

AGREEMENT FOR SUBDIVISION IMPROVEMENTS  
IN ACCORDANCE WITH THE SUBDIVISION ORDINANCE OF  
TOWN OF SOMERSET  
SOMERSET, WISCONSIN  
(hereafter Agreement)

\_\_\_\_\_  
(hereafter SUBDIVISION)

THIS Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, by and between \_\_\_\_\_, Managing Member, and \_\_\_\_\_, Member, and \_\_\_\_\_, Member, of \_\_\_\_\_, a Wisconsin Limited Liability Company, and \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ in their individual capacities (hereafter the "Subdivider," whether one or more), and the Town of Somerset (hereafter the "Municipality"), a municipal corporation located at St. Croix County, Wisconsin.

RECITALS

1. The Subdivider is the fee simple owner of the real estate located within the Municipality and more particularly described in Exhibit A (Property).

2. Subdivider desires to develop the Property for the following purposes:

A residential subdivision containing (*number and type of lots*) lots.

3. The Municipality seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Subdivision and thereby to limit the harmful effects of substandard subdivisions, including premature subdivision which leaves property undeveloped and unproductive.

4. The applicable provisions of the Municipal Code of the Town of Somerset require that provisions be made for the installation of public streets, the grading of public and private lands, erosion and storm water runoff control

and other improvements required to serve the Subdivision.

5. The purpose of this Agreement is to protect the Municipality from the cost of completing subdivision improvements itself and is not executed for the benefit of material, men, laborers, or others providing work, services or material to the subdivision or for the benefit of lot or home buyers in the subdivision.

6. 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.

7. This Agreement is made for the mutual benefit of the Subdivider and the Municipality in order that land division requirements will be fully complied with.

8. The Municipality will be injured in the event of the Subdivider'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 Municipality even if construction has not begun.

9. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the Municipality's Subdivision Ordinance.

10. Subdivider agrees to develop the Property in accordance with this Agreement and any applicable regulations of any governmental entity with jurisdiction and/or the Subdivision and/or any other applicable ordinances, including its Comprehensive Plan and other rules and regulations of the Municipality.

11. It is the intention of the parties, this Agreement specifically approves the terms and conditions governing the development of the \_\_\_\_\_ Subdivision; and

12. It is the further intention of the parties for this Agreement to serve as a general outline governing the development of any future Phases, with the understanding the development of future phases shall commence only after notification to and approval by the Municipality in writing and be constructed and completed by Subdivider after satisfaction of all applicable conditions of this Agreement and any applicable municipal requirements in effect at the time the Phase is approved.

13. The approval of any future phase is contingent upon the execution of this Agreement and submittal of all documents required by this Agreement, as well as execution of a new agreement covering any future phases, and

14. This Agreement currently contains the following exhibits and any subsequent exhibits provided for under the Agreement, all of which are

incorporated as if fully set forth:

- EXHIBIT A Legal description of Property
- EXHIBIT B "Municipal Engineer's Estimate of Public Improvement Costs, List of Work and Responsibilities for \_\_\_\_\_ Subdivision".
- EXHIBIT C "Public Improvement Plans/Specifications"
- EXHIBIT D "Preliminary Grading Plan"
- EXHIBIT E "Construction Schedule"
- EXHIBIT F "Notice to Municipality of Completion of Public Improvements"
- EXHIBIT G "Letter from Engineer on Completion of Public Improvements"
- EXHIBIT H "Phase Map"
- EXHIBIT I "Deed Restrictions"
- EXHIBIT J "Encroachment Permit"
- EXHIBIT K "Affidavit of Developer as to Lien Waivers"
- EXHIBIT L "Drainage Easement"
- EXHIBIT M "Utility Easement"
- EXHIBIT N "Conservation Easement"
- EXHIBIT O "Easement Map"
- EXHIBIT P "Restrictive Covenants"

NOW THEREFORE, in consideration of the granting of approval for the development of the Property, the Subdivider agrees to develop the Property in accordance with the terms and conditions of this Agreement and any applicable regulations of any governmental entity with jurisdiction and/or the ordinances, rules and requirements imposed by the Municipal Board and regulations of the Municipality.

# AGREEMENT

## ARTICLE I - GENERAL CONDITIONS

### A. Improvements

The Subdivider shall construct and install, at his/her/their own expense, those on-site and off-site subdivision improvements listed on EXHIBIT B and further detailed in EXHIBIT C (the "Improvements"). The Subdivider's obligation to complete the Improvements will arise upon final plat approval by the Municipality, will be independent of any obligations of the Municipality and will not be conditioned on the commencement of construction in the development or sale of any lots or Improvements within the Subdivision.

