

**WINDSOR TOWN BOARD**

**RESOLUTION 2014-47**

**RESOLUTION APPROVING DEVELOPMENT AGREEMENT  
FOR PHASE III OF WOLF HOLLOW SUBDIVISION**

**WHEREAS**, Wolf Hollow Windsor, LLC, by its agents Don Esposito and Matt Neumann (collectively, "Developer"), has requested a Subdivision Development Agreement ("Development Agreement") to commence construction of Phase III of Wolf Hollow Subdivision; and

**WHEREAS**, the Town Engineer and Development and Planning Coordinator have reviewed the request and recommended certain conditions on which the request may be approved, all as set forth in the proposed Development Agreement, as prepared by the Town Attorney; and

**WHEREAS**, at its regularly scheduled meeting on August 7, 2014, the Town Board reviewed the Development Agreement, and considered the Developer's request and the terms and conditions set forth in the Development Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Windsor as follows:

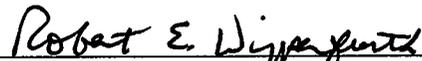
- A. The Town Board **APPROVES** the proposed Development Agreement for Phase III of Wolf Hollow Subdivision, **subject to each and every one of the following conditions**:
1. Subject to execution by the Town and Developer.
  2. Subject to recording at the Dane County Register of Deeds Office by the Town, at the Developer's expense, with a copy of the recorded document returned to the Developer and Town Attorney.
  3. Subject to Developer's reimbursement to the Town of Windsor for all costs and expenses incurred by the Town of Windsor in connection with the review and approval of this Resolution and the development associated therewith, including, but not limited to, the cost of professional services incurred by the Town of Windsor for

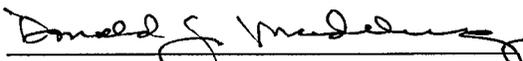
the review and preparation of required documents, attendance at meetings or other related professional services.

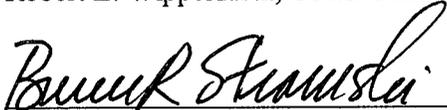
- B. The Town Board's approval expires ninety (90) days from the date of adoption of this Resolution. Time is of the essence.
- C. It is the Petitioner's obligation to timely satisfy those conditions adopted by the Town Board, and to provide satisfactory verification of compliance to the Town. Any necessary or requested reviews or submissions to the Town for determinations of compliance with this Resolution shall be made at least ten (10) business days prior to the date upon which verification of compliance is required.

The above and foregoing Resolution was duly adopted at the regular meeting of the Town Board of the Town of Windsor on the 7<sup>th</sup> day of August, 2014.

**TOWN OF WINDSOR**

  
\_\_\_\_\_  
Robert E. Wipperfurth, Town Chairman

  
\_\_\_\_\_  
Donald G. Madelung, Town Supervisor

  
\_\_\_\_\_  
Bruce Stravinski, Town Supervisor

  
\_\_\_\_\_  
Alan Buchner, Town Supervisor

  
\_\_\_\_\_  
Monica M. Smith, Town Supervisor

Attest:  
  
\_\_\_\_\_  
Christine Capstran, Town Clerk

**AGREEMENT FOR PUBLIC IMPROVEMENTS AND OTHER MATTERS RELATING  
TO PLAT OF WOLF HOLLOW,  
TOWN OF WINDSOR, DANE COUNTY, WISCONSIN- PHASE 3**

**Executive Summary**

1. **Real Estate Subject To Agreement:**
  - 1.1. **Recording Data for Plat:** Original Plat Volume 58-079B, pages 401-404; CSMs for Dusky Glen East & West
  - 1.2. **Lots Included:** Phase 3: CSM Lots 272-279, Plat Lots 64, 67, 68, 80-83
  - 1.3. **Lots Excluded:** Phases 1 & 2 (completed by different Developer); Phase 4 Lots 84-94, 116-160, 162-171
2. **Contact Information for Owner/Developer (name/phone/email):**
  - 2.1. **Owner:** Wolf Hollow Windsor, LLC
  - 2.2. **Developer:** Wolf Hollow Windsor, LLC
  - 2.3. **Authorized Representative(s):** Don Esposito [DEsposito@tobhomes.com](mailto:DEsposito@tobhomes.com) &/or Matt Neumann [matt@neumanncompanies.com](mailto:matt@neumanncompanies.com)
  - 2.4. **Developer Engineer:** Vierbicher Associates
  - 2.5. **Developer Project Manager:** Dave Glusick
3. **Contact Information for Town (name/phone/email):**
  - 3.1. **Town Planning & Development Coordinator:** Amy Anderson Schweppe, Town of Windsor, 608-846-3854; [amy@windsorwi.gov](mailto:amy@windsorwi.gov)
  - 3.2. **Town Engineer:** Kevin Richardson, P.E., Town of Windsor, 608-846-3854; [kevin@windsorwi.gov](mailto:kevin@windsorwi.gov)
  - 3.3. **Town Attorney:** Connie Anderson, Stafford Rosenbaum LLP, 608-259-2638; [canderson@staffordlaw.com](mailto:canderson@staffordlaw.com)
  - 3.4. **Only the Town Board can bind the Town of Windsor.**
4. **Contact Information for Sanitary District:**
  - 4.1. **Sanitary District:** Windsor Sanitary District No. 1, [wsdno1@centurytel.net](mailto:wsdno1@centurytel.net)
  - 4.2. **WSD No. 1 Engineer:** Gerry Groth, P.E., [ggroth@baxterwoodman.com](mailto:ggroth@baxterwoodman.com)
  - 4.3. **WSD No. 1 Attorney:** Tim Fenner, Axley Brynson, LLP, 608-283-6733, [tfenner@axley.com](mailto:tfenner@axley.com)
  - 4.4. **Sanitary District Approval:** Executed District-Developer Agreement to be provided to Town prior to commencement.
5. **Public Improvements Required:** See Town Ordinances, Town Engineer, Agreement.
6. **Construction:**
  - 6.1. **Standards:** See Town Ordinances, Town Engineer, Agreement.
  - 6.2. **Commencement Date:** Town Engineer approval required. No early start approved.
  - 6.3. **Contractor List:** Required.
  - 6.4. **Proof of Insurance:** Required; Town as Additional Insured.
7. **Acceptance of Work:** Developer Engineer provides certification of completion of public improvements in accordance with approved plans; Developer provides complete lien waivers to Town Engineer; Town Engineer observes public improvement installation periodically and provides written comments to Town Board; Developer provides full lien

