

BROADWAY HILLS ESTATES (PHASE 1) DEVELOPMENT AGREEMENT

THIS AGREEMENT, made by and between the **City of Appleton** by its City Council, a body politic and municipal corporation with a mailing address of 100 North Appleton Street, Appleton, WI 54911 (“City”) and **North Properties LLC**, a corporation with a business address of 4226 E. Applesed Drive, Appleton, WI 54913, the owner and developer (“Developer”) of property lying within the City of Appleton:

WHEREAS, Section 17-3 of the Appleton Municipal Code provide for the installation of required improvements in new subdivisions; and

WHEREAS, the Developer has proposed to develop the Broadway Hills Estates residential subdivision on property within the corporate limits of the City (“Proposed Development”), described in *Exhibit 1* (Legal Description provided by Developer) attached hereto; and

WHEREAS, the Final Plat of the Broadway Hills Estates Subdivision, shown in *Exhibit 2* (provided by Developer) attached hereto, has been conditionally approved by the City; and

WHEREAS, a series of meetings and negotiations have taken place between the City and the Developer to determine various development and financial responsibilities as between the City and the Developer for on-site and off-site public improvements and fees in connection with the Proposed Development; and

WHEREAS, the City and the Developer, for their mutual benefit, have mutually agreed as to development and financial responsibilities for public improvements and fees in connection with the Proposed Development;

NOW THEREFORE, it is mutually agreed as follows:

1. The Developer shall be responsible for the installation of all the following in the Proposed Development, to the standards set forth by the City, pursuant to paragraph 4 below:
 - a. Sanitary sewer mains, manholes and laterals
 - b. Water mains, valves, hydrants, hydrant leads, fittings, and services
 - c. Storm sewer mains, manholes, catch basins, inlet leads, overland flow paths, yard drains and associated piping and laterals
 - d. Street excavation and graveling, terrace seeding, lot filling, grading and seeding and all associated construction site erosion control measures, with fill to consist of clay fill in the streets.
 - e. Street Lights
 - f. All other infrastructure required for the developments not specifically set forth in this agreement

2. The Developer shall provide the City an estimate for items 1a – 1f prior to the installation of the items for the development.

3. The Developer shall provide fully executed and signed *Waivers of Special Assessment Notices and Hearing* (shown in **Exhibit 3**) for the development, acknowledging consent to pay Special Assessments levied by the City for the following items to be furnished and/or installed by the City:

- a. City Administrative Fees
- b. Temporary Asphalt Street Surface
- c. Sanitary Area Assessment
- d. Sanitary Sewer and Watermain Connection Fees
- e. Televising of sanitary and storm sewer lines
- f. Street Name Signs
- g. Traffic Control Signs
- h. Concrete Pavement abutting lots owned by the Developer at the time of concrete paving
- i. Sidewalks installed on lots owned by the Developer at the time of concrete paving

Estimates of up-front City costs and associated special assessments to be paid by the Developer for items 3a – 3i for the development are attached hereto as **Exhibit 4**. The actual final costs for items 3a-3i will be used as the basis for the special assessments billed to the Developer.

4. The Developer shall provide the City with copies of all final costs, invoices, labor costs, the contract documents and specifications, design documentation, all contract administration supporting documentation, an itemized list of all expenses for the installation of sanitary sewer, storm sewer, water main, street excavation and graveling and street lights for the Proposed Development. Said information provided by Developer shall be provided within 60 days of installation and shall meet City's Infrastructure Adjustment Form requirements. The Developer's design engineer shall perform the construction staking and the City shall inspect the same.

5. The Developer's contractor shall perform the testing of the water main, sanitary sewer, storm sewer and compaction of fill material placed in future roadway areas in the Proposed Development under the supervision of City inspectors.

6. The Developer shall provide lien waivers to the City from prime contractor, subcontractors, suppliers and consultants within 60 days of the installation of the items in paragraph 1.

7. The Developer agrees to convey by deed, dedication, or other appropriate means, to the City all the streets, roads, courts, avenues, drives, public ways, sanitary sewer, storm sewer, water main, and storm water facilities in the Proposed Development. Developer further agrees to convey any public access ways by dedication or easement to the City. All public improvements contemplated in the final plat shall be constructed within areas to be dedicated to the City either by deed, dedication or easement as contemplated in the Proposed Development and this agreement.

