

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.
- D. Prevailing Wage Rates

If the DEVELOPMENT consists of single family homes and PUBLIC IMPROVEMENTS that will be dedicated to the CITY, this Section includes the following language:

1. The DEVELOPMENT consists of exclusively single-family homes with PUBLIC IMPROVEMENTS that will be dedicated to the CITY upon acceptance. Therefore the DEVELOPMENT meets that statutory exception from Wisconsin Statute Sec 66.0903
1. DEVELOPER agrees to pay for all labor performed on the PUBLIC IMPROVEMENTS under the terms of this AGREEMENT at rates at least equal to the wage scale incorporated herein by reference as though fully set forth, and which is on file with the City Clerk and the City Engineer for this DEVELOPMENT. Said wage rate determination shall be posted by DEVELOPER’S contractor in at least one (1) conspicuous and accessible place at the project site throughout the duration of the construction of the PUBLIC IMPROVEMENTS.
2. Upon completion of the PUBLIC IMPROVEMENTS provided for, the DEVELOPER must file with the CITY an affidavit from an authorized officer of the DEVELOPER’S general contractor stating that said contractor has complied fully with the terms and requirements of the wage rate determination and that it has received evidence of compliance from each of its agents and/or subcontractors. Final payment to subcontractors shall not be made until the required Affidavit is provided.
3. DEVELOPER shall retain and otherwise keep full and accurate records for not less than three (3) years from the date of completion of the PUBLIC IMPROVEMENTS indicating the name, trade and occupation of any person performing work on the PUBLIC IMPROVEMENTS, including the number of hours worked and the wages paid. DEVELOPER acknowledges that they have filed certified payroll records with the department of Workforce Development on not less than a monthly basis.
4. DEVELOPER shall comply fully with the terms of Wisconsin Statute Sec. 66.0903 and specifically, shall discharge the responsibilities required of the municipality with respect to construction of the PUBLIC IMPROVEMENTS identified in this AGREEMENT. DEVELOPER agrees to indemnify and hold harmless the CITY against any and all claims, demands, actions, causes of

action, including but not limited to, reasonable attorney fees, which may be claimed against the CITY as the result of the failure of the Contractor and/or their agents, officers, subcontractors or assigns to comply fully with the terms of the State of Wisconsin prevailing wage rate determination and including, but not limited, Wisconsin Statute Sec 66.0903. This indemnification shall include, but shall not be limited to, claims by employees or other contractors or the State of Wisconsin arising from a violation of the provisions of this paragraph or aforementioned Statute.

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 fully implementing the approved Master Grading Plan.

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 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 acceptance of the sanitary sewer system 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 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 acceptance of the water system 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 Drainage System 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, Storm Water 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 storm water 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 storm water 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 it's 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 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 Storm Water 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. STORM WATER CHARGES

1. Upon issuance of the Occupancy Permit by the CITY, each building site or building in the DEVELOPMENT shall be subject to the Storm Water Utility fee in the same amount and collected in the same manner as are Storm Water 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 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. 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.
4. 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.

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 105% of the actual cost of all the PUBLIC IMPROVEMENTS as approved by the CITY in a form approved by the City Attorney, which shall be returned to DEVELOPER upon the final acceptance of the PUBLIC IMPROVEMENTS by the CITY for the following:

1. Public Site Grading
2. Public Road System
 - a. Installation of the final course of pavement shall occur at time of initial development. If the DEVELOPER installs all infrastructure and all pavement courses initially, a surety instrument shall be provided to the CITY that guarantees that maintenance will occur for the road surface and base course. Refer to Section X.B. Forfeiture of Surety for requirements. In the interim, the DEVELOPER shall ensure that the road surface and base course are kept in good shape and shall make repairs as necessary prior to the CITY taking final acceptance.
 - b. Installation of the final course will be allowed to be deferred, until 70% of the homes have been substantially completed in a residential development, or 24 months after commencement of construction of the project, whichever comes first. The Director may only waive the actual timing of completion for the 70% or twenty-four-month requirement, if requested, for extenuating circumstances such as inclement weather and/or coordination with other projects but by no more than six months. For projects that have been allowed to be phased, all PUBLIC INFRASTRUCTURE shall be secured by surety instrument and reviewed by the CITY and updated annually by the DEVELOPER until such time that the PUBLIC INFRASTRUCTURE receives preliminary acceptance. PUBLIC INFRASTRUCTURE that was built as part of a phased approach shall still be secured by a maintenance surety. Refer to Section IX.B. Forfeiture of Surety for requirements. In the interim, the DEVELOPER shall ensure that the road surface and base course are kept in good shape and shall make repairs as necessary prior to the CITY taking final acceptance.