- waivers; Dedication process requires approval of resolution by Town Board; Developer shall provide maintenance and repair until dedication.
8. **Guarantee of Work:** Required for 14 months after substantial completion, unless extended due to defective work.
  9. **Surety:** Unless otherwise requested by Developer and incorporated in Agreement, Developer agrees to provide letter of credit at 110% of cost; reductions possible during term of Development Agreement following substantial completion; Town Engineer recommendation and Town Board approval required for reductions.
  10. **Developer Reimbursement of Town Costs:** Reimbursement required per Development Agreement and Escrow Agreement.
  11. **Development Documents:** All are subject to Town Attorney and Town Board approval; includes Development Agreement, Declaration of Covenants and Restrictions, Stormwater Management and Maintenance Agreement, Transfer Restrictions if Phased Development, other documents as specified; documents executed and submitted to Town for recording; all documents run with the land.
  12. **Phasing:** Permitted with plan and Town Board approval; recording of Declaration Restricting Transfer required.
  13. **Parkland Dedication or Fee in Lieu, and Fee for Initial Improvements:** Wis. Stat. § 236.45(6); paid before execution of Plat.
  14. **Impact Fee: Traffic and/or Other Fees:** NONE
  15. **Subdivision Signage:** Town Board design approval required; "A Windsor Neighborhood" required on sign.
  16. **Miscellaneous Provisions:** \_\_\_\_\_
    - 16.1. \_\_\_\_\_
    - 16.2. \_\_\_\_\_
    - 16.3. \_\_\_\_\_

**The Executive Summary above is provided as a convenience to the parties. The requirements shall be as set forth in full in the Development Agreement itself.**



42 waive the right to contest the terms of the Agreement and agree to be bound hereto, all as set  
43 forth in the Agreement.

## 44 45 AGREEMENT

46  
47 **NOW, THEREFORE**, in consideration of the above recitals, which are incorporated  
48 herein by reference, and other good and valuable consideration, the sufficiency of which is  
49 hereby acknowledged, the Town and Developer agree as follows:

### 50 51 1. **REQUIRED PUBLIC IMPROVEMENTS.**

52  
53 1.1. At a minimum, the Developer shall construct and install, at its expense, those on-  
54 site and off-site general public improvements required by Town Ordinances and  
55 this Agreement (“**Improvements**”) and that subset of public improvements  
56 required by the sanitary district (the “**District**”) providing sanitary sewer  
57 collection and wastewater treatment services as well as public water service to the  
58 Development (“**Water & Sewer**”). Developer shall be required to connect the  
59 Development to existing utilities, which may include facilities outside of the  
60 boundaries of the Development. Construction of Water & Sewer shall be  
61 completed in accordance with a development agreement by and between the  
62 Developer and the District serving the Development (“**Developer-District**  
63 **Agreement**”), a fully executed copy of which shall be provided to the Town. The  
64 Developer-District Agreement is incorporated herein by reference, as if set forth  
65 fully herein.

66  
67 1.2. Following consultation with Town staff, the Developer shall present plans for the  
68 Improvements, which plans shall be prepared under the seal of Developer’s  
69 Engineer (the “**Plans**”).<sup>1</sup> The Plans shall set forth the required Improvements  
70 with particularity and shall include, at a minimum, the following: public  
71 stormwater management facilities; public streets; gas, electric, and  
72 telephone/internet; lighting. The Improvements shall meet Town construction  
73 standards, as established by the **Town Ordinances**<sup>2</sup> and in accordance with  
74 generally acceptable industry standards. The Town Engineer shall have the  
75 authority to interpret and apply the ordinances and generally accepted industry  
76 standards as to the Improvements.

77  
78 1.3. The Town Engineer shall be given an adequate opportunity to review the Plans  
79 and may request such additional information from the Developer as desired.  
80 Following the Town Engineer’s written statement of “no objection” to the Plans,

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<sup>1</sup> Plans for Water & Sewer shall be submitted directly to the District’s Engineer for review and recommendation per the District-Developer Agreement.

<sup>2</sup> There is a QuickLink to the Town Ordinances at [www.windsorwi.gov](http://www.windsorwi.gov) or through the library at the Municode web site ([www.municode.com](http://www.municode.com)). See in particular, Town Ord. Chapter 38, Article IV, Division 7: *Engineering Plans* and Article V. *Standards and Specifications*.