8. The City agrees to accept the dedication of all the Public Improvements in the Proposed Development, whether by deed, dedication or easement subject to the City's Acceptance of the Public Improvements in accordance with and subject to the terms of the City's Subdivision Ordinance.

9. The Developer shall repair or replace, as directed by the City and to the City's satisfaction, at its own cost, any damage caused to City property by the installation of the improvements in the Proposed Development. Repairs shall be completed within six (6) months of notification from the City to the Developer of the need to repair or replace such damage.

10. The Developer shall pay the cost of all items listed under Paragraph 1 above. Concrete Paving and sidewalks will be assessed to the abutting property owners and the Developer will be assessed for only the cost of those lots owned by the Developer. Concrete streets shall be installed only after 75% of the lots in the Proposed Development have been issued building permits or after a 7-year period from the date of official street opening, whichever comes first.
11. The schedule for the Proposed Development shall be as follows:
 - a. Infrastructure installation may commence after City approval of the Final Plat, Drainage Plan, Established Grades, Storm Water Management Plan, Construction Plans, Construction Specifications and procurement of all necessary City and Regulatory Agency permits, unless an Early Start is approved by the City Engineer.
 - b. Building permits may be issued upon City approval and acceptance of all infrastructure. Streets must be officially opened to the public by the City Engineer prior to the issuance of building permits.
12. The developer shall pay any required parkland fees pursuant to Chapter 17 of the Appleton Municipal Code, not to exceed \$300 per lot.
13. The City agrees to include the installation of watermain in French Road adjacent to this Development to serve Phase 2 in the 2022 Capital Improvement Budget, contingent upon the annexation application filed by December 31, 2020.
14. The City shall contribute \$43,844.44 towards the costs of constructing the North (\$21,959.22) and South (\$21,885.22) stormwater ponds per the attached sub-basin calculations in **Exhibit 5**.
15. The City represents that this Agreement and the terms and conditions contained herein are consistent with adopted ordinances and resolutions on the subject matter.
16. The Developer shall pay the entire cost associated with installation of underground gas, electric, telephone and cable TV utilities and streetlights in the Proposed Development. The City shall review the proposed locations and have approval authority over any utilities proposed within the public right-of-way, prior to installation. The City standard for streetlights is wooden poles. The street lighting plan shall be designed by We Energies and approved by the City. The City shall pay We Energies the monthly electrical charge for street lighting. If the Developer desires decorative streetlights, then the Developer shall be responsible for all costs associated with the decorative streetlights, above the standard wood pole equivalent costs. The Developer shall be responsible for requesting said decorative lights from WE Energies. The Developer must also sign a Waiver of Special Assessments document for the annual assessments associated with decorative lighting.
17. The City represents and warrants to Developer that they have the power, authority and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by the City under this Agreement.
 - a. The City represents and warrants to Developer that they are empowered and authorized to execute and deliver this Agreement and other agreements and documents, if any, required hereunder to be executed and delivered by the City. This Agreement has been, and each

such document at the time it is executed and delivered, will be duly executed and delivered on behalf of the City and Village.

- b. When executed and delivered to Developer, all such agreements shall constitute a legal, valid and binding obligation of the City, enforceable in accordance with their terms.

18. The Developer represents and warrants to the City that Developer is a Limited Liability Company, duly organized and existing under the laws of the State of Wisconsin, and that all proceedings of Developer necessary to authorize the negotiation and execution of this Agreement and the consummation of the transaction contemplated by this Agreement have been taken in accordance with applicable law.

19. The Developer represents and warrants to the City that the execution and delivery of this Agreement, the consummation of the transactions contemplated in this Agreement and the execution and delivery of the documents required to be executed, delivered or acknowledged by Developer at the closing will not violate any provision of Developer's operating agreement or any applicable statute, rule, regulation, judgment, order or decree of the State of Wisconsin or a court having jurisdiction over Developer or its property.

20. The Agreement shall be effective as of the date of execution thereof and remain in effect until the earliest of: (a) the Developer notifies the City that the Proposed Development has been terminated, (b) upon the mutual agreement of the Parties to terminate the Agreement, or (c) if one (1) year after the date of execution the Developer not take any further action on the Proposed Development.

21. This Agreement, along with *Exhibits 1 through 5* sets forth the entire understanding of the parties relative to its subject matter and supersedes and merges any and all prior communications, negotiations and agreements, oral or written.

22. It is understood and agreed that the provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any one or more of the provisions contained herein shall not affect the validity and enforceability of the other provisions contained herein.