No lot in the Subdivision may be sold until the Improvements have been accepted by the Municipality.

### B. Contractors Engaged By Subdivider

The Subdivider agrees to engage Contractors/Subcontractors acceptable to Municipal Engineer (all future references to Municipal Engineer shall also include the right to designate entities and/or individuals to act in the Municipal Engineer's place) for all construction included in this Agreement who shall perform for such work to the standards of the Municipality and who shall comply with every requirement of the Municipality's Municipal Code and standards in performing such work. The Subdivider shall furnish the Municipal 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.

### C. Municipality Approval of Starting Dates

1. The Subdivider agrees that no construction work shall be scheduled for the above mentioned Improvements without the Municipal Engineer's (all future references to Municipal Engineer shall also include the right to designate entities and/or individuals to act in the Municipal Engineer's place) approval of the starting date and schedule which shall be submitted by the Subdivider for approval by the Municipal Engineer a minimum of seven (7) calendar days before work is scheduled to begin. This schedule shall be attached as EXHIBIT D and incorporated herein as if fully set forth. No work shall commence on the Property until all parties have signed this Agreement, all Exhibits have been attached, and an approved letter of credit and insurance certificate (as provided herein) is on file with the Municipality. No building permits shall be issued until the Municipality has given all necessary approvals and utilities to serve the individual site are in

place and inspected and a drive able year-round roadway is in place.

2. The Subdivider agrees to conduct a preconstruction conference prior to any construction activity, including grading work. The Municipal Engineer and representatives of Municipality will attend this conference. The Subdivider will be responsible for scheduling and conducting this conference. Full-time construction observation will be provided for any work which will be buried. Municipality, at its sole discretion, will determine which individual and/or entity will serve as resident inspector. Daily construction logs shall be kept and copies forwarded to the Municipal Engineer each week. If Municipality designates an individual or entity other than the Municipal Engineer as resident inspector, the Municipal Engineer may nevertheless visit the site to observe and evaluate construction work and progress at such times and frequencies as deemed necessary by Municipal Engineer at its sole discretion. Pursuant to Paragraph K.1.e. of this Agreement, Subdivider shall reimburse Municipality for fees of Municipal Engineer incurred in any such observation work.

D. Change Order to Work

The Subdivider further agrees that the Municipality 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 Municipality and the Subdivider. The changes are to be in writing, executed by both parties, and are to be attached as exhibits.

E. Acceptance of Work

The Municipality shall inspect the Improvements as they are completed and, if acceptable to the Municipal Engineer, certify such Improvements as being in compliance with the standards and specifications of the Municipality. Such inspection and certification, if appropriate, will occur within thirty (30) days of written notice by the Subdivider that Subdivider's desire to have the Municipality inspect an Improvement. The Town retains the right to accept public improvements at a later date if, in the Town's sole discretion, there is work remaining to be completed or repairs remaining to be made to the public improvements. Before obtaining certification of any such Improvement, the Subdivider shall present to the Municipality valid lien waivers from all persons providing materials or performing work on the Improvement for which certification is sought. Certification by the Municipal Engineer does not constitute a waiver by the Municipality of the right to draw funds under the letter of credit on account of defects in or failure of any Improvement that is detected or which occurs

following such certification.

Subdivider further agrees that the dedication of right-of-way Improvements and that the required public Improvements will not be accepted by the Municipality until all of the following have occurred as to each Improvement for which Subdivider seeks acceptance by Municipality:

- 1) The "Notice to Municipality of Completion of Public Improvements", attached hereto as Exhibit "F", has been received by the Municipality.
- 2) The "Letter from Developer's Engineer on Completion of Public Improvements", attached hereto as Exhibit "G", has been received by Municipality.
- 3) The Improvements have been inspected and approved by the Municipal Engineer.
- 4) All outstanding Municipality-incurred costs, including engineering and inspection charges, have been paid in full.
- 5) Affidavits and lien waivers are received by the Municipality indicating that the Contractor and his/her suppliers have been paid in full for all work and materials furnished under this Agreement.

The Subdivider agrees to provide for maintenance and repair of all required public Improvements until such Improvements are formally accepted by the Municipality through Resolution.