81 and subject to the other requirements and conditions set forth herein, the  
 82 Developer shall proceed with construction in accordance with the Plans and on  
 83 the timetable represented to the Town by the Developer, which timeline has been  
 84 reasonably relied upon by the Town.  
 85

86 **2. STANDARDS AND SPECIFICATIONS FOR IMPROVEMENTS.<sup>3</sup>**  
 87

88 Developer's construction of the Improvements and performance of this Agreement shall  
 89 be in accordance with the Town Ordinances, whether or not specifically referenced in this  
 90 Agreement, and the Plans. For convenience and reference, an overview of the  
 91 Improvements for this Development and information identifying the Plans is provided in  
 92 **Exhibit 1**, which is attached hereto and incorporated by reference as if set forth fully  
 93 herein.  
 94

95 **The standards and specifications for Improvements expressly include, but are not**  
 96 **limited to, the following:**  
 97

98 **2.1. During Construction: Grading, Erosion Control and Barricading:**  
 99

100 The Developer shall furnish, install and maintain during construction and until the  
 101 Improvements are accepted by the Town, all barricades and signs as are prudent  
 102 and necessary for public safety, particularly where new rights-of-way extend or  
 103 intersect existing streets and all street ends. The Town Engineer may also require  
 104 Developer to furnish, install and maintain additional barricades and signs.  
 105 Developer shall maintain "road closed" barrier(s) in place to prevent non-  
 106 emergency access until such time as the binder layer of asphalt is installed on all  
 107 of the streets in the Phase under construction.  
 108

109 The Developer shall furnish, install prior to grading, utility installation or any  
 110 other land disturbance activity, and maintain during construction and until the  
 111 Improvements are accepted by the Town, such stormwater runoff and erosion  
 112 control measures as are required by and included in the County-approved plans  
 113 for erosion control and stormwater runoff. The Developer shall obtain separate  
 114 approvals for each construction phase, as required. The Town Engineer may also  
 115 require Developer to furnish, install and maintain additional erosion control and  
 116 stormwater runoff measures, as the Town Engineer deems appropriate. The  
 117 Developer shall adhere to the requirements for erosion control and stormwater  
 118 runoff, and expressly grant the right-of-entry on the Development to the Town  
 119 Engineer, or designee, to observe the erosion control and stormwater runoff.  
 120

121 **2.2. Stormwater Management Facilities:** The Developer shall install adequate ditches,  
 122 **drainageways and stormwater management facilities (collectively, Stormwater**

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<sup>3</sup> See in particular, Town Ord. Chapter 38, Article IV, Division 7: *Engineering Plans* and Article V. *Standards and Specifications*.

123 **Management Facilities**) based on generally accepted industry standards and as  
 124 required by law. The Developer's Engineer shall provide necessary background  
 125 data, including stormwater calculations, to the Town Engineer along with a  
 126 proposed plan for Stormwater Management Facilities certified by the Developer's  
 127 Engineer. The Town Engineer may rely on the background data and stormwater  
 128 calculations provided when reviewing the proposed plans. The Developer shall  
 129 proceed with installation and construction of the Stormwater Management  
 130 Facilities in accordance with the plans for all such matters for which a written  
 131 statement of "no objection" has been issued by the Town Engineer.  
 132

133 2.3. **Streets and Street Lighting**: Streets, curb and gutter, and street lighting shall be  
 134 installed and constructed in accordance with the Plans. Any additional special  
 135 provisions related to streets and street lighting shall be as set forth in **Exhibit 2**,  
 136 which is attached hereto and incorporated by reference as if set forth fully herein.  
 137

138 2.4. **Sidewalk and Trails**: All sidewalk and trails required to be constructed by  
 139 Developer shall be constructed in accordance with plans to be prepared by  
 140 Developer and for which a written statement of "no objection" has been issued by  
 141 the Town Engineer.<sup>4</sup>  
 142

143 2.5. **Signage**: The entry sign for the Development shall be as required to meet Dane  
 144 County signage requirements and shall be subject to prior approval by the Town  
 145 Board, or designee. The signage shall include "A Windsor Neighborhood."  
 146

147 2.6. **Special Provisions**: Special provisions regarding Improvements are set forth in  
 148 **Exhibit 2**, which is attached and incorporated by reference. As with other work  
 149 specified in this Agreement, all special provisions set forth on **Exhibit 2** shall be  
 150 constructed and installed in accordance with plans prepared under the seal of the  
 151 Developer's Engineer and for which the Town Engineer has issued a written  
 152 statement of "no objection."  
 153

### 154 3. **CONTRACTORS ENGAGED BY DEVELOPER FOR PROJECT;** 155 **INDEMNIFICATION AND INSURANCE.** 156

157 3.1. **Approval of Contractor(s)**: The Developer agrees to engage contractors for all  
 158 construction, who shall first be approved for such work by the Town Engineer and  
 159 who shall qualify with every applicable requirement of the Town and any  
 160 Ordinance, rule or regulation thereof. Prior to the commencement of construction  
 161 of the Improvements, the Developer shall furnish to the Town Engineer the names  
 162 of all contractors and subcontractors, together with a classification of the work  
 163 performed by each and copies of all construction documents relating to the

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<sup>4</sup> See in particular, Town Ord. Chapter 38, Article V, Division 3: *Block Design*. Multi-use paths are required for certain blocks.

