement expenditures.

With these objectives in mind, the City hereby adopts the following policies concerning growth and Staging as specified in the Lake Elmo Comprehensive Plan:

- 1) Adhere to the Staging Plan as adopted in the Land Use Plan.
 - a. Council approval will be required prior to the acceptance of any residential land use applications for development activity within the Stage 3 development area or for any parcels within the Stage 2 development area that are not directly adjacent to Lake Elmo Avenue.
 - b. Commercial development projects may be allowed to commence within any Stage provided the project is able to address the "adequate public facilities" provisions as lists below.
- 2) Clarify the circumstances under which the City will consider accelerating development in Stage 2 or Stage 3.
 - a. Commercial development proposals that are able to demonstrate the availability of adequate public facilities may proceed provided the application materials address this issue.

- b. Adequate Public Facilities is defined as follows: *[Include Definition]*
 - c. In considering accelerating development to later stages, the development will be evaluated to assess the public risk from the project. In this case, a public risk will be considered a public cost that is not off-set by a reasonable percentage of taxes or other revenues (including, but not limited to, city exactions, dedications, development or other fees or charges, permits, utility connections, impact fees, etc) that are attributable to the development. Public costs shall include costs incurred or that might reasonably be expected to be incurred in the foreseeable future. (City-wide capital expenditures not solely attributable to the development will not be considered as part of this analysis because the financing of these costs is spread across the entire tax base and paid for by hook-up charges, user fees and similar means)
- 3) Define the level of activity that will allow development to occur in later stages.
- a. For new development to be allowed beyond Stage 1 or any subsequent stages, at least 65% of the residential lots within the entire development stage must be platted as part of a final plat and must have either a structure constructed on them or a building permit issued for the construction of a structure on these lots.
- 4) Prepare an Interim Comprehensive Plan amendment in advance of the release of the 2015 Systems Statement.
- a. The amendment will address the following:
 - i. Reducing the City's population and household forecasts to match the 2015 Systems Statement.
 - ii. Considering land use changes along the corridor, and specifically reducing the amount of land guided for HDR, expanding the BP land area, and concentrating MDR and HDR areas around development nodes.
 - iii. Revising or eliminating the MOU targets included in the previous plan.
 - iv. Updating the Staging Plan to reflect current conditions and the revised population and household forecasts.
- 5) Consider adoption of an adequate public facilities ordinance to more clearly require compliance with these policies.

Other Strategies

Lake Elmo Development Status - May 15, 2015

Developer	Area	Total Units	Concept	Preliminary	Final	Dev Ag
Lennar	I94	310			X	X
Hunters Crossing	I94	51			X	X
Hammes	I94	163			X	X
Easton Village	OV	217			X	X
Boulder Ponds	I94	162			X	X
Village Preserve	OV	91			X	
Inwood (Hagen) (PUD)	I94	539		X		
Village Park Preserve	OV	104		X		
Wildflower (PUD)	OV	145		X		
Lennar LE Avenue	I94	48	X			
Landucci (Goetschel Farm)	OP	49	X			
Hidden Meadows (Rockpoint)	OP	33		X		
Totals		1912	2	4	6	5

I94 Units in Pipeline	1273
OV Units in Pipeline	557
OP Units in Pipeline	82

Population Calculation	1919 X 2.5 =	4780
Current Approximate Population		8100
Total by 2025		12880

Met Council 2040 Population Forecast	18,200
Minus 2025 Population Based on 100% Buildout	12,880
Total Available Population Growth for 2040	5320
Total Available Homes for Development (5320/2.5)	2128

Financial Forecasting	
SACs + Connection = 1832 X \$4000 =	\$7,328,000
WACS+Connections = 1912 X \$4000 =	\$7,648,000
Estimated Home Value X \$350,000 =	\$669,200,000
Additional Tax Base (x.002)	\$1,338,000.00

Comprehensive Plan. The City will also be adopting zoning district standards within the urban residential development areas that will allow the clustering of housing on smaller lots in exchange for the preservation of open space within new developments.

