

WINDSOR TOWN BOARD

RESOLUTION 2015-09

**RESOLUTION APPROVING AGREEMENT FOR PUBLIC IMPROVEMENTS
AND DEVELOPMENT MATTERS (“DEVELOPMENT AGREEMENT”)
FOR BLUE ADDITION TO LAKE WINDSOR,
TOWN OF WINDSOR, DANE COUNTY, WI**

WHEREAS, Windsor Golf Ventures, Inc. (“Petitioner”) has applied for approval of the Final Plat of Blue Addition to Lake Windsor (“Final Plat”) located in the Town of Windsor, Dane County, Wisconsin; and

WHEREAS, as a condition of approval of the Final Plat, the Petitioner and Town are required to enter a Development Agreement, a copy of which is attached hereto and incorporated by reference; and

WHEREAS, at its regularly scheduled meeting on March 19, 2015, the Town Board reviewed the terms and conditions of the Development Agreement, and wishes to approve the Development Agreement as presented.

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

- A. The Town Board **APPROVES** the attached Development Agreement, **subject to each and every one of the following conditions:**
1. Subject to execution by the Developer, by its duly authorized representatives, and the Town by the Town Chairperson and attested to by the Town Clerk.
 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 on December 31, 2015. 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 19th day of March, 2015 by a vote of 4 in favor and 0 opposed.

TOWN OF WINDSOR

Robert E. Wipperfurth
Robert E. Wipperfurth, Town Chairman

Donald G. Madelung
Donald G. Madelung, Town Supervisor

Bruce Stravinski
Bruce Stravinski, Town Supervisor

Excused Absence
Alan Buchner, Town Supervisor

Monica M. Smith
Monica M. Smith, Town Supervisor

Attest:
Christine Capstran
Christine Capstran, Town Clerk



**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

**DOCUMENT #
5170542
07/22/2015 3:41 PM
Trans. Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 21**

**PLAT OF BLUE ADDITION TO LAKE WINDSOR,
AND LOTS 1, 2 AND 3 OF CERTIFIED SURVEY MAP
13005 RECORDED AS DOC. NO. 4144251,
ALL LOCATED IN THE TOWN OF WINDSOR,
DANE COUNTY, WISCONSIN:**

**AGREEMENT FOR PUBLIC IMPROVEMENTS AND
DEVELOPMENT MATTERS
("Development Agreement")**

Executive Summary

1. **Real Estate Subject To Agreement:** Plat of Blue Addition to Lake Windsor, and Lots 1, 2 and 3 of Certified Survey Map No. 13005 recorded as Doc. No. 4144251, All Located in the Town of Windsor, Dane County, Wisconsin.
 - 1.1. **Water/Sewer for Platted Lots:** Lots 1-6 along Golf Drive connect to public water & sewer from Windsor Sanitary District No. 1; Lots 7-13 along Oak Lane connect to public sewer from Lake Windsor Sanitary District, with water by private wells.
 - 1.2. **Development Plan for Platted Lots:** total of 10.77 acres; 13 lots; 11 single family; 2 duplex; Outlot 1 as neighborhood park.
 - 1.3. **Water/Sewer for CSM Lots:** public water & sewer by Windsor Sanitary District No. 1.
 - 1.4. **Development Plan for CSM Lots:** 3 duplex
2. **Owner/Developer/Authorized Representative:** Windsor Golf Ventures, Inc.; Timothy Gotzion, President
3. **Contact for Town:** Only the Town Board can bind the Town of Windsor. 608-846-3854
 - 3.1. **Town Planning & Development Coordinator:** Amy Anderson Schweppe
 - 3.2. **Town Engineer:** Kevin Richardson, P.E., B.C.E.E.
4. **Public Improvements Required:** See Town Ordinances, Town Engineer, Agreement.
5. **Construction:**
 - 5.1. **Standards:** See Town Ordinances, Town Engineer, Agreement.
 - 5.2. **Commencement Date:** Town Engineer approval required. No early start approved.
 - 5.3. **Contractor List:** Required.
 - 5.4. **Proof of Insurance:** Required; Town as Additional Insured.
6. **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.

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:
Amy Schweppe Anderson
Town of Windsor
4084 Mueller Road
DeForest, WI 53532

PARCEL IDENTIFICATION NUMBERS
See Exhibit 3
(Parcel Identification Numbers)