164 construction of the Improvements. Such submittal shall be prior to the  
 165 commencement of construction of any of the Improvements. All construction  
 166 documents for the Improvements are subject to the prior review of the Town.  
 167

168 3.2. Indemnification by Contractor(s): The Developer shall require all contractors  
 169 engaged in the construction of the Improvements to indemnify and hold the Town  
 170 and its engineers and consultants harmless from and against any and all claims,  
 171 losses, damages, costs and expenses which such contractors may or might incur in  
 172 connection with the construction of the Improvements. Such indemnification and  
 173 hold harmless clause shall be in form and content acceptable to the Town  
 174 Attorney and shall be included in each contract which the Developer has with a  
 175 contractor.  
 176

177 3.3. Indemnification by Developer: For a period of time commencing with the  
 178 execution of this Agreement and expiring fourteen (14) months from the date of  
 179 substantial completion<sup>5</sup>, the Developer hereby expressly agrees to indemnify, save  
 180 and hold harmless the Town, its engineers, consultants, employees, officers and  
 181 agents from and against all claims, costs, suits, causes of actions, demands and  
 182 liability of every kind and nature, for injury or damage received or sustained by  
 183 any person or persons or property, whomsoever and whatsoever, in connection  
 184 with, or on account of the performance of the work contemplated hereby and the  
 185 construction of the Improvements, except where such claim is the exclusive result  
 186 of the willful or negligent acts of the Town.<sup>6</sup> As requested by the Town, the  
 187 Developer further agrees to aid and defend the Town with legal counsel  
 188 acceptable to the Town in the event the Town is named as a defendant in any  
 189 action concerning the performance of the work pursuant to this Agreement, except  
 190 where such suit is brought by the Developer. The provision is not intended to and  
 191 shall not be interpreted to limit insurance coverage that may be available to the  
 192 Town or governmental immunity or other defenses that may be available to the  
 193 Town, each and all of which are expressly reserved by the Town. It is hereby  
 194 agreed that the Developer is not an agent or employee of the Town, and neither  
 195 Developer nor its contractors shall represent itself as an agent or employee of the  
 196 Town.

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<sup>5</sup> See Wis. Stat. § 236.13, as amended, which applies to all preliminary and final plats as of August 1, 2014. Pursuant thereto, “substantial completion” is defined as follows: “(P)ublic improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed at the time the binder course is installed on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90% of the public improvements by costs are completed.”

<sup>6</sup> The Town does not, by this provision or by any other provision in this Agreement, waive, reduce or in any way limit any governmental immunity (whether absolute, qualified, as to intentional torts or discretionary acts or other immunity) to which it may be entitled, and hereby expressly reaffirms its right to any and all such immunity, notice of injury, notice of claim and limitation as to damages to the full extent provided by law.

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- 3.4. Insurance by Contractor(s): The Developer shall also require all contractors engaged in the construction of the Improvements to maintain such reasonable insurance as shall be required by the Town Attorney and Engineer; and upon demand, furnish to the Town Attorney and Engineer, a current certificate of insurance to evidence such insurance. All such insurance shall comply with the Town's contract requirements pertaining to damage claims, indemnification of the Town and insurance. The Contractor(s) so engaged are required to furnish comprehensive general liability insurance of not less than \$1,000,000.00 aggregate for any such damage sustained by two or more persons in any one accident. The Developer is responsible for confirming that such insurance is in place and that the Town is named as an additional insured on such insurance.

#### 4. CONSTRUCTION RELATED ACTIVITIES FOR IMPROVEMENTS.

In connection with the construction of the Improvements, it is hereby agreed as follows:

- 4.1. Scheduling: The Developer agrees that no work shall be scheduled for construction of the Improvements without the Town Engineer's approval of the starting date(s) and construction schedule. The construction of the Improvements shall be completed on or before the completion date(s) set forth in the schedule, unless otherwise extended in writing by the Town.
- 4.2. Commencement: The final plans and specifications, signed by the Developer's Engineer, shall be submitted to the Town Engineer prior to any land disturbance or commencement of work. A starting date will not be approved until (1) a written statement of "no objection" with respect to the final plans and specifications for the Improvements has been issued by the Town Engineer, and (2) the Letter of Credit or other security required by this Agreement has been furnished to the Town.
- 4.3. Completion: All work specified herein shall be completed within twelve (12) months after the date of commencement, and time is of the essence as to completion. The deadline for completion may be extended as to the laying of the final layer of asphalt paving on streets in accordance with Town policy, as recommended by the Town Engineer. Town policy also requires that Developer furnish appropriate surety for the completion of such work as recommended by the Town Engineer, and approved by resolution of the Town Board.
- 4.4. Costs: The Developer agrees that the Town shall not be responsible for any costs or charges related to the construction of the Improvements, and that the Developer is responsible for all such costs, except as otherwise expressly provided for in the Agreement.

