

Development Agreement

This Development Agreement (this "AGREEMENT") is entered into this ____ day of _____, 20__, by and between DEVELOPER's Name, its successors, assigns and future owners of the PROPERTY, hereinafter referred to as (the "DEVELOPER") and the CITY OF NEW BERLIN, a Wisconsin municipal corporation (the "CITY").

RECITALS

WHEREAS, DEVELOPER is the owner of approximately # acres of land in the CITY, said land described on Exhibit A attached hereto (the "PROPERTY");

AND, WHEREAS, DEVELOPER desires to develop the PROPERTY for retail and commercial purposes OR business park or industrial purposes OR residential purposes under the Name of the Development (the "DEVELOPMENT"), which includes certain public improvements described on Exhibit B attached hereto (the "PUBLIC IMPROVEMENTS");

AND, WHEREAS, said land is currently zoned zoning classification, and the proposed DEVELOPMENT conforms to said zoning classification,

AND, WHEREAS, the CITY Plan Commission OR Community Development Authority (CDA) on date has approved of the DEVELOPMENT with conditions;

OR

AND, WHEREAS, the CITY Plan Commission on date recommended approval of the Preliminary Plat and the Common Council on date approved Resolution #xx-xx, which approved of the DEVELOPMENT with conditions;

AND, WHEREAS, the CITY Board of Public Works on date recommended approval of the AGREEMENT and the CITY Common Council on date approved the AGREEMENT.

AND, WHEREAS, it is now necessary that DEVELOPER and CITY enter into an AGREEMENT relative to the manner and method by which the PUBLIC IMPROVEMENTS will be developed;

NOW, THEREFORE, DEVELOPER and CITY agree as follows:

I. GENERAL

- A. DEVELOPER has prepared plans for the PUBLIC IMPROVEMENTS, which plans have been presented to and approved by the CITY.
- B. A Certified Survey Map (CSM) OR A Subdivision Plat substantially conforming to the criteria of State Statutes and CITY Ordinances, constituting the DEVELOPMENT, has been or shall be recorded at DEVELOPER's sole expense.

City of New Berlin
Tamara Simonson
3805 S Casper Dr
New Berlin, WI 53151

Tax Key No. NBC

- C. Prior to start of construction of the PUBLIC IMPROVEMENTS, DEVELOPER shall provide insurance policy endorsements to the CITY naming the CITY as additional insured on a primary and noncontributory basis with respect to Comprehensive General Liability coverage for the PUBLIC IMPROVEMENTS work performed by DEVELOPER. The comprehensive general liability coverage will carry limits of not less than \$1M per occurrence and \$2M in the aggregate. The coverage shall be issued on an occurrence basis for this project. In addition, the DEVELOPER shall carry liability coverage for all vehicles and hired and non-owned vehicles with limits acceptable to the CITY. The DEVELOPER shall all carry Workers Compensation coverage with statutory limits. The policies shall be written by an insurance company licensed to do business in Wisconsin. DEVELOPER shall provide not less than 30 days written notice to the CITY prior to change, modification or termination of said policy. Such notice provisions shall be in the unconditional affirmative, phrases such as “shall endeavor to notify” are unacceptable and shall be rejected.

II. SEQUENCE OF DEVELOPMENT

- A. CONSTRUCTION PLAN APPROVALS
- B. DEVELOPMENT AGREEMENT APPROVALS AND SURETIES
- C. PRE-CONSTRUCTION MEETING
- D. EROSION CONTROL AND STORMWATER BEST MANAGEMENT PRACTICES
- E. GRADING
- F. SANITARY SYSTEM
- G. WATER SYSTEM
- H. STORM DRAINAGE SYSTEM
- I. ROAD SYSTEM
- J. PRIVATE UTILITIES (Electric, Gas, Telephone, CATV, etc.)
- K. RESTORATION
- L. RECORD DRAWINGS AND CERTIFICATIONS
- M. EASEMENT RECORDING
- N. FINAL PLAT APPROVAL

III. GRADING AND EROSION CONTROL

- A. COMPLIANCE
 - 1. DEVELOPER shall secure proper Erosion Control Permits to implement the approved Erosion Control Plan.
 - 2. Erosion Control Methods shall be those required by the erosion control ordinances as adopted by the CITY, County, or State. The Primary Contractor shall be responsible for maintaining erosion control in accordance with the Erosion Control Permit during construction.
 - 3. DEVELOPER shall be responsible for pre-grading and maintaining grades within the DEVELOPMENT in accordance with the approved DEVELOPER's Grading Plan [until the CITY approves the Final Plat.](#)

4. DEVELOPER shall be responsible for implementing the approved Master Grading Plan. This shall be achieved as part of the DEVELOPERs construction activities and by providing the approved Master Grading Plan to lot buyers for implementation during the building permit phase of the individual lots.