21

7. **Guarantee of Work:** Required for 14 months after substantial completion, unless extended due to defective work.
8. **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.
9. **Developer Reimbursement of Town Costs:** Reimbursement required per Development Agreement, Escrow Agreement and Town Ordinances.
10. **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, other documents as specified; documents executed and submitted to Town for recording; all documents run with the land.
11. **Phasing:** This Development shall be completed as a single phase.
12. **Parkland Dedication or Fee in Lieu, and Fee for Initial Improvements:** Wis. Stat. § 236.45(6); paid before execution of Plat.
13. **Subdivision Signage:** No signage required; however, any signage shall be subject to Dane County standards and Town Board design approval.
14. **Required Approvals:**
 - 14.1. Comprehensive Plan Amendment and Rezone (satisfied)
 - 14.2. Engineering & Technical (*see* Jan. 26, 2015 letter from Town Engineer)
 - 14.3. Development Agreement
 - 14.4. Declaration of Covenants & Restrictions
 - 14.5. Declaration Restricting Transfer of Lots prior to compliance with TB Resolution
 - 14.6. Notice regarding easements and special issues (may reference in Declaration Restricting Transfer)
 - 14.7. Payment of Parkland Improvement Fees due prior to execution of Plat by Town (2015 = \$1,108.89 per single family and duplex) (may reference in Declaration Restricting Transfer)
 - 14.8. Final Erosion & Sedimentation Control Plan, with Dane County's Land & Water Resources Department (LWRD) approval
 - 14.9. Stormwater Management Plan, with Dane County's Land & Water Resources Department (LWRD) approval
 - 14.10. Stormwater Management Maintenance Agreement
 - 14.11. Homeowner's Association Agreement

The Executive Summary above is provided as a convenience to the parties. In the event of a conflict, the requirements shall be as set forth in full in the Development Agreement itself.

DEVELOPMENT AGREEMENT

1 **THIS DEVELOPMENT AGREEMENT** (the “**Agreement**”) is made and entered into
2 by and between Windsor Golf Ventures, Inc., a Wisconsin corporation, with its principal
3 business office located at 6592 Lake Road, Suite D, Windsor, WI 53598 (“**Developer**”), and the
4 Town of Windsor and its successors (“**Town**”), a body corporate and politic, with its principal
5 business office located at 4084 Mueller Road, Windsor, Wisconsin.

RECITALS

6
7
8
9 **WHEREAS**, the Developer has received preliminary approval from the Town, as set
10 forth in Town Board Resolution No. 2014-08, of a residential development to be known as Blue
11 Addition to Lake Windsor and located on the Plat of Windsor Blue Addition to Lake Windsor, in
12 the Town of Windsor, Dane County, Wisconsin (“**Plat**”), and Developer wishes to enter this
13 Agreement to satisfy one of the conditions of the Town Board’s approval and shall thereafter
14 promptly proceed with recording of the Plat;

15
16 **WHEREAS**, the Developer also wishes to proceed with development of Lots 1, 2 and 3
17 of Certified Survey Map No. 13005 recorded as Doc. No. 4144251, in the Town of Windsor,
18 Dane County, Wisconsin (“**CSM**”), intends to and shall merge Outlot 2 of the Plat with CSM Lot
19 1 and Outlot 3 of the Plat with CSM Lot 2, and wishes to obtain necessary approval for such
20 development concurrent with the approvals of the Plat;

21
22 **WHEREAS**, for the purposes of this Agreement, the Plat and CSM shall be referred to as
23 the “**Development**,”

24
25 **WHEREAS**, the Town seeks to protect the health, safety and general welfare of the
26 community by requiring the completion of various improvements in the Development and
27 thereby to limit the harmful effects of substandard developments, including premature
28 development which leaves property undeveloped and unproductive;

29
30 **WHEREAS**, the Town’s Ordinances require, among other things, that provisions be
31 made for the grading of public lands, erosion and stormwater runoff control and street
32 improvements required to serve the Developer’s Development;

33
34 **WHEREAS**, the Developer wishes to proceed with this Development in a single phase;

35
36 **WHEREAS**, the purpose of this Agreement includes, but is not limited to, the avoidance
37 of harmful consequences of land development prior to satisfactory completion of improvements,
38 or prior to the payment of improvement costs and related fees;

84 incorporated herein by reference, as if set forth fully herein.
85

86 1.2. The Developer shall obtain adjustments to the boundaries of the Windsor Sanitary
87 District No. 1 and the Lake Windsor Sanitary District to accommodate the
88 requirements for connections set forth in this Agreement. Costs incurred by the
89 Town to assist with this boundary adjustment process shall be reimbursed to the
90 Town by the Developer.
91

92 1.3. The Developer shall pay in full the Interceptor Connection Charge (“ICC”) and
93 Treatment Plant Connection Charge (“TPCC”) required to connect the lots in the
94 Development to the respective sanitary district’s collection system and thereby to
95 the Madison Metropolitan Sewerage District (“MMSD”). Payment of the ICC
96 and TPCC is the Developer’s responsibility, and not the responsibility of the
97 Town. This provision is personal to the Developer and survives approval and/or
98 connection of the Lots to the sanitary districts. Failure to pay proper ICC and
99 TPCC charges may result in fines and penalties, which are hereby deemed to be
100 the responsibility of the Developer. Similarly, the Developer shall pay any and all
101 connection charges associated with water connections where public water service
102 is provided by the Windsor Sanitary District No. 1, and the connection charges
103 due to the sanitary districts.
104