Staging Plan

While **Table 3-C** provides a projected schedule for the construction of new residential and non-residential developments, the City has also adopted a general staging plan within the City's urban growth areas to help ensure that the City is able to deliver the required municipal services and public infrastructure that will be needed to support new development. The infrastructure needed to serve these developing areas is substantial and the staging plan will provide a mechanism for the City to manage this growth and to be able to adequately prepare for the City's future infrastructure needs. The objectives of the staging plan are to:

- Identify a logical pattern for future growth based on the amount of land planned for new development and the availability of infrastructure to serve this development
- Give the City additional control over the timing and location of new development to coincide with the City's ability to provide the required services.

Provide additional opportunities and an official mechanism for the City to be able to plan, budget, and set goals for future development.

The Staging Plan is document as part of **Map 3-4**, and identifies three separate stages for future development without a specific time period attached to these phases. Instead, growth is expected to occur at the rate documented in **Table 3-C**, with each of the stages being developed in the order depicted on the map and further described as follows:

- Stage I: New sewer development located west of Keats Avenue that will connect to the MCES WONE interceptor.
- Stage II: New sewer development located west of Manning Avenue and south of the Forest residential subdivision that will connect to the MCES Cottage Grove Ravine regional interceptor.
- Stage III: All remaining new sewer development south of 10th Street that will connect to the MCES Cottage Grove Ravine regional interceptor.

The City will monitor growth by assessing market conditions, land capacity, and the availability of public infrastructure in order to determine when development may occur in stages subsequent to the first stage. The acceleration of a development in any of the latter stages may be permitted by the City provided it is demonstrated that adequate public infrastructure exists to support this development. The availability of infrastructure and any necessary utility extensions and transportation improvements needed to support new development will be considered in deciding whether or not to open up the next staging area to development. In order to accelerate the development of latter stages, there must be a commitment that the development will pay its proportionate share of the infrastructure costs to extend services to any new development.

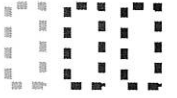
Map 3-4



I-94 Corridor Development Staging Plan - Lake Elmo, MN



City of Lake Elmo
7-19-2012
Data Source:
Washington County, MN



Stage 1
Stage 2
Stage 3



To help ensure that public facilities needed to support new development meet or exceed an acceptable level of service, the City will consider adoption of an adequate facilities ordinance. The primary goals of this ordinance are to: 1) avoid sprawling or leapfrog development that would result in an inefficient use of the City's infrastructure and services, and 2) give priority to development opportunities that do not require the construction of significant extensions of public infrastructure. When developers build on parcels that are not contiguous to areas served by existing infrastructure, there is an expectation that the developer will pay for the added costs to serve non-contiguous development. Non-contiguous development will not be allowed if it would negatively impact the City's financial stability and capacity.

Implementation

The following tasks will be completed by the City to facilitate the implementation of the land use plan.

Zoning Code Update

Planned development within the Old Village and south of 10th Street will introduce development styles and patterns new to the community that cannot be achieved by existing zoning classifications. The zoning code will need to be updated to include new residential, commercial and Business Park districts as needed to ensure the City's vision can be successfully carried out.

- *Creation of Design Standards*

As a supplement to the new zoning districts, the City will pursue the creation and adoption of specific design standards for areas of new development. Design standards go beyond standard zoning requirements such as area and width to specify required building materials, building articulation, architectural standards, etc. Adoption of design standards sets an overall policy for what development should look like to guide the quality of the built environment towards the community's established vision.

- *Form Based Code*

Within the Old Village area, the City will consider implementation of a form based code in lieu of standard Euclidian zoning districts. Under a form based code, requirements focus primarily on the built environment and its relation to the public realm rather than on the separation of uses. Form based codes are regulatory, not advisory like typical design standards. Specific standards for public spaces and building forms are adopted directly into code and mandate that future construction achieve the established community vision.

Internal Process Evaluation

A review of procedures for all application types will be undertaken by the City to ensure internal processes are optimized for quick turn-around and minimal delays whenever possible.

Cooperation with Other Government Agencies

The City will reach out to neighboring communities and reviewing agencies to proactively address issues that may impact future development.