B. INSPECTION and MAINTENANCE

1. Oversight of all construction and maintenance shall be performed under the direction of the Department of Community Development (DCD), at the DEVELOPER's sole expense.
2. All erosion control measures shall be maintained in accordance with the Erosion Control Permits.
3. DEVELOPER, at his/her sole expense, shall be responsible for removing erosion control measures as directed by the DCD.

IV. **SANITARY SYSTEM**

If the DEVELOPMENT will not be served by CITY Wastewater Utility, this Section includes the following language:

- A. No municipal sanitary sewer is currently available to the DEVELOPMENT; each and every building or lot shall be served by an on-site disposal system installed in accordance with existing ordinances and regulations of the Waukesha County Environmental Services Department.
- B. Should any of the Common or Open Spaces be used for private owner waste treatment systems (POWTS), those locations shall be as shown on the approved Construction Plans. Those POWTS shall be constructed, landscaped and maintained as an integral part of the open space and so as not to adversely impact or limit the use, character and sight lines of said open space.
- C. DEVELOPER hereby indemnifies and holds harmless the CITY, its officers, agents, employees and assigns (hereafter the Parties Indemnified) as and against any and all demands, actions, causes of action, expenses or claims made against the Parties Indemnified, including but not limited to the actual attorney fees of the Parties Indemnified in defending such claims, arising from or related to the granting of permission to the DEVELOPER to construct POWTS partially or completely in the open space for this subdivision.

A. AVAILABILITY

1. Each and every building in the DEVELOPMENT shall be served by a sanitary sewer main and lateral at DEVELOPER's sole expense and connected to the CITY Wastewater Utility in accordance with plans and specifications approved by the City Engineer, the Utility Department and all other regulatory agencies.
2. In Subdivisions, the sanitary sewer lateral shall be installed to the lot line at the DEVELOPER's sole expense. As individual buildings are being constructed, the property owner shall extend the sanitary sewer lateral from the lot line to the building.
3. All buildings or units in the DEVELOPMENT will be individually served with private laterals. In the event it is later determined that the locations or size of such laterals are insufficient to service certain parcels or units of land within the project, the owner(s) of such parcel(s) may install laterals subject to CITY

approval which will be paid for by the property owner.

4. DEVELOPER shall provide for the extension of the sanitary sewer system in accordance with the Site Development Plan approved by the DCD and the Utility Department by laying sanitary sewer mains in public right-of-way and/or public easement as directed by the City Engineer and the Utility Department.

B. CAPACITY OF THE SYSTEM

1. The system shall conform to the Sanitary Sewer Plan of the CITY and have a capacity sufficient to meet the needs of the DEVELOPMENT and each building therein, and as directed by the City Engineer and the Utility Department.

C. INSPECTION OF THE SYSTEM

1. Oversight of all construction shall be performed under the direction of the DCD, at the DEVELOPER's sole expense.

D. OWNERSHIP OF SANITARY SEWER SYSTEM

1. Upon CITY's final acceptance of the sanitary sewer system, those portions of the sanitary sewer system located in the public right-of-way and/or public easement shall be dedicated by the DEVELOPER to the CITY and shall thereafter be maintained and serviced by the CITY.

E. SANITARY SEWER SERVICE CHARGES

1. Upon issuance of the Occupancy Permit by the CITY, all building sites, and all buildings in the DEVELOPMENT shall be subject to all sanitary sewer service charges and/or assessments in the same amount and collected in the same manner as are sanitary sewer service charges and/or assessments for all other parts of the CITY served by the same wastewater treatment facilities.