The Municipality will provide timely notice to the Subdivider whenever inspection reveals that an improvement does not conform to the standards and specifications shown on EXHIBIT C - Plans and Specifications or is otherwise defective. The Subdivider shall have 20 days from the issuance of such notice to correct or substantially correct the defect. The Municipality shall not declare a default under this Agreement during the 20 day correction period on account of any such defect unless it is clear the Subdivider does not intend to correct the defect or unless the Municipality determines that immediate action is required in order to remedy a situation which poses an imminent health or safety threat. The Subdivider shall have no right to correct defects in or failure of any Improvement found to exist or occurring after the Municipality accepts dedication of the Improvement(s).

Subdivider shall provide copies to Municipality of "as built" plans for all Improvements within sixty (60) days of acceptance by Municipality of the final Improvements to be constructed by Subdivider pursuant to this Agreement.

Subdivider's responsibility under the ENCROACHMENT PERMIT (attached as EXHIBIT F) shall cease after all Improvements have been accepted by the Municipality.

F. Time of Completion

All work specified will be completed in accordance with the following schedule:

Phase I  (lot numbers) : all Improvements except the final lift on the streets shall be completed by \_\_\_\_\_.  
Unless otherwise agreed upon in writing, the final lift on the streets of Phase I of Subdivision shall be completed by \_\_\_\_\_.

Phase II  (lot numbers) : all Improvements except the final lift on the streets shall be completed by \_\_\_\_\_.  
Unless otherwise agreed upon in writing, the final lift on the streets of Phase II of Subdivision shall be completed by \_\_\_\_\_.

Furthermore, all work shall be completed in accordance with the approved construction schedule attached as EXHIBIT E as submitted and approved by the Municipal Engineer.

G. Indemnification and Insurance Required of Private Contractors

The Subdivider hereby expressly agrees to indemnify and hold the Municipality and its agents 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 Subdivider further agrees to aid and defend the Municipality or its agents (at no cost to the Municipality or its agents) in the event they are named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Subdivider. The Subdivider is not an agent or employee of the Municipality.

1. Subdivider will provide and maintain or cause to be maintained at all times during the process of constructing the Improvements until six (6) months after acceptance of all Improvements and, from time to time, at the request of the Municipality, furnish proof of payment of premiums on:
  - a. Comprehensive general liability insurance (including operations,

contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury, including death, and property damage (to include, but not be limited to damages caused by erosion or flooding) which may arise out of the Subdivider's work or the work of any of its subcontractors.

Limits for bodily injury or death shall not be less than \$500,000.00 for one person and \$1,000,000.00 for each occurrence; limits for property damage shall not be less than \$200,000.00 for each occurrence. The Municipality and the Municipal Engineer shall be an additional named insured on said policy.

b. Worker's compensation insurance, with statutory coverage.

The Subdivider shall file a copy of the insurance coverage with the Municipality.

2. The Subdivider shall ensure that all Contractors engaged in the construction of this project comply with the above requirements pertaining to damage claims, indemnification of the Municipality, and providing insurance coverages consistent with those listed above. The Subdivider shall also require Contractors engaged in the construction of this project to maintain a current Certificate of Insurance on file with the Municipal Clerk.

H. Guarantee of the Work

The Subdivider 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 Municipal Board of the last improvement completed by the Subdivider under this Agreement against defects in workmanship or materials. If any defect should appear during the guarantee period, the Subdivider agrees to make required replacement or acceptable repairs of the defective work at his/her/their 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. The letter of credit or other approved surety shall remain in force for the full length of time that any Phase remains to be completed; in addition, a portion of the letter of credit deemed adequate by the Municipal Engineer shall remain in force for a minimum of the one year guarantee period.

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

I. Compliance With Law

The Subdivider shall comply with all relevant laws, ordinances, and regulations in effect at the time of final subdivision plat approval when fulfilling his obligations under this Agreement. When necessary or advisable to protect or promote the public health or welfare, or when necessary for Municipality to provide adequate public utility services to this or other subdivisions, the Subdivider shall be subject to laws, ordinances and regulations that become effective after final plat approval.

J. Specifications for Improvements

The Subdivider shall be required to fully comply with any and all provisions of the Municipal Subdivision Ordinance whether or not specifically addressed in this Agreement including but not limited to:

1. Grading, Erosion Control and Barricades

- a. The Subdivider shall furnish, install, and maintain during construction and until the Improvements are accepted by the Municipality, all barricades and signs as specified by the Municipal 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 Subdivider shall obtain the approval of the Municipal Engineer for erosion and runoff control measures as required by the Municipal Ordinances prior to grading, utility installation or any other land disturbance activity. Separate approvals shall be obtained for each construction phase. The Subdivider shall adhere to conditions of the approval and grants the right-of-entry on the subdivision to designated personnel of the Municipality to inspect and monitor compliance with this requirement. Erosion Control measures shall comply with the current edition of the "Wisconsin Construction Site Best Management Practice Handbook".