105 1.4. Following consultation with Town staff, the Developer shall present plans for the
106 Improvements, which plans shall be prepared under the seal of Developer’s
107 Engineer (the “Plans”).¹ The Plans shall set forth the required Improvements
108 with particularity and shall include, at a minimum, the following: public
109 stormwater management facilities; public streets; gas, electric, and
110 telephone/internet; lighting. The Improvements shall meet Town construction
111 standards, as established by the Town Ordinances² and in accordance with
112 generally acceptable industry standards. The Town Engineer shall have the
113 authority to interpret and apply the ordinances and generally accepted industry
114 standards as to the Improvements.
115

116 1.5. The Town Engineer shall be given an adequate opportunity to review the Plans
117 and may request such additional information from the Developer as desired.
118 Following the Town Engineer’s written statement of “no objection” to the Plans,
119 and subject to the other requirements and conditions set forth herein, the
120 Developer shall proceed with construction in accordance with the Plans and on
121 the timetable represented to the Town by the Developer, which timeline has been

¹ Plans for Water & Sewer shall be submitted directly to the Sanitary District’s Engineer with a copy to the Town Engineer.

² Town Ordinances are available at www.windsorwi.gov or through www.municode.com.

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

² Town Ordinances are available at www.windsorwi.gov or through www.municode.com.

⁴ See staff listing at: <https://www.countyofdane.com/lwrld/staff.aspx>

122 reasonably relied upon by the Town.
123

124 2. **STANDARDS AND SPECIFICATIONS FOR IMPROVEMENTS.**³
125

126 Developer's construction of the Improvements and performance of this Agreement shall
127 be in accordance with the Town Ordinances, whether or not specifically referenced in this
128 Agreement, and the Plans. For convenience and reference, an overview of the
129 Improvements for this Development and information identifying the Plans is provided in
130 **Exhibit 1**, which is attached hereto and incorporated by reference as if set forth fully
131 herein.
132

133 **The standards and specifications for Improvements expressly include, but are not**
134 **limited to, the following:**
135

136 2.1. During Construction: Grading, Erosion Control and Barricading:
137

138 The Developer shall furnish, install and maintain during construction and until the
139 Improvements are accepted by the Town, all barricades and signs as are prudent
140 and necessary for public safety, particularly where new rights-of-way extend or
141 intersect existing streets and all street ends. The Town Engineer may also require
142 Developer to furnish, install and maintain additional barricades and signs.
143

144 The Developer shall furnish, install prior to grading, utility installation or any
145 other land disturbance activity, and maintain during construction and until the
146 Improvements are accepted by the Town such stormwater runoff and erosion
147 control measures as are required by and included in the County-approved plans
148 for erosion control and stormwater runoff. The Developer shall obtain separate
149 approvals for each construction phase, as required. The Town Engineer may also
150 require Developer to furnish, install and maintain additional erosion control and
151 stormwater runoff measures, as the Town Engineer deems appropriate. The
152 Developer shall adhere to the requirements for erosion control and stormwater
153 runoff, and expressly grant the right-of-entry on the Development to the Town
154 Engineer, or designee, to observe the erosion control and stormwater runoff.
155

156 2.2. Stormwater Management Facilities: The Developer shall install adequate ditches,
157 drainageways and stormwater management facilities (collectively, **Stormwater**
158 **Management Facilities**) based on generally accepted industry standards and as
159 required by law. The Developer's Engineer shall provide necessary background
160 data, including stormwater calculations, to the Town Engineer along with a
161 proposed plan for Stormwater Management Facilities certified by the Developer's
162 Engineer and approved by Dane County's Land & Water Resources Department

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

163 (LWRD) (<http://lwrd.countyofdane.com/wred/>).⁴ The Town Engineer may rely
164 on the background data and stormwater calculations provided when reviewing the
165 proposed plans. The Developer shall proceed with installation and construction of
166 the Stormwater Management Facilities in accordance with the plans for all such
167 matters for which a written statement of “no objection” has been issued by the
168 Town Engineer.

169
170 2.3. Streets and Street Lighting: *[Reserved for future use.]*
171

172 2.4. Sidewalk and Trails: Due to the specific geographical features of the
173 Development, the Town hereby waives the requirement for the Developer to
174 install sidewalks and trails.⁵ In lieu of such installation, the Developer shall make
175 a payment in lieu of sidewalk to the Town, in the amount of Forty One Thousand
176 Two Hundred Fifty Dollars (\$41,250.00), an amount reasonably determined by
177 the Town Engineer. This payment shall be used for improvements to the park
178 located on Outlot 1 of the Plat.
179

180 2.5. Signage: Signage is not required by Town at this time; however, any signage
181 installed by Developer shall be as required to meet Dane County signage
182 requirements and shall be subject to prior approval by the Town Board, or
183 designee.
184

185 2.6. Special Provisions: Special provisions regarding Improvements are set forth in
186 **Exhibit 2**, which is attached and incorporated by reference. As with other work
187 specified in this Agreement, all special provisions set forth on **Exhibit 2** shall be
188 constructed and installed in accordance with plans prepared under the seal of the
189 Developer’s Engineer and for which the Town Engineer has issued a written
190 statement of “no objection.”
191