3. Public Sanitary System

- a. If the roadway is installed to final grade initially, all sanitary features shall be installed to finish grade, and installed per the CITY's Development Handbook. The Utility will conduct a final inspection; as-builts must be submitted and approved and final easements recorded for the return of that portion of the surety instrument.
- b. If the roadway is not installed to final grade initially, the manholes shall be set to the level of the binder course if in the pavement. The manholes will need to be adjusted to final grade with a permanent adjustment and external seal; no paving rings will be allowed to make the final adjustment. As-builts and easement documents may not be delayed with this option.

4. Public Water System

- a. If the roadway is installed to the final grade initially, all water features shall be installed to the finish grade and installed per the CITY's Development Handbook. The Utility will conduct a final inspection; as-builts must be submitted and approved and final easements recorded for the return of that portion of the surety instrument.
- b. If the roadway is not installed to final grade initially, the water valves shall be set to the level of the binder course and turned down to the lowest level possible so with the final lift, the boxes can be turned up to final height. As-built and easement documents may not be delayed with this option.

5. Public Storm Drainage System

- a. If the roadway is not installed to the final grade initially, all stormwater features (inlets, manholes, curb and gutter, flumes, etc.) shall be installed to finish grade, tuck pointed, cleaned and inspected. The CITY will conduct a final inspection, as-builts must be submitted and approved and final easement recorded for the return of that portion of the surety instrument.
- b. If the roadway is not planned to be installed to final grade for more than 12 months, the curb and gutter shall be gapped at the inlets and the inlet grates shall be set to the level of the binder course to allow for drainage in the interim. Manholes will need to be adjusted to final grade with a permanent adjustment; no paving rings will be allowed to make the final adjustment.

6. Other Special Conditions

- a. Any other special features such as streetscaping, street lights, trails, signage, etc., shall be installed at the time of the initial construction.

B. FORFEITURE OF SURETY

1. 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.

2. After completing the required PUBLIC IMPROVEMENTS, the DEVELOPER shall provide a complete accounting of expenditures to the CITY.
 - a. The surety may be reduced, by the itemized amount of each of the Utilities (Sanitary System, Water System, and Storm Drainage System), as the PUBLIC IMPROVEMENTS receive final acceptance by the CITY.
 - b. The surety for the Public Road System portion of the PUBLIC IMPROVEMENTS may be reduced to 20% of the construction costs of the Public Road System after the CITY issues preliminary acceptance. This shall serve as a maintenance surety to guarantee workmanship and materials of construction of the Public Road System for a period of two years after preliminary acceptance of the Public Road System.
 - c. After the two-year maintenance period ends, 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.

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. 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.
 - 1. Preliminary acceptance of the Road System will be granted when the Road System has been initially completed and all punch list items have been corrected by the DEVELOPER and approved by the CITY.
 - 2. Final acceptance of the Road System will be not granted until 2 years after preliminary acceptance (maintenance period). At the end of the maintenance period, the CITY will conduct an inspection of the Road System (including curb and gutter, inlets, ditches, culverts and appurtenances) and prepare a punch list of items that need correction. After all punch list items have been completed by the DEVELOPER, and approved by the CITY, final acceptance will be granted.

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 it's 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 it's 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 or construction on building sites.
- 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 Storm Water 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 Storm Water Management BMP's are to be maintained per the approved Storm Water 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).
- F. DEVELOPER agrees that if the PUBLIC IMPROVEMENTS to be constructed and dedicated to the CITY under the terms of this AGREEMENT satisfies the project cost threshold as identified under the State of Wisconsin prevailing wage rate law Wisconsin Statute Section 66.0903(6) as amended and is not otherwise excepted from the application of the law as provided in said statute, the DEVELOPER shall comply with the terms of Wisconsin Statute Section 66.0903 and specifically discharge the responsibilities required of municipalities with respect to construction of all elements of the PUBLIC IMPROVEMENTS identified in this AGREEMENT. DEVELOPER shall further supply evidence to the CITY of having obtained from the State of Wisconsin a determination of the prevailing wage rates as well as evidence that all contractors and subcontractors have compensated their employees in accord with that determination.

[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: _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
DESCRIPTION OF PUBLIC IMPROVEMENTS