

THIRD ADDITION TO EMERALD VALLEY 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, **Emerald Valley Estates, LLC**, a limited liability corporation with a business address of 1718 Van Zeeland Court, Little Chute, WI 54140, 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; and

WHEREAS, the Developer has proposed to develop the Third Addition to Emerald Valley, a 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, a Final Plat of the Third Addition to Emerald Valley Subdivision, shown in *Exhibit 2* (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 Development;

NOW THEREFORE, it is mutually agreed as follows:

1. The Developer shall be responsible for the installation of the following in the Proposed Development, to the standards set forth by the City and 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
 - e. Street Lights
 - f. All other infrastructure required for development 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.

3. The Developer shall provide a fully executed and signed *Waiver of Special Assessment Notices and Hearing*, shown in *Exhibit 3*, 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 Administration Fees
- b. Sanitary Sewer Area Assessment
- c. Televising of sanitary and storm sewer lines
- d. Street Name Signs
- e. Traffic Control Signs
- f. Temporary Asphalt Surface
- g. Concrete Pavement abutting lots owned by the Developer at the time of concrete paving
- h. Sidewalks installed on lots owned by the Developer ~~at the time~~ *within 5 years* of concrete paving

An estimate of up-front City costs and associated special assessments to be paid by the Developer for items 3a – 3h is attached hereto as *Exhibit 4*. The actual final costs for items 3a-3h will be used as the basis for the amount of 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 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 of Appleton 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 or dedication to the City all the streets, roads, courts, avenues, drives, public ways, 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 Developer shall establish a level loop on the hydrant(s) in the Proposed Development and a copy of all benchmarks shall be provided to the City.

9. 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.

10. 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, which shall be completed within six (6) months notification by the City to the Developer of the need to repair or replace such damage.

11. 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.

12. 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.
- b. Per the conditions of the Emerald Valley 2nd Addition Stormwater Permit, provide as-builts and engineer's certification that stormwater system components within the 2nd Addition development function per City approvals. The components in question include the storm sewers and overland flow paths, including the berms located along the west side of lots 61 through 64 and along the south side of lots 59 through 60, the modified yard drain between lots 59 and 60, and the swale directing runoff to the referenced yard drain. No building permits will be issued until the as-builts and certification are filed with the City.
- c. 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.

13. 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, in accordance with Item 20 of the original Development Agreement for Emerald Valley Estates dated July 17, 2006.

14. The City represents that this Agreement and the terms and conditions contained herein are consistent with adopted ordinances and resolutions on the subject matter.

15. The Developer shall pay the entire cost associated with installation of underground gas, electric, telephone and cable TV utilities and street lights 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 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.

16. 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.

a. 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.

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 its terms.

17. 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.

a. 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 limited liability corporation bylaws or agreements 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.

18. 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.

19. 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.

20. 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.

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

[SIGNATURE PAGE TO FOLLOW]

EMERALD VALLEY ESTATES, LLC

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

STATE OF WISCONSIN)
 : ss.
_____ COUNTY)

Personally came before me on this ____ day of _____, 2017, 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: _____
Timothy M. Hanna, Mayor

By: _____
Kami Lynch, City Clerk

STATE OF WISCONSIN)
: ss.
OUTAGAMIE COUNTY)

Personally came before me on this _____ day of _____, 2017, the above-named Timothy M. Hanna 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

James P. Walsh, City Attorney

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

H:\Word\Projects\2017\Emerald Valley - Third Addition - Development Agreement.docx
April 2017