192 3. **CONTRACTORS ENGAGED BY DEVELOPER FOR PROJECT;**
193 **INDEMNIFICATION AND INSURANCE.**
194

195 3.1. Approval of Contractor(s). The Developer agrees to engage contractors for all
196 construction, who shall first be approved for such work by the Town Engineer and
197 who shall qualify with every applicable requirement of the Town and any
198 Ordinance, rule or regulation thereof. Prior to the commencement of construction
199 of the Improvements, the Developer shall furnish to the Town Engineer the names
200 of all contractors and subcontractors, together with a classification of the work
201 performed by each and copies of all construction documents relating to the
202 construction of the Improvements. Such submittal shall be prior to the

⁴ See staff listing at: <https://www.countyofdane.com/lwrd/staff.aspx>

⁵ See in particular, Town Ord. Chapter 38, Article V, Division 3: *Block Design*. Multi-use paths are required for certain blocks.

203 commencement of construction of any of the Improvements. All construction
204 documents for the Improvements are subject to the prior review of the Town.
205

206 3.2. Indemnification by Contractor(s). The Developer shall require all contractors
207 engaged in the construction of the Improvements to indemnify and hold the Town
208 and its engineers and consultants harmless from and against any and all claims,
209 losses, damages, costs and expenses which such contractors may or might incur in
210 connection with the construction of the Improvements. Such indemnification and
211 hold harmless clause shall be in form and content acceptable to the Town
212 Attorney and shall be included in each contract which the Developer has with a
213 contractor.
214

215 3.3. Indemnification by Developer. For a period of time commencing with the
216 execution of this Agreement and expiring fourteen (14) months from the date of
217 substantial completion⁶, the Developer hereby expressly agrees to indemnify, save
218 and hold harmless the Town, its engineers, consultants, employees, officers and
219 agents from and against all claims, costs, suits, causes of actions, demands and
220 liability of every kind and nature, for injury or damage received or sustained by
221 any person or persons or property, whomsoever and whatsoever, in connection
222 with, or on account of the performance of the work contemplated hereby and the
223 construction of the Improvements, except where such claim is the exclusive result
224 of the willful or negligent acts of the Town.⁷ As requested by the Town, the
225 Developer further agrees to aid and defend the Town with legal counsel
226 acceptable to the Town in the event the Town is named as a defendant in any
227 action concerning the performance of the work pursuant to this Agreement, except
228 where such suit is brought by the Developer. The provision is not intended to and
229 shall not be interpreted to limit insurance coverage that may be available to the
230 Town or governmental immunity or other defenses that may be available to the
231 Town, each and all of which are expressly reserved by the Town. It is hereby
232 agreed that the Developer is not an agent or employee of the Town, and neither
233 Developer nor its contractors shall represent itself as an agent or employee of the
234 Town.
235

236 3.4. Insurance by Contractor(s). The Developer shall also require all contractors
237 engaged in the construction of the Improvements to maintain such reasonable

⁶ 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."

⁷ 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.

238 insurance as shall be required by the Town Attorney and Engineer; and upon
239 demand, furnish to the Town Attorney and Engineer, a current certificate of
240 insurance to evidence such insurance. All such insurance shall comply with the
241 Town's contract requirements pertaining to damage claims, indemnification of the
242 Town and insurance. The Contractor(s) so engaged are required to furnish
243 comprehensive general liability insurance of not less than \$1,000,000.00
244 aggregate for any such damage sustained by two or more persons in any one
245 accident. The Developer is responsible for confirming that such insurance is in
246 place and that the Town is named as an additional insured on such insurance.
247

248 **4. CONSTRUCTION RELATED ACTIVITIES FOR IMPROVEMENTS.**
249

250 In connection with the construction of the Improvements, it is hereby agreed as follows:
251

252 4.1. Scheduling. The Developer agrees that no work shall be scheduled for
253 construction of the Improvements without the Town Engineer's approval of the
254 starting date(s) and construction schedule. The construction of the Improvements
255 shall be completed on or before the completion date(s) set forth in the schedule,
256 unless otherwise extended in writing by the Town.
257

258 4.2. Commencement. The final plans and specifications, signed by the Developer's
259 Engineer, shall be submitted to the Town Engineer prior to any land disturbance
260 or commencement of work. A starting date will not be approved until (1) a
261 written statement of "no objection" with respect to the final plans and
262 specifications for the Improvements has been issued by the Town Engineer, and
263 (2) the Letter of Credit or other security required by this Agreement has been
264 furnished to the Town.
265

266 4.3. Completion. All work specified herein shall be completed within twelve (12)
267 months after the date of commencement, and time is of the essence as to
268 completion. The deadline for completion may be extended as to the laying of the
269 final layer of asphalt paving on streets in accordance with Town policy, as
270 recommended by the Town Engineer. Town policy also requires that Developer
271 furnish appropriate surety for the completion of such work as recommended by
272 the Town Engineer, and approved by resolution of the Town Board.
273

274 4.4. Costs. The Developer agrees that the Town shall not be responsible for any costs
275 or charges related to the construction of the Improvements, and that the Developer
276 is responsible for all such costs, except as otherwise expressly provided for in the
277 Agreement.
278