V. **WATER SYSTEM**

If the DEVELOPMENT will not be served by CITY Water Utility, this Section includes the following language:

- A. No municipal water is currently available to the DEVELOPMENT; each and every building shall be served by an on-site private well system installed in accordance with existing ordinances and regulations of the Waukesha County Environmental Services Department and the Wisconsin Department of Natural Resources.

A. AVAILABILITY

1. Each and every building in the DEVELOPMENT shall be served by water main and a lateral installed at DEVELOPER's sole expense and connected to the New Berlin Water Utility in accordance with plans and specifications approved by the DCD, the Utility Department and all other agencies.
2. In Subdivisions, the water lateral shall be installed to the lot line at the DEVELOPER's sole expense. As individual buildings are being constructed, the property owner shall extend the water lateral from the lot line to the building.
3. All buildings or units in the DEVELOPMENT will be individually served with private laterals. In the event it is later determined that the locations, pressure or size of such laterals are insufficient to service certain parcels or units of land within the project, the owner(s) of such parcel(s) may install laterals subject to CITY approval which will be paid for by the property owner.

4. DEVELOPER shall provide for the extension of the water system in accordance with the Site Development Plan approved by the DCD and the Utility Department by laying water mains in public right-of-way and/or public easement as directed by the City Engineer and the Utility Department and shown on the plans.
5. Each condo dwelling unit and each commercial lease space shall be independently metered per CITY code.

B. CAPACITY OF THE SYSTEM

1. The water system shall conform to the Water Plan of the CITY and have a capacity sufficient to meet the needs of the DEVELOPMENT and each building therein and as directed by the City Engineer and the Utility Department.

C. INSPECTION

1. Oversight of all construction shall be performed under the direction of the DCD, at the DEVELOPER's sole expense.

D. OWNERSHIP

1. Upon CITY's final acceptance of the water system, those portions of the water system located in the public right-of-way and/or public easement shall be dedicated by the DEVELOPER to the CITY and shall thereafter be maintained and serviced by the CITY.

E. WATER UTILITY CHARGES

1. Upon issuance of the Occupancy Permit by the CITY, all buildings, or building sites in the DEVELOPMENT shall be subject to all water service charges and/or assessments in the same amount and collected in the same manner as are water service charges and/or assessments for all other parts of the CITY served by CITY water.

VI. **STORM DRAINAGE SYSTEM**

If the DEVELOPMENT does not contain any Storm DrainageSystem components, this Section includes the following language:

A. The DEVELOPMENT does not contain any storm drainage system components.

A. COMPONENTS

1. Storm drainage shall be provided by means of storm sewers, culverts, ditches, Stormwater Best Management Practices (BMP's), and appurtenances in the public right-of-way and/or in drainage easements where required and/or within natural areas (where applicable and permitted), all in accordance with storm drainage plans prepared by DEVELOPER and approved by the DCD and entirely at the DEVELOPER's sole expense. All storm drainage shall be in conformance with the approved Stormwater Management Plan.

B. CONSTRUCTION

1. The DEVELOPER shall be responsible for the planning, design and construction of facilities for storm drainage (the Storm Drainage System) until such stormwater exits the exterior perimeter line of the DEVELOPMENT or until it reaches a point, outside of and adjacent to the PROPERTY from which point such stormwater passes into, or through specified conduits or channels.

Such design shall be reviewed and approved by the DCD prior to construction.

2. The design and construction plan for the Storm Drainage System shall be reviewed and approved by DCD prior to construction.
3. Nothing in this paragraph shall be deemed to limit the DEVELOPER's responsibility to adjacent owners for discharged water. Should any claim be made against the CITY for increased water discharge or altered drainage patterns from the project, DEVELOPER shall indemnify, defend and hold harmless the CITY paying all costs thereof (including but not limited to actual attorney fees) and further indemnify the CITY from any loss or damage based upon a claim arising from water allegedly discharged within or from the site, except if the loss or damage was caused by the negligence or willful misconduct of the CITY.
4. Major drainage improvements shall be constructed during the first phase of the DEVELOPMENT including, but not limited to the BMP's and necessary downstream improvements.
5. All normal maintenance and/or repair of the Storm Drainage System shall be the obligation of the DEVELOPER. The DCD, at its sole discretion, may require the DEVELOPER to restore the Storm Drainage System to its original condition should its function diminish through disrepair or other causes.
6. The DCD may periodically inspect the Storm Drainage System upon reasonable notice. Should maintenance and/or repair work not be completed in a timely manner to the CITY's reasonable satisfaction, the CITY shall have the authority to complete said work and charge all reasonable costs, including but not limited to engineering, administration costs and legal costs, to the DEVELOPER of the land set forth in the legal description on Exhibit A with each owner assessed an undivided fractional ownership of the expense as a lien against their property.