23. This Agreement may not be modified or amended, except when placed in writing, with the written consent of the City and the Developer.

[SIGNATURE PAGE TO FOLLOW]

North Properties, LLC

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

STATE OF WISCONSIN)

: ss.

_____ COUNTY)

Personally came before me on this ____ day of _____, 2020, the above-named persons, _____ and _____, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Notary Public, State of Wisconsin
My commission is/expires: _____

CITY OF APPLETON

By: _____
Jake Woodford, Mayor

By: _____
Kami Lynch, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me on this _____ day of _____, 2020, the above-named Jake Woodford and Kami Lunch, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Notary Public, State of Wisconsin
My commission is/expires: _____

Provision has been made to pay the liability that will accrue under this contract.

Approved as to Form:

Tony Saucerman, Director of Finance

Christopher Behrens, City Attorney



Martenson & Eisele, Inc.

professionals dedicated to serving people committed to improving their communities

Planning
Environmental
Surveying
Engineering
Architecture

EXHIBIT 1

PART OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 AND PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4, SECTION 31, TOWNSHIP 22 NORTH, RANGE 18 EAST, CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN, MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 31; THENCE NORTH 89 DEGREES 51 MINUTES 17 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION, A DISTANCE OF 877.00 FEET; THENCE NORTH 00 DEGREES 43 MINUTES 43 SECONDS EAST, 33.01 FEET, TO THE NORTH RIGHT-OF-WAY LINE OF BROADWAY DRIVE; THENCE NORTH 89 DEGREES 51 MINUTES 17 SECONDS WEST, ALONG THE NORTH RIGHT-OF-WAY LINE OF BROADWAY DRIVE, A DISTANCE OF 386.28 FEET; THENCE NORTH 02 DEGREES 03 MINUTES 47 SECONDS EAST, ALONG THE EAST LINE OF OUTLOT 1 OF CERTIFIED SURVEY MAP NO. 5664, A DISTANCE OF 1371.59 FEET; THENCE SOUTH 89 DEGREES 51 MINUTES 17 SECONDS EAST, 1262.37 FEET, TO THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION; THENCE SOUTH 01 DEGREES 59 MINUTES 41 SECONDS WEST, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION, A DISTANCE OF 662.89 FEET; THENCE NORTH 88 DEGREES 00 MINUTES 19 SECONDS WEST, 210.94 FEET; THENCE SOUTH 01 DEGREES 59 MINUTES 41 SECONDS WEST, 204.50 FEET; THENCE SOUTH 88 DEGREES 00 MINUTES 19 SECONDS EAST, 210.94 FEET, TO THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION; THENCE SOUTH 01 DEGREES 59 MINUTES 41 SECONDS WEST, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION, A DISTANCE OF 537.16 FEET TO THE POINT OF BEGINNING.

CONTAINING A TOTAL OF 1,717,423 SQUARE FEET [39.427 ACRES].

PROJECT NO.: 1-1306-001

DATE: September 3, 2020

Q:\1-1306-001 GAUERKE FREEDOM ESTIMATE\DEVELOPER_AGREEMENT\EXHIBIT 1 LEGAL.DOC

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Omro Office | 109 W. Main Street
920 • 685 • 6240 | Omro, WI 54963

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www.martenson-eisele.com



EXHIBIT "2"

PART OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 AND PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4, SECTION 31, TOWNSHIP 22 NORTH, RANGE 18 EAST, CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN.