279 4.5. Construction Related Activities; Inspection and Certification; Lien Waivers. The
280 Town may periodically review construction progress, conduct inspections and/or
281 complete material testing of the Improvements, and is granted access to the site

282 for such purposes. The Developer shall have the obligation to provide such on-
283 site inspection as is necessary to obtain written certification from Developer's
284 Engineer that the Improvements as and when they are completed are in
285 compliance with the standards and specifications of the Town and this
286 Agreement. The Developer's Engineer's written certification shall be provided to
287 the Town Engineer before the Town Engineer recommends acceptance of the
288 Improvements to the Town Board. In addition, and also prior to recommendation
289 of acceptance of the Improvements, the Developer shall present to the Town valid
290 lien waivers from all persons providing materials and/or performing work on the
291 Improvements for which certification is sought. The Developer agrees that no
292 occupancy permits will be issued by the Town until the Improvements have been
293 recommended for acceptance by the Town Engineer; and until all outstanding
294 engineering and inspection fees (including engineering and inspection charges of
295 the Town) have been paid in full, and affidavits and lien waivers are received by
296 the Town indicating that the contractors, suppliers and subcontractors have been
297 paid in full for all work and materials furnished in order to construct the
298 Improvements.
299

300 4.6. Maintenance and Repair. The Developer agrees to provide for maintenance and
301 repair of all Improvements and acknowledges that this obligation runs with the
302 land. The Town will endeavor to provide timely notice to the Developer
303 whenever the Town Engineer is not able to recommend acceptance of an
304 Improvement, or otherwise determines that an Improvement does not conform to
305 the Town's adopted standards and specifications or is otherwise defective. The
306 Developer shall have thirty (30) days from the issuance of such notice to correct
307 or substantially correct the defect. It is agreed that the Town shall not declare a
308 default under the Agreement during the aforesaid thirty (30)-day correction period
309 on account of any such defect unless it is clear that the Developer does not intend
310 to correct the defect or unless the Town determines that immediate action is
311 required in order to remedy a situation which poses an imminent health or safety
312 threat.
313

314 4.7. Cost Breakdown. The Developer shall, upon substantial completion of the
315 Improvements, provide to the Town a final cost for all of the costs associated with
316 the construction thereof. Such final cost breakdown shall be in such form and
317 content as the Town may reasonably require.
318

319 5. DEDICATION OF IMPROVEMENTS.

320 5.1. After substantial completion⁸ of the construction in accordance with the Town's
321

⁸ 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

standards and specifications, as certified by the Developer's Engineer, and provided there is a written statement of "no objection" from the Town Engineer, the Developer shall dedicate the Improvements to the Town.

5.2. Acceptance of the dedication requires the approval of a resolution by the Town Board.

6. **GUARANTEE OF THE WORK.** The Developer agrees to guarantee and warrant all work performed under this Agreement against defects in workmanship or materials for a period of fourteen (14) months from the date of substantial completion⁹ of the Improvements. If any defect should appear during the guarantee period, as determined in the reasonable discretion of the Town Engineer, the Developer agrees to make required replacement or acceptable repairs of the defective work at the Developer's own expense. Furthermore, following such notice to and repair by the Developer, the guarantee period shall be extended for an additional fourteen (14) month period from the date of Developer's completion of the repair. All guaranties or warranties for materials or workmanship which extend beyond the guarantee period are hereby assigned by the Developer to the Town, and confirmation of same shall be provided to the Town Engineer.

7. **COMPLIANCE WITH LAW.** When performing its obligations under this Agreement, the Developer shall comply with all terms of this Agreement, relevant laws, ordinances and regulations in effect, as promulgated by all governmental bodies having jurisdiction thereover. In the event of a conflict among the requirements, the stricter provisions shall control.

8. **FEES PAYABLE PRIOR TO CONSTRUCTION.** The Developer agrees to pay the Town for all outstanding fees and assessments levied against the Property prior to the start of construction of the Improvements.

9. **DEVELOPER TO REIMBURSE THE TOWN FOR COSTS SUSTAINED.** In addition to any escrow arrangement required by the Town pursuant to its customary practice for administering development projects, the Developer shall reimburse the Town for its actual cost of design, inspection, testing, construction, and associated legal and other fees associated with the Development. The Town's costs shall be determined as follows:

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,

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."

