

**FINAL AGREEMENT FOR LAND DIVISION IMPROVEMENTS**

**IN ACCORDANCE WITH THE TOWN OF WESTPORT CODE  
FOR**

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(Subdivision Name or CSM No.)

(Include Phase If Applicable)

**TOWN OF WESTPORT, DANE COUNTY, WISCONSIN**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between \_\_\_\_\_, hereinafter referred to as the “Developer,” and the Town of Westport, Dane County, Wisconsin, hereinafter referred to as the “Town.”

*RECITALS*

WHEREAS, the Developer has received approval by the Town for a land division known as \_\_\_\_\_, a copy of which is incorporated by reference; and

WHEREAS, the land division approval has been made contingent upon the execution of this Agreement, and submittal of all required documents as provided by this Agreement; and

WHEREAS, the Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the land division and thereby to limit the harmful effects of substandard land divisions, including premature land division which leaves property undeveloped and unproductive; and

WHEREAS, the Town of Westport Land Division Ordinance requires that provisions be made for the installation of public sanitary sewer facilities, water mains and water service laterals, the grading of public and private lands, erosion and stormwater runoff control and street improvements to serve the Developer’s land division; and

WHEREAS, the purpose of this Agreement is to protect the Town from the cost of completing land division improvements itself and is not executed for the benefit of material providers, laborers, or other providing work, services or material to the land division or for the benefit of lot or home buyers in the land division; and

**WHEREAS, the Developer proposed to complete all the required improvements to serve this land division, and does not propose to install any improvements in the subsequent construction phases; and**

*OR*

**WHEREAS, the Developer now wishes to proceed with the installation of public improvements, to serve Lot(s) \_\_\_\_\_ of the \_\_\_\_\_ . Subsequent  
(Land Division Name)  
construction phases will be defined in scope by future land division contracts; and**

WHEREAS, the purpose of this Agreement includes but is not limited to the avoidance of harmful consequences of land development prior to satisfactory completion of improvements, or prior to the payment of improvement costs; and

WHEREAS, this Agreement is made for the mutual benefit of the Developer and the Town in order that land division requirements will be fully complied with; and

WHEREAS, the Town will be injured in the event of the Developer's failure to fully and completely perform the requirements of this Agreement even if construction has not yet been commenced. Accordingly, the parties agree that the terms and provisions of the Agreement may be enforced by the Town even if construction has not begun; and

**[Add additional historical information pertinent to the land division contract, if any, here.]**

WHEREAS, the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the Town's Land Division Ordinance.

NOW, THEREFORE, in consideration of the promises, the mutual obligations and benefits provided hereunder, the Developer and the Town agree as follows:

## ARTICLE I - GENERAL CONDITIONS

### A. *Improvements*

The Developer shall construct and install, at its own expense, those on-site and off-site land division improvements listed on Exhibit A attached hereto and incorporated herein by reference ("the Improvements"). The Developer's obligation to complete the improvements will arise upon final land division approval by the Town, will be independent of any obligations of the Town contained herein and will not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the development. The improvements contemplated herein are as follows:

Sanitary sewer mains, manholes, laterals to the lot line and all appurtenances; water mains, laterals to the lot line, hydrants, valves and all appurtenances; streets, sub-base and surfacing; curb and gutter; sidewalks, gas and electric utilities; telephone service and street lights [and others specifically provided for, if any] (hereinafter referred to as the "improvements") in accordance with the plans, specifications, contract administration, staking, and inspection provided by the Developer's Engineer, \_\_\_\_\_ . In addition, the Developer further agrees to construct improvements required to connect the land division to existing utilities including facilities required outside the boundaries of the land division, and to dedicate said improvements, right-of-ways, parklands, and storm water detention/retention lands to the Town. The Developer shall provide looped water mains to the development if the policy of the Town requires their installation.

### B. *Contracts Engaged by Developer*

The Developer agrees to engage Contractors for all construction included in this Agreement who shall perform for such work to the standards of the Town and who shall comply with every requirement of the Town Code and standards in the performing such work. The Developer shall furnish the Town Engineer with the

names of all Contractors and their subcontractors, with the classification of the work they will perform, not less than seven (7) calendar days prior to any work beginning. The Contractors and subcontractors shall be subject to approval by the Town, which approval shall not be unreasonably withheld.