2. Streets and street maintenance

The Subdivider shall be responsible for all street maintenance until streets are accepted by the Municipality. Warning signs shall be placed when hazards develop in streets to prevent travel by the public. If and when streets become impassable, such streets shall be barricaded and closed. The Subdivider shall be responsible for keeping streets within and outside the Property swept clean of dirt

and debris and any spill or wash onto the streets from the construction operations.

3. Streets, Storm Sewers, Sidewalks and Driveways

The Subdivider shall construct roads to standards as specified in the Town of Somerset, Code of Ordinances, Chapter 34.

Pavement shall be a minimum 2.5 inches of compacted pavement with a minimum of six inches lime rock on the shoulders, and the shoulders shall have a minimum width of two feet on each side. A pavement thickness up to 3 inches maybe required under certain conditions. Subdivider shall grade the edge of the topsoil up to match the gravel shoulder of the final lift. The Subdivider shall install Storm Sewer Inlets and Leads if necessary. Sidewalks shall be installed when required by the Municipality's Sidewalk Policy. Developers shall be required, at their expense, to install base and sub-base for each residential driveway from the edge of the proposed roadway to the lot line of each lot according to standards specified this chapter. All driveways shall be located as designated on the approved final plant unless unforeseen problems may require placement in another location, in which case the new location requires town board approval. If a culvert is required for proper drainage, a steel culvert of appropriate size shall be installed by the developer at the developer's expense. The stub must be 14 feet wide adjoining the roadway and shall extend not less than 12 inches toward the lot line. Driveway stubs must be paved when subdivision roads are paved.

4. Storm Water Management Structures

The SUBDIVDER shall install all storm water management facilities including related storm sewers required by Municipality Ordinance and the plans and specifications approved by the Municipal Engineer. Any retention, detention or drainage ponds to be constructed by Subdivider will be graded, seeded and in mowable condition before acceptance by Municipality. If the "as built" plans to be provided by Subdivider pursuant to Paragraph I.E. for the pond do not conform to the approved specifications for the pond, Subdivider agrees to bring the pond into conformance with the approved specifications within sixty days of written notice from Municipality of the need to do so.

5. Construction Standards

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

6. Other Improvements Required

- a. Pursuant to Town Ordinance, the Subdivider shall cause gas, electrical power and telephone facilities to be installed in such manner as to make adequate service available to each lot in the subdivision.
- b. The Subdivider shall install all required street and traffic signage within the subdivision.
- c. The Subdivider shall landscape all right-of-way and public land, including retention or detention ponds, with topsoil, seed and mulch.
- d. When necessary the Subdivider shall construct a walking trail between \_\_\_\_\_ of Subdivision and shall install a ten-foot wide bituminous surface on this trail. This trail shall be completed at or before the time of installation of the first lift on the streets of Subdivision.
- e. Subdivider will construct driveways on all lots in Subdivision from the roadway shoulder to the right-of-way boundary a length of approximately 17 (seventeen) feet. Such driveways shall have a minimum width of twelve (14) feet, and have a 4 inch thick Class 5 (gravel) surface. In addition, Subdivider shall grade driveways to a suitable subgrade elevation (with a minimum twelve (12) foot width) on the following lots for the length indicated: \_\_\_\_\_
- f. Subdivider shall install a culvert or culverts \_\_\_\_\_.
- g. **[Add any extra provisions regarding improvements here – i.e. park equipment, street lights, trees, etc.]**

7. Utility, Drainage and Conservation Easements

Developer shall prepare separate documents for any utility, drainage or conservation easements specified on the preliminary or final plat of the Subdivision. Such easements shall specify the rights and obligations of the owners of lots subject to the easements as well as the rights and obligations of the grantees of the easements. Subdivider shall record these easement documents with the St. Croix County Register of Deeds within thirty days of the execution of this Agreement. Developer shall provide Town with copies of the recorded easement documents. The drainage easements shall provide access to the Homeowner's Association and to Municipality to any drainage ponds or other stormwater facilities for maintenance purposes.