⁹ See *Id.*

- 362 benefits, insurance, sick leave, holidays, overtime, vacation and similar benefits.
363 9.2. The cost of Town equipment employed.
364 9.3. The cost of mileage reimbursed to Town employees and consultants that is
365 attributable to the Development.
366 9.4. The actual costs of Town materials incorporated into the work, including
367 transportation costs, plus a restocking and/or handling fee not to exceed 10% of
368 the cost of the materials.
369 9.5. All costs and expenses incurred by Town in connection with the Development,
370 including, but not limited to, the cost of professional services incurred by the
371 Town for the review and preparation of required documents, attendance at
372 meetings or other related professional services.
373 9.6. Unless the amount totals less than \$50.00, the Town shall bill the Developer
374 monthly for expenses incurred by the Town. Bills outstanding for more than
375 thirty (30) days shall accrue interest at the rate of 1% per month.
376

377 **10. SURETY.**
378

- 379 10.1. The Developer agrees to furnish the Town, prior to the commencement of any
380 work under this Agreement, with surety in the form of an irrevocable Letter of
381 Credit¹⁰, in a form deemed acceptable by the Town Attorney, in the amount to be
382 approved by the Town Engineer, to secure performance of this contract in
383 accordance with the Town Subdivision Ordinance. The Letter of Credit shall be
384 payable at sight to the Town and will bear an expiration date not earlier than
385 twelve (12) months after the date of delivery to the Town. The Letter of Credit
386 shall include a provision requiring that the Town be given written notice not less
387 than forty-five (45) days and not more than sixty (60) days prior to the expiration
388 of the letter. Developer shall provide a new Letter of Credit satisfactory to the
389 Town not less than ten (10) days prior to the expiration of any earlier Letter of
390 Credit sufficient to cover the balance of any work to be performed by Developer
391 hereunder and any sum required to secure the guarantee of work required by this
392 Agreement. The Letters of Credit will be payable to the Town at any time upon
393 presentation of: (i) a sight draft on the issuing Bank in the amount to which the
394 Town is entitled to draw pursuant to the terms of this Agreement; (ii) an affidavit
395 executed by an authorized Town official stating that the Developer is in default
396 under this Agreement; and (iii) the original of the Letter of Credit.
397
398 10.2. As work progresses on installation of Improvements constructed as part of this
399 contract, the Town Engineer, upon written request from the Developer from time
400 to time, is authorized to recommend a reduction in the amount of surety as

¹⁰ 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.

401 hereinafter provided. When portions of construction (street, stormwater or other
402 improvements) are completed by the Developer, the Town Engineer is authorized,
403 upon submission of lien waivers by the Developer's contractors, to recommend
404 reduction in the amount of surety. Any reduction shall require approval by
405 resolution of the Town Board.
406

407 10.3. Upon acceptance by the Town of the Improvements, as approved by resolution of
408 the Town Board, the Town agrees to reduce the surety to an amount which does
409 not exceed ten percent (10%) of the cost of the Improvements, as estimated by the
410 Town Engineer, to secure performance of the guarantee described in this
411 Agreement.
412

413 10.4. Developer agrees to provide written notice of the expiration of any Letter of
414 Credit (or replacement Letter of Credit) provided for herein not less than forty-
415 five (45) days nor more than sixty (60) days prior to its expiration, by sending
416 notice to the following address:
417

418 Town Clerk
419 Town of Windsor
420 4084 Mueller Road
421 DeForest, WI 53532
422

423 11. **COVENANTS AND RESTRICTIONS; STORMWATER MANAGEMENT**
424 **AGREEMENT; TRANSFER RESTRICTIONS ON SALES; OTHER LEGAL**
425 **DOCUMENTS.**
426

427 11.1. Declaration of Covenants, Conditions and Restrictions. Prior to commencement
428 of construction of Improvements under this Agreement, Developer shall submit
429 the Declaration of Covenants, Conditions and Restrictions to the Town Attorney
430 and Town Board for review and approval as to conformity with the Town
431 Subdivision Ordinance and any conditions of approval. The Covenants,
432 Conditions and Restrictions shall contain provisions which provide for site plan
433 and architectural review procedures for any Lots to insure that the represented
434 quality of the Improvements is maintained.
435

436 11.2. Stormwater Management and Maintenance Agreement. Developer shall also
437 enter into the Town's Stormwater Management and Maintenance Agreement, in
438 recordable form satisfactory to the Town Engineer and Town Attorney, prior to
439 the commencement of construction, which agreement shall provide that the
440 Developer shall maintain the Stormwater Management Facilities, at the expense
441 of Developer, until the Town accepts the Improvements, and that after acceptance
442 of the Improvements by the Town, the homeowner association formed by
443 Developer shall maintain the Stormwater Management Facilities at the expense of
444 the association. In the event the association fails to properly maintain the

445 Stormwater Management Facilities, then the Town's Stormwater Management
446 and Maintenance Agreement shall provide that the Town may enter the property
447 and maintain the Stormwater Management Facilities, with the cost thereof to be
448 charged back as a special charge to the owners of Lots within the Development.
449 The foregoing instruments shall be recorded prior to the commencement of any
450 work under this Agreement.
451

452 11.3. Restrictions on Transfer Of Lots Outside Current Phase. Developer agrees to
453 execute and record, in a form approved by the Town Attorney, an instrument
454 prohibiting the conveyance to third parties of Lots outside of such Phase of the
455 Development on which Improvements are being constructed (other than to a bona
456 fide financial institution as a mortgagee for the costs of development and
457 construction of the project by Developer), without the consent of the Town, or
458 until the execution of a development agreement between Developer and the Town
459 for particular Lots outside of such Phase as to which this prohibition would not
460 then apply.
461