C. *Affirmative Action*

The Contractor shall allow the maximum feasible opportunity for minority, handicapped and woman business enterprises to compete for any subcontracts entered into pursuant to this contract.

D. *Town Approval of Starting Dates*

The Developer further agrees that no work shall be scheduled for the above mentioned improvements without the Town Engineer's approval of a starting date and schedule which shall be submitted by the Developer to the Town Engineer a minimum of seven (7) calendar days before work is scheduled to begin.

E. *Change Order To Work*

The Developer further agrees that the Town shall not be responsible for any costs or changes related to this project except those specifically enumerated and agreed to in this or other written agreements between the Town and the Developer.

F. *Acceptance of Work*

The Town shall inspect the improvements as they are completed and, if acceptable to the Town Engineer, certify such improvements as being in compliance with the standards and specifications of the Town. Such inspection and certification, if appropriate, will occur within 14 days of written notice by the Developer that it desires to have the Town inspect any improvements. Before obtaining certification of any such improvements, the Developer shall present to the Town valid lien waivers from all persons providing materials or performing work on the improvement for which certification is sought. Certification by the Town Engineer does not constitute a waiver by the Town of the right to draw funds under the letter of credit on account of defects in or failure of any improvements that are detected or which occur following such certification.

The Developer further agrees that the dedication of right-of-way improvements and the required public improvements will not be accepted by the Town until they have

been inspected and approved by the Town Engineer and furthermore until all outstanding town-incurred costs, including engineering and inspection charges indicated herein, have been paid in full and affidavits and lien waivers are received by the Town indicating that the Contractors and their suppliers have been paid in full for all work and materials furnished under this contract. The sanitary sewer and water main and the respective service laterals shall not be accepted until a complete breakdown of all construction, engineering and administrative costs incurred by the Developer is submitted to the Town Engineer. In addition, the water system installation shall not be accepted until a bacteriologically safe sample is obtained by the appropriate approval agency. The Developer shall be responsible to flush the main, obtain the samples, and have all tests completed as may be required for the Town's acceptance. Upon completion of the mains, hydrants, valves, appurtenances, and service laterals and acceptance of the system by the Town, ownership and control of the system shall be turned over without any restrictions to the Town.

The Developer agrees to provide for maintenance and repair of all required public improvements until such improvements are formally accepted by the Town through Resolution.

The Town will provide timely notice to the Developer whenever inspection reveals that an improvement does not conform to the standards and specifications shown on Exhibit A or is otherwise defective. The Developer shall have 30 days from the issuance of such notice to cure or substantially cure the defect. The Town shall not declare a default under this Agreement during the 30 day cure period on account of any such defect unless it is clear that the Developer does not intend to cure the defect, or unless the Town determines that immediate action is required in order to remedy a situation which poses an imminent health or safety threat.

G. *Time of Completion*

All work specified herein will be completed within \_\_\_\_\_ months from the date of this Agreement by the Developer. Furthermore, all work shall be completed in accordance with the approved construction schedule as submitted and approved by the Town Engineer.

H. *Indemnification and Insurance Required of Private Contractors*

The Developer hereby expressly agrees to indemnify and hold the Town harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on

account of the performance of work at the development site and elsewhere pursuant to this Agreement. The Developer further agrees to aid and defend the Town in the event that the Town is named as a defendant in an action concerning the Town's performance of work pursuant to this Agreement except where such suit is brought by the Developer. The Developer is not an agent or employee of the Town.

The Developer shall require all Contractors engaged in the construction of this project to comply with the Town contract requirements pertaining to damage claims, indemnification of the Town, and providing insurance coverages that are established by the Town. The Developer shall also require Contractors engaged in the construction of this project to maintain a current Certificate of Insurance on file with the Town Clerk.

I. *Guarantee of The Work*

The Developer agrees to guarantee and warrant all work performed under this contract for a period of one year from the date of final acceptance by the Town of the last improvement completed by the Developer under this Agreement, against all defects in workmanship or materials. If any defect should appear during the guarantee period, the Developer agrees to make required replacement or acceptable repairs of the defective work at his own expense. This expense includes total and complete restoration of any disturbed surface or component of the improvement to the standard provided in the plans and specifications, regardless of improvements on lands where the repairs or replacement is required.