EXHIBIT 1

LEGAL DESCRIPTION

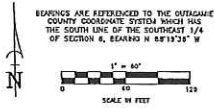
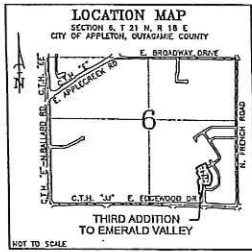
PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4, SECTION 6, TOWNSHIP 21 NORTH, RANGE 18 EAST, CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN, MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 6; THENCE NORTH 88 DEGREES 19 MINUTES 36 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION, A DISTANCE OF 1031.99 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 33 SECONDS WEST, ALONG THE WEST RIGHT-OF-WAY LINE OF PROVIDENCE AVENUE AND ITS SOUTHERLY EXTENSION, A DISTANCE OF 335.08 FEET; THENCE NORTH 75 DEGREES 42 MINUTES 30 SECONDS WEST, CONTINUING ALONG THE WEST RIGHT-OF-WAY LINE OF PROVIDENCE AVENUE, A DISTANCE OF 0.33 FEET TO THE POINT OF BEGINNING; THENCE NORTH 75 DEGREES 42 MINUTES 30 SECONDS WEST, ALONG THE NORTH LINE OF CERTIFIED SURVEY MAP NO. 6311, A DISTANCE 123.84 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 33 SECONDS WEST, 280.05 FEET; THENCE NORTH 45 DEGREES 11 MINUTES 26 SECONDS WEST, 53.70 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 33 SECONDS WEST, 107.87 FEET; THENCE NORTH 56 DEGREES 39 MINUTES 07 SECONDS WEST, 206.71 FEET; THENCE NORTH 56 DEGREES 39 MINUTES 07 SECONDS EAST, 61.61 FEET; THENCE NORTH 33 DEGREES 20 MINUTES 53 SECONDS WEST, 120.00 FEET; THENCE NORTH 56 DEGREES 39 MINUTES 07 SECONDS EAST, 197.73 FEET; THENCE 25.16 FEET ALONG AN ARC OF A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 333.00 FEET AND A CHORD THAT BEARS SOUTH 27 DEGREES 04 MINUTES 53.0 SECONDS EAST, 25.15 FEET; THENCE NORTH 56 DEGREES 39 MINUTES 07 SECONDS EAST, 134.60 FEET; THE FOLLOWING SEVEN CALLS ARE ALONG THE WEST LINE OF THE SECOND ADDITION TO EMERALD VALLEY:
THENCE SOUTH 33 DEGREES 20 MINUTES 53 SECONDS EAST, 116.53 FEET;
THENCE SOUTH 51 DEGREES 48 MINUTES 14 SECONDS WEST, 42.25 FEET;
THENCE SOUTH 33 DEGREES 20 MINUTES 53 SECONDS EAST, 270.58 FEET;
THENCE SOUTH 00 DEGREES 00 MINUTES 33 SECONDS EAST, 185.00 FEET;
THENCE SOUTH 21 DEGREES 00 MINUTES 01 SECONDS WEST, 153.41 FEET;
THENCE SOUTH 89 DEGREES 59 MINUTES 27 SECONDS WEST, 211.00 FEET;
THENCE SOUTH 00 DEGREES 00 MINUTES 33 SECONDS EAST, 300.64 FEET TO THE POINT OF BEGINNING. CONTAINING 261,163 SQUARE FEET [5.995 ACRES].

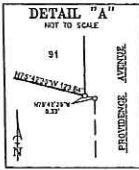
Exhibit 2

THIRD ADDITION TO EMERALD VALLEY

PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4, SECTION 6, TOWNSHIP 21 NORTH, RANGE 18 EAST,
CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN



- LEGEND**
- 1" O.D. ROUND IRON PIPE SET, 24" LONG, WEIGHING 1.12 LBS. PER LINEAL FOOT AT ALL OTHER LOT CORNERS
 - ▲ 1-1/4" O.D. ROUND REINFORCING BAR SET, 36" LONG WEIGHING 4.303 LBS. PER LINEAL FOOT
 - △ 1-1/4" O.D. REBAR FOUND
 - 3/4" O.D. REBAR FOUND
 - [] TOTAL LOT AREA IN SQUARE FEET
 - ◆ GOVERNMENT CORNER



UTILITY EASEMENTS - NO POLES OR BURIED CABLES ARE TO BE PLACED SUCH THAT THE INSTALLATION WOULD DISTURB ANY SURVEY STAKE OR OBSTRUCT VISION ALONG ANY LOT LINE OR STREET LINE. THE DISTANCE OF A SURVEY STAKE BY ANYONE IS A VIOLATION OF SECTION 236.22 OF WISCONSIN STATUTES. UTILITY EASEMENTS AS HEREIN SET FORTH ARE FOR THE USE OF PUBLIC UTILITIES AND PRIVATE PUBLIC UTILITIES HAVING THE RIGHT TO SERVE THE AREA.