8. Maintenance of Unsold Lots and Open Spaces

Subdivider shall maintain all unsold lots and open spaces in a mowable condition. Subdivider agrees to abide by all municipal ordinances pertaining to grass length and weed control. Dirt and debris piles shall not be left on any lot or open space for longer than thirty days. If any such piles are not removed within ten days' written notice by Municipality, Municipality may remove any such dirt and debris and assess or charge the costs of doing so against Subdivider.

9. Removal of Erosion Control Measures  
Subdivider shall remove all erosion control measures installed in Subdivision, including, without limitation, silt fences and erosion bales, upon thirty day's written notice by Municipality to Subdivider requesting such removal, or prior to Municipality's release of the final surety funds provided by Subdivider to Municipality to warrant the public Improvements to be installed pursuant to this Agreement, whichever occurs first.

10. Deed Restrictions  
Any deed transferring any lot in Subdivision containing a drainage easement, conservation easement, or slope area shall contain the relevant deed restriction specified in Exhibit "I". The deed restriction for the conservation easement shall be placed on any deed transferring an interest in the following lots: \_\_\_\_\_ . The deed restriction for the drainage easement shall be placed on any deed transferring an interest in the following lots: \_\_\_\_\_ . The deed restriction for the slope areas shall be placed on any deed transferring an interest in the following lots: \_\_\_\_\_ .

11. Parkland Dedication  
A park recreation fee of \$400 per lot will be paid by the Subdivider at the time of the final plat review meeting. The final plat will not be approved or signed until the park recreation fee is paid.

K. SUBDIVIDER to Reimburse the Municipality for Costs Sustained

1. The Subdivider shall reimburse the Municipality for its actual cost of design, inspection, testing, construction, and associated legal and real estate fees for the required public Improvements. The Municipality's costs shall be determined as follows:

- a. The cost of Municipal employees' time engaged in any way with the required public Improvements based on the hourly rate paid to the employee multiplied by a factor determined by the Municipality representing the Municipality's cost for expenses, benefits, insurance, sick leave, holidays, overtime, vacation, and similar benefits.
- b. The cost of Municipality equipment employed.
- c. The cost of mileage reimbursed to Municipality employees which is attributed to the land division.

- d. The costs incurred by the Municipality in connection with the review and approval of the final plat of subdivision as well as the cost for review and approval of other related documents including deed restrictions.
- f. All consultant fees, including legal and engineering, associated with the public Improvements at the invoiced amount plus administrative costs.
- g. A sum of two percent (2 %) of the improvement costs as estimated by the Municipal Engineer shall be deposited with the Municipal Clerk as an initial payment to partially cover costs.

The Municipal Clerk shall draw against such deposit for payment of all administrative, engineering, legal and other costs incurred by the Municipality. If at any time the deposit shall be insufficient to reimburse the Municipality for its expenses, the Subdivider shall deposit additional security within fifteen (15) days of notice from the Municipal Clerk.

After completion of improvement construction and acceptance by Municipality, the actual costs shall be totaled and the difference, if any, shall be paid by or remitted to the Subdivider.

L. Surety

1. The Subdivider agrees to furnish the Municipality, 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 Municipality in the minimum amount of one hundred twenty-five percent (125%) of the cost of the Improvements to secure performance of this Agreement in accordance with the Municipality's Subdivision Ordinance. The Improvements which will be included for purposes of calculation the required letter of credit amount and the estimated cost of those Improvements are: \_\_\_\_\_, crushed rock (including shoulders \_\_\_\_\_, final grade on ditch \_\_\_\_\_, seeding up to the shoulder \_\_\_\_\_ and trail \_\_\_\_\_. The total estimated cost of these Improvements is \_\_\_\_\_; meaning that the letter of credit should be in the amount of \_\_\_\_\_. The form of the letter of credit or other surety shall be approved by the Town Attorney and in full force and effect prior to commencement of construction of the Improvements. The letter of credit or other approved surety shall remain in full force and effect as a warranty of workmanship and material for a minimum of one year after

acceptance of the Improvements by the Municipal Board.

The letter(s) of credit shall be payable to the Municipality at any time upon presentation of (i) a sight draft drawn on the issuing bank in the amount to which the Municipality is entitled to draw pursuant to the terms of this Agreement; (ii) an affidavit executed by an authorized Municipality official stating that the Subdivider is in default under this Agreement; and (iii) the original of the Letter of Credit. . Financial guarantees are to be in effect for a minimum of one year and to be **automatically renewable** unless the Town releases the money before this timeframe.