All guarantees or warranties for materials or workmanship which extend beyond the above one year guarantee period shall be assigned by the Developer to the Town (as beneficiary).

J. *Compliance with Law*

The Developer shall comply with all relevant laws, ordinances, and regulations in effect at the time of final land division approval when fulfilling their obligations under this Agreement. When necessary to protect public health, the Developer shall be subject to laws, ordinances and regulations that becomes effective after final land division approval.

K. *Specifications for Improvements*

The Developer shall be required to fully comply with any and all provisions of the Town Land Division Ordinance whether or not specifically addressed in this agreement.

1. Grading, Erosion Control and Barricades:

- a. The Developer shall furnish, install, and maintain during the construction and until the improvements are accepted by the Town, all barricades and signs as specified by the Town Engineer at all points where new rights-of-way extend or intersect existing streets and all street ends. Signs and barricades shall be required, furnished, and installed so as to conform with the Manual of Uniform Traffic Control Devices.
- b. The Developer shall obtain the approval of the Town Engineer for erosion and runoff control measures as required by the Town Ordinances or other applicable laws prior to grading, utility installation or any other land disturbance activity. Separate approvals shall be obtained for each construction phase. The Developer shall adhere to conditions of the approval and grants the right-of-entry on the land division to designated personnel of the Town to inspect and monitor compliance with this requirement.

2. Sanitary Sewer Facilities and Laterals:

- a. The Developer shall install sanitary sewer mains and laterals to serve all lots within the land division. No installation of underground utilities shall commence until plans and specifications have been approved by the Town Engineer and the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement or law. When required by the Town Engineer, the sanitary sewer shall be provided in locations, sizes, and depths necessary to serve future land divisions and phases.
- b. The Developer shall pay any Madison Metropolitan

Sewage District assessments against the land division property to the appropriate Town Utility District, and shall pay to the appropriate Town Utility District any and all outstanding special assessments levied against the land division property, before the award of any contract for utility construction.

3. Water Mains and Service Pipes:

The Developer shall install water mains, including pipe, hydrants, tees, valves, crosses and related appurtenances and water service laterals to serve all lots within the land division and as required by the plans, specifications, and requirements of the Town and approved by the State of Wisconsin Department of Natural Resources, in addition to the other approvals required by this Agreement.

4. Streets, Storm Sewers and Sidewalks:

The Developer shall install Curb and Gutter, Storm Sewer Inlets and Leads, and Pavement on all streets within the land division, to the established standards and/or specifications of the Town. Sidewalks shall be installed when required by the Town.

5. Stormwater Management Structures:

The Developer shall install all stormwater management facilities including related storm sewers required by the Town in accordance with the plans and specifications approved by the Town Engineer.

6. Where standards and/or specifications have not been established by the Town, all work shall be made in accordance with established engineering practices as designated and approved by the Town Engineer.

7. Other Improvements Required:

**[If any, list here.]**

L. *Fees Payable Prior to Construction*



The Developer agrees to pay the Town the following charges prior to construction beginning:

1. All outstanding connection charges and assessments levied against lands within the land division by the Town.
2. **[If others specifically, add here; i.e. parkland dedication fees.]**

M. *Developer to Reimburse The Town for Costs Sustained*

The Developer shall reimburse the Town for its actual cost of design, inspection, testing, construction, and associated legal and real estate fees for the required public improvements. The Town's cost shall be determined as follows:

1. The cost of the Town employees' time engaged in any way with the required public improvements based on the hourly rate paid to the employee multiplied by a factor **[of 1.4 or determined by the Town Clerk]** representing the Town's cost for expenses, benefits, insurance, sick leave, holidays, overtime, vacation, and similar benefits.
2. The cost of Town equipment employed.
3. The cost of mileage reimbursed to Town employees which is attributed to the land division.
4. The actual costs of the Town materials incorporated into the work including transportation costs plus a restocking and/or handling fee not to exceed 10% of the cost of the materials.
5. The costs incurred by the Town in connection with the review and approval of the land division as well as the cost for review and approval of other related documents and procedures, including deed restrictions rezoning, Urban Service Area amendments, Land Use Plan Changes, or any other cost which benefits the Developer or the land division property, or is related in any way to the review of the land division.
6. All consultant fees associated with the public improvements at the involved amount plus administrative costs.