- 241 4.5. Construction Related Activities; Inspection and Certification; Lien Waivers: The  
242 Town may periodically review construction progress, conduct inspections and/or  
243 complete material testing of the Improvements, and is granted access to the site  
244 for such purposes. The Developer shall have the obligation to provide such on-  
245 site inspection as is necessary to obtain written certification from Developer's  
246 Engineer that the Improvements as and when they are completed are in  
247 compliance with the standards and specifications of the Town and this  
248 Agreement. The Developer's Engineer's written certification shall be provided to  
249 the Town Engineer before the Town Engineer recommends acceptance of the  
250 Improvements to the Town Board. In addition, and also prior to recommendation  
251 of acceptance of the Improvements, the Developer shall present to the Town valid  
252 lien waivers from all persons providing materials and/or performing work on the  
253 Improvements for which certification is sought. The Developer agrees that no  
254 occupancy permits will be issued by the Town until the Improvements have been  
255 recommended for acceptance by the Town Engineer; and until all outstanding  
256 engineering and inspection fees (including engineering and inspection charges of  
257 the Town) have been paid in full, and affidavits and lien waivers are received by  
258 the Town indicating that the contractors, suppliers and subcontractors have been  
259 paid in full for all work and materials furnished in order to construct the  
260 Improvements.  
261
- 262 4.6. Maintenance and Repair: The Developer agrees to provide for maintenance and  
263 repair of all Improvements and acknowledges that this obligation runs with the  
264 land. The Town will endeavor to provide timely notice to the Developer  
265 whenever the Town Engineer is not able to recommend acceptance of an  
266 Improvement, or otherwise determines that an Improvement does not conform to  
267 the Town's adopted standards and specifications or is otherwise defective. The  
268 Developer shall have thirty (30) days from the issuance of such notice to correct  
269 or substantially correct the defect. It is agreed that the Town shall not declare a  
270 default under the Agreement during the aforesaid thirty (30)-day correction period  
271 on account of any such defect unless it is clear that the Developer does not intend  
272 to correct the defect or unless the Town determines that immediate action is  
273 required in order to remedy a situation which poses an imminent health or safety  
274 threat.  
275
- 276 4.7. Cost Breakdown: The Developer shall, upon substantial completion of the  
277 Improvements, provide to the Town a final cost for all of the costs associated with  
278 the construction thereof. Such final cost breakdown shall be in such form and  
279 content as the Town may reasonably require.  
280

## 281 5. DEDICATION OF IMPROVEMENTS. 282

- 283 5.1. After substantial completion<sup>7</sup> of the construction in accordance with the Town's  
 284 standards and specifications, as certified by the Developer's Engineer, and  
 285 provided there is a written statement of "no objection" from the Town Engineer,  
 286 the Developer shall dedicate the Improvements to the Town.  
 287
- 288 5.2. Acceptance of the dedication requires the approval of a resolution by the Town  
 289 Board.  
 290
- 291 6. **GUARANTEE OF THE WORK.** The Developer agrees to guarantee and warrant all  
 292 work performed under this Agreement against defects in workmanship or materials for a  
 293 period of *fourteen (14) months from the date of substantial completion*<sup>8</sup> of the  
 294 Improvements. If any defect should appear during the guarantee period, as determined in  
 295 the reasonable discretion of the Town Engineer, the Developer agrees to make required  
 296 replacement or acceptable repairs of the defective work at the Developer's own expense.  
 297 Furthermore, following such notice to and repair by the Developer, the guarantee period  
 298 shall be extended for an additional fourteen (14) month period from the date of  
 299 Developer's completion of the repair. All guaranties or warranties for materials or  
 300 workmanship which extend beyond the guarantee period are hereby assigned by the  
 301 Developer to the Town, and confirmation of same shall be provided to the Town  
 302 Engineer.  
 303
- 304 7. **COMPLIANCE WITH LAW.** When performing its obligations under this Agreement,  
 305 the Developer shall comply with all terms of this Agreement, relevant laws, ordinances  
 306 and regulations in effect, as promulgated by all governmental bodies having jurisdiction  
 307 thereover. In the event of a conflict among the requirements, the stricter provisions shall  
 308 control.  
 309
- 310 8. **FEES PAYABLE PRIOR TO CONSTRUCTION.** The Developer agrees to pay the  
 311 Town for all outstanding fees and assessments levied against the Property prior to the  
 312 start of construction of the Improvements.  
 313
- 314 9. **DEVELOPER TO REIMBURSE THE TOWN FOR COSTS SUSTAINED.** In  
 315 addition to any escrow arrangement required by the Town pursuant to its customary  
 316 practice for administering development projects, the Developer shall reimburse the Town  
 317 for its actual cost of design, inspection, testing, construction, and associated legal and  
 318 other fees associated with the Development. The Town's costs shall be determined as  
 319 follows:

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<sup>7</sup> See Wis. Stat. §236.13, as amended, which applies to all preliminary and final plats as of August 1, 2014. Pursuant thereto, "substantial completion" is defined as follows: "(P)ublic improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed at the time the binder course is installed on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90% of the public improvements by costs are completed."

<sup>8</sup> See *Id.*

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- 9.1. The cost of Town employees' time engaged in any way with the required Improvements based on the hourly rate paid to the employee multiplied by a factor determined by the Town representing the Town's cost for expenses, benefits, insurance, sick leave, holidays, overtime, vacation and similar benefits.
- 9.2. The cost of Town equipment employed.
- 9.3. The cost of mileage reimbursed to Town employees and consultants that is attributable to the Development.
- 9.4. The actual costs of Town materials incorporated into the work, including transportation costs, plus a restocking and/or handling fee not to exceed 10% of the cost of the materials.
- 9.5. All costs and expenses incurred by Town in connection with the Development, including, but not limited to, the cost of professional services incurred by the Town for the review and preparation of required documents, attendance at meetings or other related professional services.
- 9.6. Unless the amount totals less than \$50.00, the Town shall bill the Developer monthly for expenses incurred by the Town. Bills outstanding for more than thirty (30) days shall accrue interest at the rate of 1% per month.