C. OWNERSHIP

1. The components of the Storm Drainage System in public rights of way and public easements shall be dedicated to the CITY. When dedicated to the CITY upon approval and final acceptance by the CITY, system components shall become the property of the CITY and thereafter be maintained by the CITY.
2. The Storm Drainage System and private drainage easements shall remain in the sole ownership and responsibility of DEVELOPER even if they are located within easements for access or maintenance.
3. Development of this parcel is subject to the Stormwater Management Plan established for the DEVELOPMENT. All landowners and/or owners of land within the DEVELOPMENT are and shall be jointly and severally responsible for the Storm Drainage System within the DEVELOPMENT. In the event the DEVELOPER default(s) in its duty to maintain the Storm Drainage System, as reasonably determined by the CITY, each of the property owners will be responsible for a pro-rata share of the costs of the maintenance and/or repair of the Storm Drainage System. Should the CITY have to perform repairs and/or maintenance, all of the direct and indirect costs thereof shall become a lien against the DEVELOPER with each owner assessed an undivided fractional ownership of the expense.

D. INSPECTION

1. Oversight of all construction shall be performed under the direction of the DCD, at the DEVELOPER's sole expense.

E. STORMWATER CHARGES

1. Upon issuance of the Occupancy Permit by the CITY, each building site or building in the DEVELOPMENT shall be subject to the Stormwater Utility fee in the same amount and collected in the same manner as are Stormwater Utility fees for all other parts of the CITY.

VII. **PUBLIC ROADWAYS**

If the DEVELOPMENT will not be served by Public Roadways, this Section includes the following language:

A. There are no Public Roadways being constructed as part of the DEVELOPMENT.

A. LOCATION

1. Roadways shall be constructed in such a manner that the centerline of the roadway improvements shall be centered upon the centerline of the right-of-way.
2. Roadways shall be constructed in each and every road right-of-way platted, shall be built to the exterior lot line of the subdivision and constructed with a temporary cul-de-sac/hammerhead or permanent cul-de-sac as directed by the City Engineer.

B. CONSTRUCTION

1. DEVELOPER shall provide the geotechnical data compiled during the design of the roadways to the City Engineer. Should the geotechnical data submitted to the CITY not be sufficient to satisfy the City Engineer, the DEVELOPER shall grant the CITY with a right of entry to obtain the required data. Costs associated with obtaining the required data shall be at the DEVELOPER's sole expense.
2. DEVELOPER shall install and/or improve the roadways per the approved plans.
3. The asphaltic binder course shall not be installed after September 1st, without prior approval of the City Engineer.
4. At the direction of the City Engineer, DEVELOPER shall adjust all affected utilities prior to installing the final asphalt surface course at DEVELOPER's sole expense.
5. Prior to final asphaltic surface course construction, all repairs and restoration of damaged, broken or otherwise deficient asphaltic concrete base course, curb and gutter sections, side path (if applicable), water system, sanitary system, and storm drainage system shall be completed at DEVELOPER's sole expense.
6. The final asphaltic surface course shall not be installed after October 1st, and shall be installed in the same calendar year as the binder course.
7. Material storage or stockpiling shall not be allowed on road surface after final

surface course is installed.

8. DEVELOPER shall be responsible for any damage to the road system until final acceptance.

C. INSPECTION

1. Oversight of all construction and maintenance shall be performed under the direction of the DCD, at the DEVELOPER's sole expense. All of DEVELOPER's construction and maintenance activities as provided for hereunder shall be performed in accordance with the standards set forth in CITY's Development Handbook.

D. STREET SIGNS

1. Street Names shall be in conformance with the CITY's policies.
2. Street signs shall be installed by the DEVELOPER prior to placement of the binder course or the streets being opened to the public.