EAST 1/4 CORNER SECTION 31 T22N, R18E

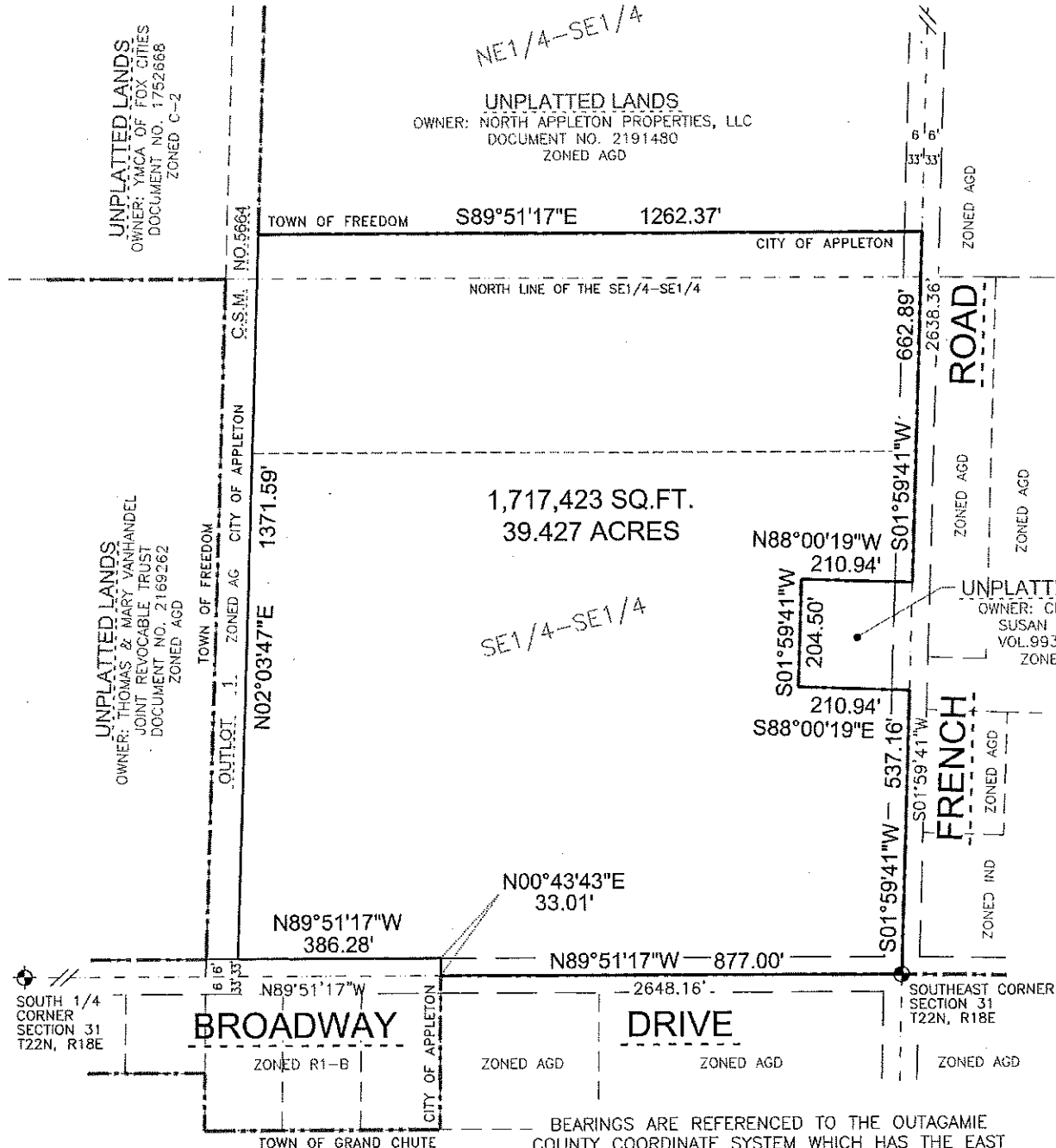
NE 1/4 - SE 1/4

UNPLATTED LANDS
OWNER: NORTH APPLETON PROPERTIES, LLC
DOCUMENT NO. 2191480
ZONED AGD

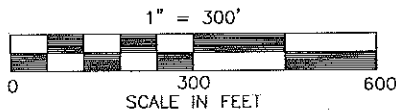
UNPLATTED LANDS
OWNER: YMCA OF FOX CITIES
DOCUMENT NO. 1752668
ZONED C-2

UNPLATTED LANDS
OWNER: THOMAS & MARY VANHANDEL
JOINT REVOCABLE TRUST
DOCUMENT NO. 2169262
ZONED AGD

UNPLATTED LANDS
OWNER: CLARENCE & SUSAN SCHMIDT
VOL. 993 PG. 677
ZONED AGD



BEARINGS ARE REFERENCED TO THE OUTAGAMIE COUNTY COORDINATE SYSTEM WHICH HAS THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 31, RECORDED TO BEAR S 01°59'41" W



Martenson & Eisele, Inc.



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Planning
Environmental
Surveying
Engineering
Architecture

DATED: SEPTEMBER 3, 2020

PROJECT NO. 1-1306-001
FILE 1-1306-001DevAgree.dwg
THIS INSTRUMENT WAS DRAFTED BY: A.Sedlor



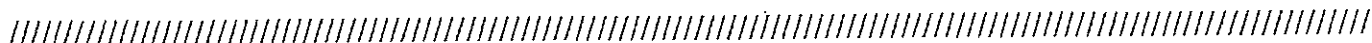
WAIVER OF SPECIAL ASSESSMENT NOTICES AND HEARING UNDER S. 66.0703 WISCONSIN STATUTES.