## 10. SURETY.

- 10.1. The Developer agrees to furnish the Town, prior to the commencement of any work under this Agreement, with surety in the form of an irrevocable Letter of Credit,<sup>9</sup> in a form deemed acceptable by the Town Attorney, in the amount to be approved by the Town Engineer, to secure performance of this contract in accordance with the Town Subdivision Ordinance. The Letter of Credit shall be payable at sight to the Town and will bear an expiration date not earlier than twelve (12) months after the date of delivery to the Town. The Letter of Credit shall include a provision requiring that the Town be given written notice not less than forty-five (45) days and not more than sixty (60) days prior to the expiration of the letter. Developer shall provide a new Letter of Credit satisfactory to the Town not less than ten (10) days prior to the expiration of any earlier Letter of Credit sufficient to cover the balance of any work to be performed by Developer

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<sup>9</sup> If the Developer prefers to provide a form of security other than a letter of credit, the Developer must contact the Town Attorney prior to executing this Development Agreement so that appropriate language can be incorporated in the Development Agreement. Please *see* Wis. Stat. § 236.13 for additional details. The language for letters of credit is in the template because it is the most common form of security provided by Developers in the Town.

358 hereunder and any sum required to secure the guarantee of work required by this  
 359 Agreement. The Letters of Credit will be payable to the Town at any time upon  
 360 presentation of: (i) a sight draft on the issuing Bank in the amount to which the  
 361 Town is entitled to draw pursuant to the terms of this Agreement; (ii) an affidavit  
 362 executed by an authorized Town official stating that the Developer is in default  
 363 under this Agreement; and (iii) the original of the Letter of Credit.  
 364

365 10.2. As work progresses on installation of Improvements constructed as part of this  
 366 contract, the Town Engineer, upon written request from the Developer from time  
 367 to time, is authorized to recommend a reduction in the amount of surety as  
 368 hereinafter provided. When portions of construction (street, stormwater or other  
 369 improvements) are completed by the Developer, the Town Engineer is authorized,  
 370 upon submission of lien waivers by the Developer's contractors, to recommend  
 371 reduction in the amount of surety. Any reduction shall require approval by  
 372 resolution of the Town Board.  
 373

374 10.3. Upon acceptance by the Town of the Improvements, as approved by resolution of  
 375 the Town Board, the Town agrees to reduce the surety to an amount which does  
 376 not exceed ten percent (10%) of the cost of the Improvements, as estimated by the  
 377 Town Engineer, to secure performance of the guarantee described in this  
 378 Agreement.  
 379

380 10.4. Developer agrees to provide written notice of the expiration of any Letter of  
 381 Credit (or replacement Letter of Credit) provided for herein not less than forty-  
 382 five (45) days nor more than sixty (60) days prior to its expiration, by sending  
 383 notice to the following address:  
 384

385 Town Clerk  
 386 Town of Windsor  
 387 4084 Mueller Road  
 388 DeForest, WI 53532  
 389

390 **11. COVENANTS AND RESTRICTIONS; STORMWATER MANAGEMENT**  
 391 **AGREEMENT; TRANSFER RESTRICTIONS ON SALES; OTHER LEGAL**  
 392 **DOCUMENTS.**  
 393

394 11.1. Declaration of Covenants, Conditions and Restrictions: Prior to commencement  
 395 of construction of Improvements under this Agreement, Developer shall submit  
 396 the Declaration of Covenants, Conditions and Restrictions to the Town Attorney  
 397 and Town Board for review and approval as to conformity with the Town  
 398 Subdivision Ordinance and any conditions of approval. The Covenants,  
 399 Conditions and Restrictions shall contain provisions which provide for site plan  
 400 and architectural review procedures for any Lots to insure that the represented  
 401 quality of the Improvements is maintained.

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11.2. Stormwater Management and Maintenance Agreement: Developer shall also enter into the Town's Stormwater Management and Maintenance Agreement, in recordable form satisfactory to the Town Engineer and Town Attorney, prior to the commencement of construction, which agreement shall provide that the Developer shall maintain the Stormwater Management Facilities, at the expense of Developer, until the Town accepts the Improvements, and that after acceptance of the Improvements by the Town, the homeowner association formed by Developer shall maintain the Stormwater Management Facilities at the expense of the association. In the event the association fails to properly maintain the Stormwater Management Facilities, then the Town's Stormwater Management and Maintenance Agreement shall provide that the Town may enter the property and maintain the Stormwater Management Facilities, with the cost thereof to be charged back as a special charge to the owners of Lots within the Development. The foregoing instruments shall be recorded prior to the commencement of any work under this Agreement.

11.3. Restrictions on Transfer Of Lots Outside Current Phase: Developer agrees to execute and record, in a form approved by the Town Attorney, an instrument prohibiting the conveyance to third parties of Lots outside of such Phase of the Development on which Improvements are being constructed (other than to a bona fide financial institution as a mortgagee for the costs of development and construction of the project by Developer), without the consent of the Town, or until the execution of a development agreement between Developer and the Town for particular Lots outside of such Phase as to which this prohibition would not then apply.

