

SECOND ADDITION TO EMERALD VALLEY DEVELOPMENT AGREEMENT

THIS AGREEMENT, made by and between the **City of Appleton**, Outagamie County, Wisconsin, a body politic and municipal corporation by its City Council (“City”) and, **Emerald Valley Estates, LLC**, the owner and developer (“Developer”) of property lying within the City of Appleton:

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

WHEREAS, the Developer has proposed to develop the Second Addition to Emerald Valley Development, a residential subdivision on property within the corporate limits of the City, described in *Exhibit 1* (Legal Description provided by Developer) attached hereto; and

WHEREAS, a preliminary plat of the Second Addition to Emerald Valley Development, shown in *Exhibit 2* (provided by Developer) attached hereto, has been submitted to the City for review and comment by relevant City Departments and City officials; and

WHEREAS, a final plat of the Second Addition to Emerald Valley Development, shown in *Exhibit 3* (provided by Developer) attached hereto, has been conditionally approved by the City with conditions remaining to be satisfied; 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 subdivision; 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 subdivision;

NOW THEREFORE, it is mutually agreed as follows:

1. The Developer shall be responsible for the installation of the following:
 - 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
 - e. Street Lights
 - f. All other infrastructure required for development not specifically set forth in this agreement
2. The Developer shall provide an estimate for items 1a – 1f.

3. The Developer shall place in escrow or provide the City with proof of one established irrevocable letter of credit for the following:
 - a. Administration Fees
 - b. Sanitary Area Assessment
 - c. Televising sanitary and storm sewer lines
 - d. Temporary Asphalt Surface
 - e. Street Name Signs
 - f. Traffic Control Signs

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. Said information provided by Developer 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 under the supervision of City of Appleton inspectors.

6. The Developer shall provide lien waivers to the City from prime contractor, subcontractors, suppliers and consultants.

7. The Developer agrees to convey by deed or dedication to the City all the streets, roads, courts, avenues, drives, public ways, and storm water facilities in the Plat. 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 final plat and this agreement.

8. A temporary Monument Placement Waiver has been approved under a separate instrument for Lots 54-80 of this subdivision to allow time for fill material to be imported and placed on the site. Pursuant to §17-3(e), Appleton Municipal Code, all subdivision monuments shall be in place within one (1) year of the granting of the waiver by the City Engineer. Failure to complete the monumenting of the entire plat within the previously mentioned one (1) year period of time, shall permit the City of Appleton to contract for the work being performed and to charge the stand-by letter of credit for the cost of said work, or, if no stand-by letter of credit has been required, the costs may be assessed against the property as a special charge. Abutting newly built streets will not be officially opened by the City and no building permits will be issued for the above-mentioned lots, not being monumented, prior to the City of Appleton receiving a current monumentation certification from a professional land surveyor licensed in the State of Wisconsin that all monumentation within the development is properly installed and within 3 inches of finished grade.

9. The Developer shall establish a level loop on the hydrants in the plat and a copy of those benchmarks shall be provided to the City.

10. The City agrees to accept the dedication of all the Public Improvements in the Plat, 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.
11. The Developer shall repair or replace, as directed by the City and to the City's satisfaction, at his own cost, any damage caused to City property by the installation of the improvements.
12. The estimate of costs paid by the Developer for items 3a – 3f is attached hereto as *Exhibit 4* and shows the items and amounts projected to be paid by the Developer. The total of the estimate of costs provides the basis for determining the amount of the escrow account/letter of credit.
13. The Developer shall pay the cost of all items listed under Paragraph 1 above. The homeowner shall be responsible for and pay for the construction of the sidewalk within six months of the issuance of an occupancy permit for each residence. The City will be responsible for constructing the sidewalks which have not been installed at time of concrete paving, with costs to be assessed to the abutting property owners in accordance with the City's Policy for Special Assessments. Concrete paving will be assessed to the abutting property owners and the Developer will be assessed only the cost of lots owned by the Developer.
14. The schedule for the Second Addition to Emerald Valley Development shall be as follows:
- Infrastructure installation may commence after City approval of Final Plat, Drainage Plan, Established Grades, Storm Water Management Plan, Plans and Specifications.
 - 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.
15. The City agrees to waive any parkland fees pursuant to Chapter 17 of the Appleton Municipal Code, in exchange for parkland dedications and conveyances previously completed as part of the original Emerald Valley Development along with future planned phases of the Development. The City further agrees to waive any connection fees in lieu of assessments for properties connecting off French Road.
16. The City represents that this Agreement and the terms and conditions contained herein are consistent with adopted ordinances and resolutions on the subject matter.
17. The Developer shall pay the entire cost associated with installation of underground gas, electric, telephone and cable TV utilities and street lights. The City shall review proposed locations of all utilities prior to installation. The City standard for street lights 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. 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.

18. The City represents and warrants to Developer that it has 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.

- The City represents and warrants to Developer that it is 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.
- When executed and delivered to Developer, all such agreements shall constitute a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

19. The Developer represents and warrants to the City that Developer is a Limited Liability Corporation, 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.

- 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 partnership 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 properties.

20. This Agreement, along with *Exhibits 1, 2, 3, and 4*, 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.

21. 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.

22. This agreement may not be modified or amended, except in writing, with the written consent of both the City and the Developer.

EMERALD VALLEY ESTATES, LLC

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

STATE OF WISCONSIN)

: ss.

_____ COUNTY)

Personally came before me on this _____ day of _____, 2015, the above-named _____ 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: _____

[SIGNATURES CONTINUE ON NEXT PAGE}

CITY OF APPLETON

By: _____
Timothy M. Hanna, Mayor

By: _____
Dawn Collins, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me on this _____ day of _____, 2015, the above-named Timothy M. Hanna and Dawn Collins, 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

James P. Walsh, City Attorney

This instrument was drafted by:
James P. Walsh, Appleton City Attorney

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April 2015