E. STREET LIGHTING

1. DEVELOPER shall pay for the cost of street lighting, as set forth in the approved plan.

F. RELOCATION OF PRIVATE UTILITIES

1. To the extent the CITY incurs any expense for private utilities to move their private infrastructure in the public right-of-way necessitated by the DEVELOPMENT, the DEVELOPER shall be responsible for those costs.

VIII. **SURETY INSTRUMENTS**

- A. Prior to signing of this AGREEMENT by the CITY, DEVELOPER shall deposit with the CITY a surety instrument in accordance with §235-22 of the Municipal Code in the amount of 120% of the estimated cost of all the PUBLIC IMPROVEMENTS as approved by the CITY in a form approved by the City Attorney.

1. [Public Site Grading](#)
2. [Public Road System](#)
3. [Public Sanitary System](#)
4. [Public Water System](#)
5. [Public Storm Drainage System](#)
6. [Other Special Conditions](#)

B. FORFEITURE OF SURETY

1. Interim Reduction (Utilities)
 - a. Upon request, an interim surety reduction to 50% per Utility may be made once the utility is fully installed and operable.

2. Preliminary Acceptance Reduction (Non-Subdivision)
 - a. The surety may be reduced to 10%, by the itemized amount of each of the Utilities (Sanitary System, Water System, and Storm Drainage System), as the PUBLIC IMPROVEMENTS receive preliminary acceptance by the CITY.
 - b. The surety for the Public Road System portion of the PUBLIC IMPROVEMENTS may be reduced to 10% of the construction costs of the Public Road System after the CITY issues preliminary acceptance.
3. Return of Surety (Non-Subdivision).
 - a. 12-months after preliminary acceptance, the CITY will conduct a final inspection. The DEVELOPER shall make all necessary repairs. After repairs are made and approved, the CITY will issue final acceptance and return the surety to the DEVELOPER'S financial institution.
4. Substantial Completion Reduction (Subdivisions)
 - a. Per Wisconsin §236.13 Substantial Completion is "the installation of the asphalt or concrete binder course on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90 percent of the public improvements by cost are completed"
 - b. Upon substantial completion, the surety for the PUBLIC IMPROVEMENTS shall be reduced to "an amount equal to the total cost to complete any uncompleted public improvements plus 10% of the total cost of the completed public improvements". This shall serve as a maintenance surety to guarantee workmanship and materials of construction of the Public Road System for a period of 14-months after substantial completion.
 - c. Substantial Completion shall not be considered preliminary acceptance.
5. Return of Surety (Subdivisions).
 - a. 12-months after substantial completion, the CITY will conduct an inspection. The DEVELOPER shall make all necessary repairs. After repairs are made and approved, the CITY will return the surety to the DEVELOPER'S financial institution.
 - b. Return of Surety shall not be considered final acceptance.

C. CASH PAYMENTS FOR:

1. Reasonable administrative fees including but not limited to engineering, inspection, and legal fees incurred to date of approval as billed by an itemized statement and to be paid within fourteen (14) days of receipt of invoice.
2. Street signs.
3. Street light installation cost at entrances to the DEVELOPMENT, if necessary.

D. PUBLIC SITES AND OPEN SPACES

1. In order to conform to the provisions of Section 235-34 C (3) of the Municipal Code, DEVELOPER agrees to pay Public Site and Open Space Fees, required prior to the CITY signing the Final Plat or CSM. These fees are in addition to any connection fees required by the CITY prior to individual building permits being granted.

E. MISCELLANEOUS

1. DEVELOPER shall be responsible for providing documents to the prospective buyers outlining the responsibilities of any Condo/Homeowner's Association, and any and all associated costs, at the time of closing on the individual units within the DEVELOPMENT.
2. DEVELOPER shall be responsible for any other items, as reasonably required in writing by the CITY, necessary to accomplish the intent of this AGREEMENT.

IX. DEED RESTRICTIONS

- A. This AGREEMENT shall be recorded in the office of the Registrar of Deeds of Waukesha County, Wisconsin by the DEVELOPER at the expense of the DEVELOPER and the use and occupancy of all lots therein shall be subject to the terms and provisions of this AGREEMENT. A copy shall be provided to the CITY.
- B. Any other restrictions desired by the DEVELOPER, but not required by the CITY may be recorded at the DEVELOPER's option. The CITY will not be responsible for the enforcement of those restrictions.