11.4. Other legal documents required for this Development shall be as specified on Exhibit 2.

12. **SURVEY MONUMENTS**. Developer agrees to install all survey monuments for the final Plat in the manner required by law and Town Ordinance, except that pursuant to the provisions of Wis. Stat. § 236.15(1)(h), Developer shall have a period of up to five (5) years after the date of execution of this Agreement by all parties, or the start of construction of the final Phase of the Development, whichever comes first, within which to complete installation of all required monuments in the entire Development as required by law and Town Ordinance. Notwithstanding the foregoing, Developer agrees to complete all such survey work for each phase of the Plat by the time of completion of Improvements for such phase of the Plat. Developer will provide security in the amount and manner reasonably required by the Town Engineer at the time of commencement of construction of the first Phase of the Plat based on estimates from responsible surveying firms, to secure the full costs of such survey monumentation work within such time period. No construction shall be commenced until the Town Engineer has approved the adequacy of the security for the surveying costs.

- 446  
447 13. **PARKLAND DEDICATION OR FEE IN LIEU OF DEDICATION.** The Town  
448 acknowledges that Developer has satisfied all requirements of the Town Ordinances with  
449 regard to the dedication of park lands or the payment of fees in lieu of dedication of park  
450 lands for the Development<sup>10</sup> upon recording the Dusky Glen CSMs and payment of a fee  
451 in lieu of land dedication in the amount of \$641.03 per dwelling unit for 15 dwelling  
452 units, for a total of \$9615.45, which amount shall be paid in full to the Town prior to the  
453 Town's execution of the Dusky Glen CSMs.  
454
- 455 14. **FEE FOR INITIAL IMPROVEMENTS TO PARKLAND PER WIS. STAT.**  
456 **§ 236.45(6).** *[Intentionally Omitted for Phase 3 Only. Town and Developer*  
457 *acknowledge and agree to a lookback at ch. 236 parkland fees upon submission of the*  
458 *Replat necessary for development of Phase 4 and prior to release of restrictions on Phase*  
459 *4 lots.]*  
460
- 461 15. **ANNEXATION.** Developer agrees that at no time will the Developer petition to annex  
462 or attach all or any part of the Property to any city of village under applicable annexation  
463 or boundary agreement laws, without the consent of the Town. Developer further  
464 acknowledges that any such annexation shall result in damages to the Town, which  
465 damages shall be substantial and difficult to quantify. Developer and Town agree to  
466 quantify such damages by calculating the estimated Tax Increment that would have been  
467 generated by the Development, using a method similar to that used to calculate Tax  
468 Increment in Tax Increment Districts formed under Wis. Stat. § 66.1105. Generally  
469 speaking, the Tax Increment is the combined mil rate multiplied by the Tax Incremental  
470 Base reduced by the Value Increment. The parties agree that the Town's liquidated  
471 damages shall be equal to 20 x the Tax Increment at full build-out, and that said  
472 liquidated damages shall be immediately due and payable if and when the Property is  
473 annexed.  
474
- 475 16. **GENERAL CONDITIONS.**  
476
- 477 16.1. **No Vested Rights Granted:** Except as provided by law, or as expressly provided  
478 in this Agreement, no vested right in connection with this project shall inure to the  
479 Developer. Nor does the Town warrant by this Agreement that the Developer is  
480 entitled to any other required approvals.  
481
- 482 16.2. **No Waiver:** No waiver of any provision of this Agreement shall be deemed or  
483 constitute a waiver of any other provision, nor shall it be deemed or constitute a  
484 continuing waiver unless expressly provided for by a written amendment to this  
485 Agreement signed by both Town and Developer; nor shall the waiver of any  
486 default under this Agreement be deemed a waiver of any subsequent default or

<sup>10</sup> For purposes of this Agreement and Section 13 in particular, the Development is Phase 3. Phases 1 & 2 were completed by another. This Developer purchased the Phase 3 & Phase 4 lots from AnchorBank. Lot 97 and Phase 4 are expressly excluded.

- 487 defaults of the same type. The Town's failure to exercise any right under this  
 488 Agreement shall not constitute the approval of any wrongful act by the Developer  
 489 or the acceptance of any Improvement.  
 490
- 491 16.3. Town Rights Retained: The Town does not hereby waive, and expressly retains,  
 492 its right to governmental immunity and other defenses that may be available to the  
 493 Town. The obligations set forth herein are not intended to, and shall not be  
 494 interpreted to, limit the Town's insurance coverage or other similar protections.  
 495 To the extent not expressly contracted in this Agreement, the Town retains and  
 496 expressly reserves its legislative discretion.  
 497
- 498 16.4. Amendment/Modification: This Agreement may be amended or modified only by  
 499 a written amendment approved and executed by the Town and the Developer.  
 500
- 501 16.5. Default: A default is defined herein as the Developer's breach of, or failure to  
 502 comply with, the terms of this Agreement. The Town reserves to itself all  
 503 remedies available at law or equity as necessary to cure any default. The Town  
 504 also reserves to itself the right to draw on a Letter of Credit or other surety  
 505 provided hereunder in addition to pursuing any other available remedies.  
 506 Remedies shall include, but not be limited to, stopping all construction in the  
 507 approved final Plat and prohibiting the transfer or sale of Lots. Remedies shall be  
 508 cumulative, and the exercise of one shall not preclude the exercise of others.  
 509
- 510 16.6. Entire Agreement: This written Agreement, and written amendments, and any  
 511 referenced attachments thereto, shall constitute the entire Agreement between the  
 512 Developer and the Town.  
 513
- 514 16.7. Attorney Fees: If the Town is required to resort to litigation or arbitration to  
 515 enforce the terms of this Agreement, and if the Town prevails in the litigation or  
 516 arbitration, the Developer shall pay all Town costs, including reasonable attorney  
 517 fees and expert witness fees. If the court or arbitrator awards relief to both  
 518 parties, each will bear its own costs in their entirety.  
 519
- 520 16.8. Time: For the purpose of computing the commencement, abandonment and  
 521 completion periods, and time periods for Town or Developer action, such times in  
 522 which war, civil disasters, acts of God, or extreme weather conditions occur or  
 523 exist shall not be included if such times prevent the Developer or Town from  
 524 performing their/its obligations under the Agreement.  
 525
- 526 16.9. Severability: If any part, term or provision of this Agreement is held by the courts  
 527 to be illegal or otherwise unenforceable, such illegality or unenforceability shall  
 528 not affect the validity of any other part, term or provision, and the rights of the  
 529 parties will be construed as if the part, term or provision was never part of the  
 530 Agreement.