7. Unless the amount totals less than \$50, the Town shall bill the Developer monthly for expenses incurred by the Town. Bills outstanding for more than 30 days shall accrue interest at the rate of 1-1/2% per month. Bills outstanding for more than 90 days shall be forwarded to the Developer's surety agency for payment. Amounts less than \$50 shall be held for billing by the Town until amounts total more than \$50, or until the conclusion of project activities.

N. *Surety*

1. The Developer agrees to furnish the Town, on or before the effective date of this Agreement, with surety in the form of, certified checks, irrevocable letters of credit, or other such form as deemed acceptable by the Town in the amount of \$ \_\_\_\_\_ to secure performance of this contract in accordance with the Town's Land Division Ordinance. The Letter of Credit, if required, shall be payable at sight to the Town and will bear an expiration date not earlier than two years after the effective date of this Agreement. The Letter of Credit will be payable to the Town at any time upon presentation of (i) a sight draft drawn on the issuing Bank in the amount to which the Town is entitled to draw pursuant to the terms of this Agreement; (ii) an affidavit executed by an authorized Town official stating that the Developer is in default under this Agreement; and (iii) the original of the Letter of Credit. The security breakdown is as follows:

a.	Erosion Control	_____
b.	All other improvements and Related costs	_____
	TOTAL	_____

**[If construction phases are utilized, insert the following paragraph.]**

2. Where construction phases are involved, the Developer agrees that prior to commencing any land surface disturbances or construction associated with the subsequent construction phases, an Agreement for Land Division Improvements for the subsequent phases will be executed by the Developer and the Town, and the Developer will furnish the Town with acceptable surety in the amount of 125% of the

estimate of the Town Engineer, as surety to secure performance of said contract.

3. As work progresses on installation of improvements constructed as part of the Contract, the Town Engineer, upon written request from the Developer from time to time, is authorized to recommend a reduction in the amount of surety as hereinafter provided. When portions of construction (water, sanitary sewer, street, sidewalk, greenway or other improvements) are completed by the Developer, and determined acceptable by the Town Engineer, the Town Clerk is authorized, upon submission of lien waivers by the Developer's contractors, to reduce the amount of surety.
4. Upon acceptance by the Town of the improvements constructed as part of this Agreement, the Town agrees to reduce the surety to an amount equal to an estimate of the Town Engineer to secure performance of the guarantee described in this Agreement.

O. *Developer's Designated Project Manager*

The Developer hereby appoints \_\_\_\_\_ as the Project Manager. Said individual shall act as the Developer's representative during the Construction Phase of the installation of these improvements. The Project Manager shall be available during construction hours on the job site or available by telephone. During non-construction hours, the Project Manager shall be available for emergency situations at the following telephone number \_\_\_\_\_. The mailing address for this construction project shall be as follows:

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**[If construction phases are utilized, insert the following paragraph.]**

P. *Transfers Within Future Phases*

The Developer shall record deed restrictions approved by the Town Attorney which specify that the lots which are included in future construction phases of the land division will not be transferred or sold unless the Town Clerk's approval is obtained.

## ARTICLE II - SUPPLEMENTAL GENERAL CONDITIONS

### A. *No Vested Rights Granted*

Except as provided by law, or as expressly provided in this Agreement, no vested rights in connection with this project shall inure to the Developer. Nor does the Town warrant by this Agreement that the Developer is entitled to any other approvals required.

### B. *No Waiver*

No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Developer, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Developer or the acceptance of any improvements.

### C. *Amendment/Modification*

This Agreement may be amended or modified only by a written amendment approved and executed by the Town and the Developer.

### D. *Future Construction Phases*

Future construction phases of this land division shall proceed only after execution of a separate agreement or a written amendment regarding construction of each phase and the approval of additional security or other documents as required.