X. ACCEPTANCE OF PUBLIC IMPROVEMENTS

- A. All PUBLIC IMPROVEMENTS required by the CITY within the DEVELOPMENT are the DEVELOPER's sole responsibility.
- B. The DEVELOPER shall take all necessary action so as to have all PUBLIC IMPROVEMENTS of the DEVELOPMENT specified in the AGREEMENT installed and approved within two years following the date of commencing construction for each of the PUBLIC IMPROVEMENTS.
- C. After completing the required PUBLIC IMPROVEMENTS, the DEVELOPER shall provide a complete accounting of expenditures to the CITY.
- D. PUBLIC IMPROVEMENTS shall be accepted by the CITY when the DEVELOPER has met and satisfied each of the terms and conditions of this AGREEMENT, permits, applicable ordinances of the CITY, and the requirements of the CITY's Development Handbook.
- E. Preliminary Acceptance:
 1. When all systems (Utility and Road) have been installed per the CITY's Development Handbook and to finish grade and tested and all punch list items have been corrected and all requirements have been satisfied by the DEVELOPER and approved by the CITY.
 2. Required Documentation: The following list shall not be considered all-

inclusive, but rather a guide to what is typically required.

- a. As-builts for Stormwater Best Management Practices
- b. As-built for Road Centerline
- c. Itemized as-built construction cost list for Public Infrastructure
- d. Easement Documents recorded
- e. All Inspection invoices are paid to date

F. Final Acceptance:

1. 12-months after preliminary acceptance, the CITY will conduct an inspection of the systems and prepare a punch list of items that need correction.
2. Final Acceptance will be granted after all punch list items have been corrected by the DEVELOPER and approved by the CITY, and paragraph D above has been satisfied.
3. Required Documentation: The following list shall not be considered all-inclusive, but rather a guide to what is typically required.
 - a. Erosion Control Removed
 - b. As-builts for Utilities
 - c. All Inspection invoices are paid
 - d. Lien waivers submitted

XI. GENERAL CONDITIONS

- A. DEVELOPER further agrees to abide by such further orders or directions as may be reasonably given by the CITY and/or its Boards and Commissions, as may be necessary to implement and carry out the terms and intent of this AGREEMENT, provided such further orders or directions are usually and customarily required of like developments similarly stated.
- B. It is expressly understood and agreed that the terms of this AGREEMENT are covenants running with the land and binding on DEVELOPER and CITY. The terms of the AGREEMENT regarding insurance, warranty and surety obligations shall survive the expiration of this AGREEMENT.
- C. The signatory DEVELOPER shall not dissolve its Corporation, LLC, or other business group designation, without written notification to the CITY, more specifically the CITY Engineer, a minimum of 60 days prior to the dissolution. The written notification shall include a plan for meeting the requirements of the AGREEMENT and the identity and contact information for the person(s)/entity that will be the subsequent responsible party.
- D. DEVELOPER shall be responsible for the repair to existing roadways and infrastructure for damage caused as a result of its construction activities.
- E. DEVELOPER is required to have the public utilities (sanitary system, water system, & storm drainage system) located and marked in the field until the final as-built drawings for the utilities are approved by the CITY. As a courtesy, the New Berlin Utility Department will forward by FAX any locates requests that are received for the DEVELOPMENT. DEVELOPER shall provide the New Berlin Utility Department with

a regular business hours phone number, FAX number, and an after business hours phone or pager number, so Emergency Locate requests can be forwarded, as necessary.