2. As work progresses on installation of Improvements constructed as part of the Agreement, the Municipal Engineer, upon written request from the Subdivider from time to time, is authorized to recommend a reduction in the amount of surety. When portions of construction (water, sanitary sewer, street, sidewalk, greenway or other Improvements) are completed by the Subdivider, and determined acceptable by the Municipal Engineer, the Municipal Board at its sole discretion is authorized, upon submission of lien waivers by the Subdivider's contractors, to reduce the amount of surety. Lien waivers are to be submitted from any contractor, subcontractor, material supplier, or other individual or entity who performed any work or supplied any materials for the specific Public Improvements for which acceptance is sought. Subdivider is to complete and submit a signed "Affidavit of Developer as to Lien Waivers" (attached as Exhibit "K") with each request for reduction of the letter of credit. No reduction in the letter of credit will be authorized until the required submittals have been made by Subdivider.
3. Upon acceptance by the Municipal Board of the Improvements constructed as part of this Agreement, the Municipality may reduce the surety to an amount equal to an estimate of the Municipal Engineer to secure performance of the guarantee described in this Agreement, subject to the approval of the Municipal Engineer and Municipal Attorney.

M. Subdivider's Designated Project Manager

The Subdivider hereby appoints \_\_\_\_\_ as the Project Manager. This individual shall act as the Subdivider'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 at \_\_\_\_\_ . 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:

- N. Engineer of Record and Resident Inspector  
The Municipality hereby designates \_\_\_\_\_ as the Resident Inspector and Engineer and his/her mailing address is for the project. His/her telephone number is \_\_\_\_\_.
- O. Preliminary Plat Approval  
Subdivider was granted preliminary plat approval for Subdivision at Municipality's \_\_\_\_\_ meeting on \_\_\_\_\_.
- P. Submission of Final Plat
- Q. Impact Fees.  
Subdivider is aware that Municipality has not enacted an impact fee ordinance. Subdivider consents to the assessment of any applicable impact fees against all lots in Subdivision pursuant to the terms of the ordinance.
- R. Homeowner's Association  
Subdivider can agree to form a Homeowner's Association with mandatory membership \_\_\_\_\_ for the owners of all lots in Subdivision. The Association shall be validly formed by an attorney licensed to practice law in the State of Wisconsin. The formation documents as well as the Association's rules and bylaws shall be submitted to Municipality for review and approval. Among the responsibilities of the Association shall be maintenance of all drainage ponds and storm water facilities in Subdivision. Such documents shall also grant Municipality (or its designee) the right, if it deems necessary to safeguard the public health safety and welfare, to enter the Property and conduct any necessary maintenance work itself and assess the costs against the Homeowner's Association or the individual lots of Subdivision, at Municipality's discretion.

## ARTICLE II - SUPPLEMENTAL GENERAL CONDITIONS

- A. No Vested Rights Granted  
Except as provided by law, or as expressly provided in this Agreement, no vested right in connection with this project shall inure to the Subdivider. Nor does the Municipality warrant by this Agreement that the Subdivider is entitled to any required approvals.
- B. No Waiver  
No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement. Nor shall Municipality's failure to pursue any default under this Agreement be deemed a waiver of any subsequent default or other defaults of the same type. The Municipality's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Subdivider or the acceptance of any Improvement(s).
- C. Amendment/Modification  
This Agreement may be amended or modified only by a written amendment approved and executed by the Municipality and the Subdivider.
- D. Future Construction Phases  
Future construction phases of this plat 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. Phase II cost estimates for surety purposes are enclosed for information only. A specific estimate using the current prices is to be submitted at the time of application for the Phase.
- E. Default  
A default is defined as the Subdivider's breach of or failure to comply with, the terms of this Agreement. The Municipality 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 final plat and prohibiting the transfer or sale of lots or not issuing building permits.
- F. Entire Agreement  
This written Agreement, and written amendments, and any referenced

attachments shall constitute the entire Agreement between the Subdivider and the Municipality.

G. Attorney's Fees

If the Municipality is required to resort to litigation, arbitration, or mediation to enforce the terms of this Agreement, and if the Municipality prevails in the litigation, arbitration, or mediation the Subdivider shall pay all Municipality costs including reasonable attorney's fees and expert witness fees. If the court, arbitrator, or mediator awards relief to both parties, each will bear its own costs in their entirety.

H. Time

For the purpose of computing the commencement, abandonment, and completion periods, and time periods for Municipality 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 Subdivider or Municipality from performing his/her/their obligations under the Agreement.