E. *Default*

A default is defined herein as the Developer's breach of, or failure to comply with, the terms of this Agreement. The Town reserves to itself all remedies available at law or equity as necessary to cure any default. The Town also reserves to itself the right to draw on a letter of credit or other surety provided hereunder in addition to pursuing any other available remedies. Remedies shall include, but not be limited to, stopping all construction in the approved land division and prohibiting the transfer or sale of lots.

F. *Entire Agreement*

This written agreement, and written amendments, and any referenced attachments thereto, shall constitute the entire agreement between the Developer and the Town.

G. *Time*

For the purpose of computing the Commencement, Abandonment, and Completion Periods, and time periods for Town action, such times in which war, civil disasters, acts of God, or extreme weather conditions occur or exist shall not be included if such times prevent the Developer or the Town from performing obligations under the Agreement.

H. *Severability*

If any part, term, or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

I. *Benefits*

The benefits of this Agreement to the Developer are personal and shall not be assigned without the express written approval of the Town. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors, and assigns of the Developer. There is no prohibition on the right of the Town

to assign its rights under this Agreement. The Town shall release the original Developer's Letter of Credit if it accepts new security from any developer or lender who obtains the property. However, no act of the Town shall constitute a release of the original Developer from his liability under this Agreement.

J. *Immunity*

Nothing contained in this Agreement constitutes a waiver of the Town's sovereign immunity under applicable law.

K. *Notice*

Any notice required or permitted by this Agreement shall be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:

if to Developer:

**[Insert name and address]**

if to Town:

Town Clerk  
Town of Westport  
5387 Mary Lake Road  
Waunakee, WI 53597

L. *Recordation*

The Town may record a copy of this Agreement in the Register of Deeds Office. All costs of recording shall be paid by the Developer.

M. *Personal Jurisdiction and Venue*

Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement or Letter

of Credit shall be deemed to the proper only if such action is commenced in Circuit Court for Dane County. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

N. *Effective Date*

This Agreement shall be effective as of the date and year first written above.

O. *Ownership Warranty*

The Developer hereby warrants to lawful ownership and being now lawfully seized and possessed of the real estate to be improved pursuant to this Agreement.

P. *Attorney/Expert Witness Fees*

If the town is required to resort to litigation, arbitration, or mediation to enforce the terms of this Agreement, and if the Town prevails therein, or if the Town validly exercises its right to draw on the letter of credit, the Developer shall pay all Town costs, including reasonable attorney fees and expert witness fees.

IN WITNESS WHEREOF, the parties hereto have set their hand at Westport, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

TOWN OF WESTPORT

By: \_\_\_\_\_  
Town Chair

Attest: \_\_\_\_\_  
Town Clerk

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
the above-named \_\_\_\_\_, Town Chair, and \_\_\_\_\_,  
Town Clerk, of the Town of Westport, to me known to be the persons and officers  
who executed the foregoing instrument and acknowledged that they executed the  
same as such officers by the Town's authority.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission

NAME OF DEVELOPER -  
FILL IN COMPLETE NAME:

\_\_\_\_\_  
\_\_\_\_\_

**Note: If Developer is a  
corporation, at least two  
corporate officers must sign.  
If a general partnership, all  
partners must sign.**

By: \_\_\_\_\_  
(Name and title)

By: \_\_\_\_\_  
(Name and title)

**USE THIS ACKNOWLEDGMENT IF DEVELOPER IS A CORPORATION:**

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_,  
the above-named \_\_\_\_\_, to me known to be the person(s) who  
executed the foregoing instrument and as such officials acknowledged the same as the  
properly authorized act of said corporation.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission



**USE IF DEVELOPER IS A GENERAL PARTNERSHIP OR INDIVIDUAL:**

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, the above-named \_\_\_\_\_, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission

**IF DEVELOPER IS A LIMITED LIABILITY COMPANY (LLC) OR LIMITED PARTNERSHIP, TOWN ATTORNEY SHOULD DRAFT SPECIFIC EXECUTION FORM AND LANGUAGE**

Approved as to Form:

\_\_\_\_\_  
Town Attorney

This instrument drafted by and return to:

Town Attorney  
Town of Westport  
5387 Mary Lake Road  
Waunakee, WI 53597

List of Attachments:

\_\_\_\_\_ List of Improvements  
\_\_\_\_\_ **[If others, list all.]**