462 11.4. Other legal documents required for this Development shall be as specified on
463 Exhibit 2.
464

465 12. **SURVEY MONUMENTS.** Developer agrees to install all survey monuments for the
466 final Plat in the manner required by law and Town Ordinance, except that pursuant to the
467 provisions of Wis. Stat. § 236.15(1)(h), Developer shall have a period of up to five (5)
468 years after the date of execution of this Agreement by all parties, within which to
469 complete installation of all required monuments in the entire Development as required by
470 law and Town Ordinance. Developer will provide security in the amount and manner
471 reasonably required by the Town Engineer at the time of commencement of construction
472 of the first Phase of the Plat based on estimates from responsible surveying firms, to
473 secure the full costs of such survey monumentation work within such time period. No
474 construction shall be commenced until the Town Engineer has approved the adequacy of
475 the security for the surveying costs.
476

477 13. **PARKLAND DEDICATION OR FEE IN LIEU OF DEDICATION.** The Town
478 acknowledges that Developer has satisfied all requirements of the Town Subdivision
479 Ordinance with regard to the dedication of park lands or the payment of fees in lieu of
480 dedication of park lands for the Development upon recording the Plat and that no fees in
481 lieu of dedication are required for this Development. Prior to Windsor's acceptance of
482 this dedication, which shall occur at such time as the Developer has substantially
483 completed installation of the public infrastructure and other requirements in this
484 Agreement and Town ordinances, the Developer shall maintain Outlot 1 at Developer's
485 expense. In addition to the dedication set forth herein and on the Plat, and as required by
486 Town ordinances, the Developer shall convey Outlot 1 to the Town by deed so that the
487 Town holds the fee interest in Outlot 1.
488

- 489 14. **FEE FOR INITIAL IMPROVEMENTS TO PARKLAND PER WIS. STAT.**
490 **§ 236.45(6).** The Town acknowledges that Developer has satisfied all requirements of
491 the Town Subdivision Ordinance with regard to the fee for initial Improvements to
492 parkland by paying the sum of \$1108.89 per UNIT (2015 rate; paid per unit at the same
493 rate for single family and duplex lots; single=1 unit; duplex= 2 units), which payment
494 shall be made prior to the Town's execution of the Plat. The Park Improvement Fees
495 shall be used for improvements to the parkland in the Plat.
496
- 497 15. **ANNEXATION.** Developer agrees that at no time will the Developer petition to annex
498 or attach all or any part of the Property to any city of village under applicable annexation
499 or boundary agreement laws, without the consent of the Town.
500
- 501 16. **GENERAL CONDITIONS.**
502
- 503 16.1. No Vested Rights Granted. Except as provided by law, or as expressly provided
504 in this Agreement, no vested right in connection with this project shall inure to the
505 Developer. Nor does the Town warrant by this Agreement that the Developer is
506 entitled to any other required approvals.
507
- 508 16.2. No Waiver. No waiver of any provision of this Agreement shall be deemed or
509 constitute a waiver of any other provision, nor shall it be deemed or constitute a
510 continuing waiver unless expressly provided for by a written amendment to this
511 Agreement signed by both Town and Developer; nor shall the waiver of any
512 default under this Agreement be deemed a waiver of any subsequent default or
513 defaults of the same type. The Town's failure to exercise any right under this
514 Agreement shall not constitute the approval of any wrongful act by the Developer
515 or the acceptance of any Improvement.
516
- 517 16.3. Town Rights Retained. The Town does not hereby waive, and expressly retains,
518 its right to governmental immunity and other defenses that may be available to the
519 Town. The obligations set forth herein are not intended to, and shall not be
520 interpreted to, limit the Town's insurance coverage or other similar protections.
521 To the extent not expressly contracted in this Agreement, the Town retains and
522 expressly reserves its legislative discretion.
523
- 524 16.4. Amendment/Modification. This Agreement may be amended or modified only by
525 a written amendment approved and executed by the Town and the Developer.
526
- 527 16.5. Default. A default is defined herein as the Developer's breach of, or failure to
528 comply with, the terms of this Agreement. The Town reserves to itself all
529 remedies available at law or equity as necessary to cure any default. The Town
530 also reserves to itself the right to draw on a Letter of Credit or other surety
531 provided hereunder in addition to pursuing any other available remedies.

532 Remedies shall include, but not be limited to, stopping all construction in the
533 approved final Plat and prohibiting the transfer or sale of Lots. Remedies shall be
534 cumulative, and the exercise of one shall not preclude the exercise of others.
535

536 16.6. Entire Agreement. This written Agreement, and written amendments, and any
537 referenced attachments thereto, shall constitute the entire Agreement between the
538 Developer and the Town.
539

540 16.7. Attorney Fees. If the Town is required to resort to litigation or arbitration to
541 enforce the terms of this Agreement, and if the Town prevails in the litigation or
542 arbitration, the Developer shall pay all Town costs, including reasonable attorney
543 fees and expert witness fees. If the court or arbitrator awards relief to both
544 parties, each will bear its own costs in their entirety.
545