The undersigned owner(s) of property benefited by the following proposed public improvement to be made by the City of Appleton, Outagamie-Calumet-Winnebago County, Wisconsin, to wit:

The undersigned owner(s) of property benefited by the above proposed public improvement to be made by the City of Appleton, Outagamie-Calumet-Winnebago County, Wisconsin, in consideration of the construction of said improvement will benefit our property and consent to the levying of special assessments against our premises under S. 66.0703 of the Wisconsin Statutes, for the cost of such improvement.

In accordance with S. 66.0703 (7) of the Wisconsin Statutes, I/we hereby waiver all special assessment notices and hearings required by S. 66.0703 (7), and I /we herby further agree and admit that my (our) property is specially benefited by the above described municipal work or improvement as contemplated by Sec. 66.0703(7)Wisconsin Statutes.

Street Address Signature of Owner Date



OFFICE USE ONLY

FIELD NOTES:

Unit No. Inspector/Surveyor Name Date sidewalk/apron marked

Total amount of sidewalk to be replaced

Of that total, what amount is due to tree damage

Apron: Type of existing surface Size of existing apron

Date given to Field Supervisor

Date returned to office

Broadway Hills Estates Subdivision (Phase 1)

		Number of Lots :	20	NOTES / COMMENTS
EXHIBIT 4	Total Lot Area (SF) :	1,375,482		
	Total C/L Footage (LF) :	1,841		
	Total Pavement Area (SF) :	60,753		
	Administrative Fees (Engineering, Inspection, Survey)	\$13,807.50	\$7.50 per c/l foot	
City of Appleton Costs (Assessed) <i>Estimated</i>	Temporary Asphalt Pavement	\$92,408.00	\$13.70 +/- per square yard	
	Sanitary Sewer Connection Fee	\$28,494.61	\$37.64 per front ft. (Broadway frontage less pond outlot)	
	Water Main Connection Fee	\$52,476.88	\$25.21 per front ft. (Broadway and west frontage less pond outlot)	
	Sanitary Sewer Area Assessment	\$32,805.25	\$23.85 per 1000 s.f.	
	Sanitary & Storm Sewer Televising	\$2,761.50	\$1.50 per c/l foot	
	Street Name / Traffic Control Signs	\$2,761.50	\$1.50 per c/l foot	
	Concrete Pavement	\$44,184.00	\$60.00 per front ft. (for 20% of lots)	
	Sidewalks - at time of Concrete Pavement	\$22,092.00	\$30.00 per front ft. (for 20% of lots)	
	SUBTOTAL	\$291,791.24		
	Developer Costs And Responsibility <i>Estimated</i>	Mobilization, Misc. Construction, Topsoil Stripping, Erosion Control	\$107,206.49	
Sanitary Sewer		\$119,690.00		
Storm Sewer		\$192,553.00		
Water Main		\$142,690.00		
Sanitary Laterals		\$22,700.00		
Storm Laterals		\$18,362.00		
Water Services		\$32,849.64		
Grading & Graveling		\$138,324.81		
Stormwater Ponds (Total Construction Cost)		\$123,067.36		
Stormwater Ponds (City Contribution)		-\$43,844.44		
Street Lights		\$12,000.00		
Private Electric		\$40,195.00		
Private Gas		\$22,000.00		
SUBTOTAL		\$927,793.86		
PROJECT TOTALS		\$1,219,585.10		

City Pond Participation Exhibit 5

Subbasin	Name	Area (ac)	Owner	Pond
7	Offsite North (treated)	7.761	City	North
8	North	19.951	Developer	North
12	N French Rd	5.282	City	North
9	South	24.842	Developer	South
11	Offsite West (treated)	3.952	City	South
13	S French Rd	2.157	City	South
14	Broadway Drive	5.070	City	South
Total		69.015		

Totals	Area (ac)	Percentage	Bid	City Contribution
North Pond	32.994		\$55,548.76	\$21,959.22
City	13.043	39.5%		
Developer	19.951	60.5%		
South Pond	36.021		\$70,518.60	
City	11.179	31.0%		\$21,885.22
Developer	24.842	69.0%		
Total	69.015			\$43,844.44