I. 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 other 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.

J. Benefits

The benefits of this Agreement to the Subdivider are personal and shall not be assigned without the express written approval of the Municipality. 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 Subdivider and also shall be binding on the heirs, successors, and assigns of the Subdivider. There is no prohibition on the right of the Municipality to assign its rights under this Agreement. The Municipality shall release the original Subdivider's letter of credit if it accepts new security from any subdivider or lender who obtains the property. However, no act of the Municipality shall constitute a release of the original Subdivider from his/her/their liability under this Agreement.

K. Immunity

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

L. Personal Guarantees

The undersigned guarantors represent that they are all of the individuals or entities that have an ownership interest in Subdivider and that they collectively own 100% of the equity in Subdivider. The guarantors hereby guarantee the full and complete performance of their Agreement by Subdivider and further agree to pay to Municipality all amount necessary to fully compensate if for any breach of this Agreement or delay in performance of this Agreement by Subdivider.

M. 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 Subdivider:

if to Municipality:

Town Clerk  
Town of Somerset  
748 HWY 35, P.O.Box 248  
Somerset, WI 54025

N. Recordation

The Municipality may record a copy of this Agreement or Affidavit indicating the existence of this Agreement in the Register of Deeds' Office. All costs of recording shall be paid by the Subdivider.

O. 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 commenced in Circuit Court for St. Croix County. The Subdivider expressly waives his/her/their right to bring such action in or to remove such action to any other court whether state or federal.

P. Effective Date

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

**TOWN OF SOMERSET**

By: \_\_\_\_\_  
Ed Schachtner, Town Chairperson

Attest: \_\_\_\_\_  
Town Clerk  
Jeri Koester

STATE OF WISCONSIN )  
                                  )ss.  
COUNTY OF ST. CROIX )

Personally came before me this \_\_\_ day of \_\_\_\_, the above-named Ed Schachtner Town Chairperson, and Jeri Koester, Town Clerk of the Town of Somerset, 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 authority of the Town of Somerset.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission:

**SUBDIVIDER**

\_\_\_\_\_  
By: \_\_\_\_\_, Managing Member

\_\_\_\_\_  
\_\_\_\_\_, Personally

**NAME**

\_\_\_\_\_  
[NAME], Personally

STATE OF WISCONSIN )  
                                  ) ss.

COUNTY OF ST. CROIX )

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

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission:

Approved as to Form:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_Municipal Attorney

This instrument drafted by:

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

**EXHIBIT A**  
**LEGAL DESCRIPTION**  
**SUBDIVISION**  

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**SOMERSET, WISCONSIN**

**EXHIBIT B**  
**\_\_\_\_\_ SUBDIVISION**  
**ESTIMATE OF PUBLIC IMPROVEMENT COSTS, LIST OF WORK AND**  
**RESPONSIBILITIES**

**EXHIBIT C**  
**\_\_\_\_\_ SUBDIVISION**  
**PUBLIC IMPROVEMENT PLANS/SPECIFICATIONS**

**EXHIBIT D**  
**\_\_\_\_\_ SUBDIVISION**  
**PRELIMINARY GRADING PLAN**

**EXHIBIT E**  
**SUBDIVISION**  

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**CONSTRUCTION SCHEDULE**

**EXHIBIT F**  
**SUBDIVISION**  
**NOTICE TO MUNICIPALITY OF COMPLETION OF PUBLIC**  
**IMPROVEMENTS**

DATE: \_\_\_\_\_

Town Clerk  
Town of Somerset  
Somerset, WI

Re: NOTICE OF COMPLETION OF PUBLIC IMPROVEMENTS

Dear Sir/Madam:

\_\_\_\_\_, Developer, hereby notifies the Town of Somerset, pursuant to the Development Agreement dated \_\_\_\_\_ between Developer and the Town, that the public improvements specified in that Agreement are completed. Developer further certifies that the public improvements have been completed in compliance with the plans and specifications approved by the Town of Somerset. Developer requests that the Town notify its Town Engineer of such completion and that it further direct its Engineer to inspect the public improvements for compliance with Town standards and requirements.

Developer requests that it be contacted by the Town Engineer to arrange for such inspection as soon as possible.

Developer further requests that, upon approval of the Town Engineer, Town accept the public improvements and notify the financial institution which issued Developer's letter of credit of the date of such acceptance. Developer acknowledges that any such surety is to remain in place for a time period of one year from the date of acceptance of the public improvements by the Town. Financial guarantees should be automatically renewable unless the Town releases the money before this timeframe.

The specific public improvements for which Developer is requesting Town acceptance are listed on the attachment.