NOTES

ALL LINEAR MEASUREMENTS HAVE BEEN MADE TO THE NEAREST ONE HUNDRETH OF A FOOT.

ALL ANGULAR MEASUREMENTS HAVE BEEN MADE TO THE NEAREST 20 SECONDS AND COMPUTED TO THE NEAREST HALF SECOND.

FRONT YARD BUILDING SETBACKS ARE 20 FEET, THE MINIMUM REAR YARD BUILDING SETBACKS ARE 25 FEET AND MINIMUM SIDE YARD BUILDING SETBACKS ARE 6 FEET AS LISTED IN THE CITY OF APPLETON ZONING ORDINANCE, R-18 SINGLE-FAMILY DISTRICT.

THERE ARE NO EXISTING BUILDINGS WITHIN THE PLATTED AREA.

CURVE	RADIUS	DELTA	LENGTH	CHORD BEARING	CHORD	TANGENT IN	TANGENT OUT
1	333.00'	00°13'42"	25.85'	S 27°04'52.00" W	25.15'	N 24°55'02" W	N 23°14'44" W
2	267.00'	01°40'10"	77.68'	N 08°20'38.00" W	77.41'	N 00°00'33" W	N 16°40'42" W
3	333.00'	01°40'10"	77.68'	N 08°20'38.00" W	77.41'	N 00°00'33" W	N 16°40'42" W
4	333.00'	00°30'18"	37.81'	N 03°15'42.00" W	37.79'	N 00°00'33" W	N 06°30'51" W
5	333.00'	01°05'24"	59.07'	N 01°35'47.00" W	59.00'	N 00°39'51" W	N 10°40'43" W
6	78.00'	01°40'11"	20.37'	S 64°58'11.20" W	20.29'	S 73°19'17" W	S 56°39'06" W
7	138.00'	01°40'11"	37.82'	S 64°58'11.20" W	37.69'	S 73°19'17" W	S 56°39'06" W
8	267.00'	01°13'01"	53.82'	N 22°57'43.20" W	53.73'	N 16°40'43" W	N 29°14'44" W
9	333.00'	01°13'01"	73.04'	N 22°57'43.20" W	72.89'	N 16°40'43" W	N 29°14'44" W
10	333.00'	00°14'13"	47.88'	N 20°32'52.30" W	47.84'	N 16°40'43" W	N 24°55'02" W
11	78.00'	02°17'10"	26.25'	N 82°23'45.20" W	26.13'	N 73°19'17" W	N 31°48'11" W
12	138.00'	02°17'10"	48.82'	N 82°23'45.20" W	48.54'	N 73°19'17" W	N 31°48'11" W

WISCONSIN
CARA
ZANUSSEN
SCOTT
STOCKERDORF
LAND SURVEYORS
WI
Maya A. Zanussen
3-28-17

There are no objections to this plat with respect to s. 236.15, 236.16, 236.20 and 236.21 (1) and (2), Wis. Stats. as provided by s. 236.12, Wis. Stats.

Certified **MAY 22 2017**

Renata Doney
Department of Administration

Martenson & Eisele, Inc.
1377 Markey Road
Appleton, WI 54912
www.martensoneisele.com
608.731.0311 608.731.0311

Planning
Engineering
Surveying
Architecture

Revised May 18, 2017
Drawing No. 1-0534-004
Sheet 1 of 2
This instrument drawn by: Amy Esdar