546 16.8. Time. For the purpose of computing the commencement, abandonment and
547 completion periods, and time periods for Town or Developer action, such times in
548 which war, civil disasters, acts of God, or extreme weather conditions occur or
549 exist shall not be included if such times prevent the Developer or Town from
550 performing their/its obligations under the Agreement.
551

552 16.9. Severability. If any part, term or provision of this Agreement is held by the courts
553 to be illegal or otherwise unenforceable, such illegality or unenforceability shall
554 not affect the validity of any other part, term or provision, and the rights of the
555 parties will be construed as if the part, term or provision was never part of the
556 Agreement.
557

558 16.10. Benefits. The benefits of this Agreement to the Developer are personal and shall
559 not be assigned without the express written approval of the Town. Such approval
560 may not be unreasonably withheld, but any unapproved assignment is void.
561 Notwithstanding the foregoing, the burdens of this Agreement are personal
562 obligations of the Developer and also shall be binding on the heirs, successors and
563 assigns of the Developer.
564

565 16.11. Notice. Any notice required or permitted by this Agreement shall be deemed
566 effective when personally delivered in writing or three (3) days after notice is
567 deposited with the U.S. Postal Service, postage prepaid, certified mail and return
568 receipt requested, and addressed as follows:
569

570 If to Developer:

Timothy W. Gotzion
Windsor Golf Ventures, Inc.
6592 Lake Road, Suite D
Windsor, WI 53598

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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:

EXHIBIT 2
SPECIAL PROVISIONS

The Developer shall complete the following prior to execution of the Plat by the Town:

1. Comprehensive Plan Amendment. -DONE
2. Zoning consistent with Dane County Zoning Ordinance: R-1 Residence District for Lots 1-4 & 7-13; R-3A Residence District for Lots 5 & 6; RE-1 Recreational for Park Outlot. -DONE
3. Delineation of park, open space, drainage and utility easements on Outlot 1 to meet Town ordinances.
4. Completion of Documents to be Executed for Recording With Plat.

The Developer agrees to complete the following to the satisfaction of the Town Engineer, Town Attorney, Town Planner and/or Town Planning & Development Coordinator, as appropriate:

1. Special Provisions for Section 1 Required Public Improvements:
 - a. Developer shall provide water/sewer connections to Park located on Outlot 1, at Developer's cost and to Town Engineer's specifications. (required by Town ordinances)
 - b. Developer is advised that Town ordinances require right-of-way permits whenever work is being done in the right-of-way. Connections to WSD No. 1 will require right-of-way permits to cross Golf Drive. Each permit is currently \$250. Reductions and/or waivers may be granted *by the Town Board* if Developer makes all connections simultaneously and stubs the water and sewer to the Lot lines. Obtaining such reductions/waivers is the Developer's responsibility and may be approved by Resolution of the Town Board. Developer shall be responsible for restoration of Golf Drive, including asphalt for any pavement cuts.
2. Special Provisions for Section 2 Standards and Specifications for Improvements:
 - a. See Section 2.4 for special provisions related to fees in lieu of sidewalk.
 - b. No signage for the Development is required by the Town at this time. However, any signage desired by the Developer shall be designed to meet Dane County requirements and shall be subject to approval by the Town Board.
 - c. Developer shall use best efforts to minimize the impact of the Development on the trees. Nonetheless, both the Town and Developer acknowledge that this Development will likely negatively impact some of the trees currently on the Property. Developer shall submit a tree restoration plan, and implement same, all in a manner satisfactory to the Town Board and staff. The Town recommends that the Developer submit and obtain approval of a tree restoration plan prior to recording the Plat, but this is not required by the Town. However, no right-of-way or building permits shall be issued until such tree restoration plan has been submitted, reviewed by Town staff and approved by the Town Board.

EXHIBIT 3
Plat of Blue Addition To Lake Windsor,
And Lots 1, 2 and 3 of Certified Survey Map 13005, Recorded as Doc. No.
4144251,
All Located in the Town of Windsor,
Dane County, Wisconsin

Legal Descriptions and Tax Parcel Identification Nos.

Lots in Plat	Tax Parcel Nos.
Lot 1	068/0910-304-5501-0
Lot 2	068/0910-304-5512-0
Lot 3	068/0910-304-5523-0
Lot 4	068/0910-304-5534-0
Lot 5	068/0910-304-5545-0
Lot 6	068/0910-304-7106-0
Lot 7	068/0910-304-7117-0
Lot 8	068/0910-304-7128-0
Lot 9	068/0910-304-7139-0
Lot 10	068/0910-304-7150-0
Lot 11	068/0910-304-7161-0
Lot 12	068/0910-304-7172-0
Lot 13	068/0910-304-5563-0
OutLot 1	068/0910-304-7200-0
OutLot 2	068/0910-304-7225-0
OutLot 3	068/0910-304-7250-0

Lots in CSM 13005	Tax Parcel Nos.
Lot 1	068/0910-304-9710-0
Lot 2	068/0910-304-9720-0
Lot 3	068/0910-304-9730-0