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16.10. Benefits: The benefits of this Agreement to the Developer are personal and shall not be assigned without the express written approval of the Town. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer.

16.11. 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 mail and return receipt requested, and addressed as follows:

If to Developer: Wolf Hollow Windsor, LLC  
Attn.: Don Esposito/Matt Neumann  
N27 W24075 Paul Ct., Suite 200  
Pewaukee, WI 53072

If to Town: Town of Windsor  
Attn: Town Clerk  
4084 Mueller Road  
DeForest, WI 53532

16.12. Successors to Town: If the Town’s governmental structure changes, this Agreement shall be deemed assigned and assumed by the Town’s successor without the need for further action by the parties.

16.13. Recordation: The Town may record this Agreement or a memorandum of this Agreement in the Register of Deeds Office. All costs of recording shall be paid by the Developer.

16.14. Effective Date: This Agreement shall be effective as of the date and year executed by both parties.

*[SIGNATURES ON FOLLOWING TWO PAGES]  
[EXHIBITS INCORPORATED BY REFERENCE]*

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Executed in Dane County, Wisconsin, on this 7<sup>th</sup> day of August, 2014.

**TOWN OF WINDSOR**

By: Robert Wipperfurth  
Robert Wipperfurth, Town Chairman

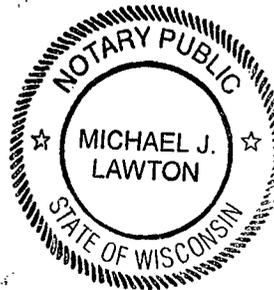
Attest: Christine Capstran  
Christine Capstran, Town Clerk

**ACKNOWLEDGMENT**

STATE OF WISCONSIN    )  
  )  
COUNTY OF DANE        )

Personally came before me this 7<sup>th</sup> day of August, 2014, the above-named Robert Wipperfurth and Christine Capstran, Chairman and Clerk of the Town of Windsor, respectively, to me known to be the persons and officers who executed the foregoing instrument and acknowledged the same as such officers by the Town's authority.

[Signature]  
Print Name: Michael J. Lawton  
Notary Public, State of Wisconsin  
My Commission is Permanent/Expires: \_\_\_\_\_





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**EXHIBIT 1**  
**IDENTIFICATION OF PLANS AND SUMMARY OF IMPROVEMENTS**

**PLANS:** The Town Engineer has no objection to the final plans presented by the Developer's Engineer, which plans are dated and marked as follows:

Prepared by Vierbicher - Street & Utility Improvements, Wolf Hollow-Phase 3, Town of Windsor: Revision 3 - dated 07/15/14 (15 pp.) plus watermain removal exhibit and letter from Vierbicher and Randall Kolinske, PE to WSD No. 1 Jeff Bartosiak dated July 22, 2014.

The above Plans are incorporated by reference as if set forth in full herein.

**EXHIBIT 2**  
**SPECIAL PROVISIONS**

**Issues Requiring Additional Discussion**

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1. OL 6 will be repurposed for stormwater detention. Design and approvals shall be per the Agreement. A Stormwater Management & Maintenance Agreement shall be and is required per Section 11.2.
2. Stormwater Management Plan for Phase 3 shall be per the Plans & Specifications approved by Dane County, and implemented per this Agreement.
3. Stormwater Management Plan for Phase 4 has been conceptually reviewed to determine viability, but shall be submitted with the Replat anticipated for Phase 4.
4. Following substantial completion of the Phase 3 Stormwater Management Plan and execution of the Stormwater Management & Maintenance Agreement required by this Agreement, the Developer shall be entitled to the release of the stormwater easements burdening the lots on the Dusky Glen CSMs.
5. Restrictions on Transfer of Lots in Phase 4 (see Section 11.3) shall be executed simultaneously with the Development Agreement.
6. The Developer shall provide a 66 foot connection to Windsor Crossing that meets where shown on the Windsor Crossing Plat unless otherwise mutually agreed by the Developer and Town.
7. Cost Recoupment for Dredging in amount of \$20,000.00 acknowledged and shall be paid by Developer prior to commencement of Phase 4.
8. The parties agree to swap Lot 112 for OL 7, and shall market accordingly. The parties shall work together in good faith to meet the legal requirements necessary to effectuate the swap in a timely manner.
9. Parkland dedication & fees in lieu of dedication for Phase 3 shall be as set forth in Sections 13 & 14 of the Agreement, which are incorporated in this Exhibit by reference.
10. The provisions set forth in this Exhibit are intended to and shall survive substantial completion of the Improvements, and shall bind the parties as to Phase 4, unless otherwise mutually agreed by the parties.