Sincerely,

\_\_\_\_\_

Developer  
Address  
Phone Number

Exhibit F, Page 2

**Attachment to “Notice of Completion of Public Improvements  
LIST OF PUBLIC IMPROVEMENTS  
\_\_\_\_\_ SUBDIVISION**

**EXHIBIT G**  
**LETTER FROM ENGINEER ON COMPLETION OF PUBLIC**  
**IMPROVEMENTS**  
**\_\_\_\_\_ SUBDIVISION**  
**SOMERSET, WISCONSIN**

Date: \_\_\_\_\_

Town Clerk  
Town of Somerset  
Somerset, WI 54002

Re: NOTICE OF COMPLETION OF PUBLIC IMPROVEMENTS

Dear Town Clerk:

I served as the project engineer for the \_\_\_\_\_ subdivision in the Town of Somerset. The developers, \_\_\_\_\_, have requested that you accept the public improvements listed on the attachment to this letter. I am writing to certify that the public improvements listed on the attachment have been completed in compliance with the plans and specifications for those improvements which were submitted and approved by the Town of Somerset.

Sincerely,

\_\_\_\_\_  
Engineer  
Address  
Phone Number

Exhibit G, page 2

**Attachment to “Letter from Engineer on Completion of Public  
Improvements”**

**\_\_\_\_\_ SUBDIVISION  
SOMERSET, WISCONSIN**

**EXHIBIT H  
PHASE MAP  
SUBDIVISION  
SOMERSET, WISCONSIN**

**EXHIBIT I**  
**DEED RESTRICTIONS**  
**SUBDIVISION**  

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**SOMERSET, WISCONSIN**

**EXHIBIT J**  
**ENCROACHMENT PERMIT**  
**SUBDIVISION**  

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**SOMERSET, WISCONSIN**

**EXHIBIT K**

**AFFIDAVIT OF DEVELOPER AS TO LIEN WAIVERS**

**\_\_\_\_\_ SUBDIVISION  
TOWN OF SOMERSET**

***[Complete either "A" and/or "B" as applicable and strike through any inapplicable Paragraph]***

**A.**

\_\_\_\_\_, the undersigned Subdivider(s) (hereafter "Subdivider" whether one or more) in the Development Agreement dated \_\_\_\_\_ (hereafter "Developer's Agreement") for the \_\_\_\_\_ Subdivision in the Town of Somerset, (hereafter "Municipality") hereby warrant that the \_\_\_ [insert number of attached lien waivers] attached lien waivers constitute final lien waivers from all contractors, sub-contractors, material suppliers and/or others who have supplied materials or performed work on the specific public improvements for which acceptance by Municipality is requested in the correspondence dated \_\_\_\_\_ from Subdivider to Municipality.

**(OR)**

**B.**

\_\_\_\_\_, the undersigned Subdivider (hereafter "Subdivider") in the development agreement dated \_\_\_\_\_ (hereafter "Developer's Agreement") for the \_\_\_\_\_ Subdivision in the Town of Somerset, (hereafter "Municipality") hereby warrants that the \_\_\_ [insert number of attached lien waivers] attached lien waivers constitute partial

and/or final lien waivers from all contractors, sub-contractors, material suppliers and/or others who have supplied materials or performed work on the specific public improvements for which acceptance by Municipality is requested in the correspondence dated \_\_\_\_\_ from Subdivider to Municipality. Subdivider hereby further warrants that the only amounts remaining due to the signatory of any partial lien waiver for any public improvement for which acceptance is sought in the referenced correspondence are standard retainers held by Subdivider pending final completion of the Subdivision. The amounts of any such retainer and the contractor, sub-contractor, material supplier or other individual or entity to which any such retainers are owed are listed below:

<u>NAME OF CONTRACTOR, ETC.</u>	<u>RETAINER AMOUNT OWING</u>
_____	_____
_____	_____
_____	_____

This affidavit is given to induce the Town Board of Municipality to authorize a reduction in the letter of credit from Subdivider to Municipality pursuant to the terms of the Developer's Agreement.

Dated \_\_\_\_\_, 20\_\_\_\_.

**SUBDIVIDER**

\_\_\_\_\_  
 (Name of Corporation)



**EXHIBIT L**  
**DRAINAGE EASEMENT(S)**

**EXHIBIT M**  
**UTILITY EASEMENT(S)**

**EXHIBIT N**  
**CONSERVATION EASEMENT(S)**

**EXHIBIT O**  
**EASEMENT MAP**

**EXHIBIT P**  
**RESTRICTIVE COVENANTS**