- F. DEVELOPER and subsequent owners of lots shall promptly remove all construction debris including, but not limited to, paper, plastic, insulation, packaging, etc. and will take adequate measures to keep all debris on the lot site to prevent littering adjoining properties.
- G. Streets shall be swept daily as needed to remove silt, stone, ground or other materials which have been tracked or eroded onto the streets. The DCD may periodically inspect the streets for debris and determine if street sweeping is required. Reasonable efforts will be made to contact the responsible party to get the impacted streets swept. Should street sweeping not be completed in a timely manner to the DCD's reasonable satisfaction, the CITY shall have the authority to complete said work and charge all reasonable costs for the street sweeping to the responsible party. In the event that said costs are not promptly paid, the CITY may assess those charges against the property within this DEVELOPMENT as a special charge for current services pursuant to Wis Stat Sec. 66.0627.
- H. DEVELOPER agrees, to the fullest extent permitted by law, to indemnify and hold the CITY harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the DEVELOPER's negligent or intentional acts, errors or omissions in the performance of its obligations under this AGREEMENT and those of its contractors/subcontractors or anyone for whom the DEVELOPER is legally liable. Neither party will be responsible to the other for consequential damages including, but not limited to, loss of profit, loss of investment or business interruption.
- I. DEVELOPER or its successor or assignee shall be responsible for maintenance of rights-of-way up to the edge of the roadways adjoining the DEVELOPMENT to include grass cutting and any litter removal consistent with the landscaping of the DEVELOPMENT. Failure to maintain this area shall subject the DEVELOPMENT to charges by the CITY.
- J. Setbacks, height restrictions, and locations of all structures shall be as regulated by the zoning ordinances of the CITY.
- K. All conditions of approval for the DEVELOPMENT by the [Plan Commission OR CDA](#) and/or Common Council shall be followed.
- L. Except for the specific responsibilities and obligations retained by the DEVELOPMENT hereunder, CITY shall provide to the DEVELOPMENT and its occupants the same governmental services, as are generally provided to other residents, residences, and citizens of the CITY.
- M. Neither the CITY's own inspection nor the CITY's acceptance of DEVELOPER's dedication to the CITY shall be deemed a waiver of the DEVELOPER's obligation to construct the Water, Sanitary, Storm Drainage, and Road Systems according to the CITY's Development Handbook.

XII. SPECIAL CONDITIONS

- A. Fire or emergency protection services are available to the DEVELOPMENT.
- B. Snow and ice removal from private roadways, drives or parking lots shall not be placed

in public roadways or rights-of-way.

- C. DEVELOPER shall be responsible for submitting a Stormwater Management Practice Maintenance Agreement in accordance with the requirements of the CITY Zoning Code. DEVELOPER shall also be responsible for recording the document, in a form that is acceptable to the CITY, at the Waukesha County Register of Deeds so that the Agreement is binding upon all subsequent owners of lands within the DEVELOPMENT.
- D. The Stormwater Management BMP's are to be maintained per the approved Stormwater Management Practice Maintenance Agreement referred to above.
- E. The DEVELOPER shall provide an open space maintenance plan satisfactory to the CITY as required under the Municipal Code Chapter 235-41. The DEVELOPER and ultimately the Condo/Homeowners Association shall be responsible for implementing said plan and maintaining said areas according to that plan. The DEVELOPER shall landscape and provide access to the open space as may be required by and in accordance with applicable CITY ordinance(s).

[signature page(s) follow]

ACKNOWLEDGMENT

IN WITNESS WHEREOF, the said DEVELOPER has caused this AGREEMENT to be signed.

In the presence of:

(DEVELOPER's Name)

(Authorized Signature)

DEVELOPER acknowledges that the person signing this AGREEMENT has the authority of DEVELOPER's Name to do so and that the document has been approved by official action of the DEVELOPER.

(STATE OF WISCONSIN)
(COUNTY OF WAUKESHA) SS.
(CITY OF _____)

Personally came before me this __ day of _____, 20__, the above named DEVELOPER's Name to me known to be the person who executed the foregoing instrument.

Notary Public Waukesha County Wisconsin
My commission expires:

Approved as to form:

City Attorney

Accepted pursuant to the Authority of the Common Council:

CITY OF NEW BERLIN

Mayor

City Clerk

Drafted by: _____

CERTIFICATION

I, Georgia Stanford , duly appointed as City Clerk for the City of New Berlin, do hereby certify that the attached plans and maps are true and correct copy of the original and if they are not legible or readable, a copy of the original is available at the City of New Berlin Engineering Department.

Document: _____

File Number: _____

Date: _____

Name: Georgia Stanford

Signature: _____

Title: City Clerk

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
DESCRIPTION OF PUBLIC IMPROVEMENTS